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## THE AGREEMENT

### PARTIES

(1) Milberg Limited of 4 Flag Business Exchange, Vicarage Farm Road, Peterborough, PE1 5TX, and, in relation to the management of the claim all those who accept this Agreement and/or whose names appear in the Register.

(2) [NAME OF CLIENT] (the Client).

### RECITAL

- (A) This Agreement represents your entire agreement with us in relation to the Claim. You are one of the Claimants that form part of a group action against the Defendant.
- (B) This Agreement consists of three parts (Parts 1, 2 and 3):
- a. 'How we will run the Claim' (Part 1). This part of the Agreement is intended primarily to explain how we will run the Claim for the Claimants. It sets out how the Claim will be run and how we will advise the Committee and take instructions from them (and only them) about the key decisions to be made in the Claim, including decisions about settlement offers we receive or make. It sets out important costs sharing provisions which are relevant to the payment provisions set out in Part 2.
  - b. 'How we will charge you for the work that we do' (Part 2). This part of the Agreement explains our obligations to each other, how we will be paid for the work that we do, how counsel will be paid, and how other Disbursements will be paid. This is a Conditional Fee Agreement.
  - c. 'Clauses of general application' (Part 3).
- (C) The Claimants were all, or continue to be, owners of, or have an interest in, vehicles manufactured by Daimler AG and distributed in the UK by Mercedes-Benz Cars UK Limited equipped with diesel engines and, in entering into this Agreement, warrant that is the case.
- (D) At the time of signing this Agreement, the Claimants intend to bring or (in the case of the Claimants) have already brought the Claim.
- (E) The Committee has entered into or may enter into the following documents on the Claimants' behalf: an After the Event insurance policy to cover the risk of losing the Claim and having to cover the Defendants' legal costs and a Funding Agreement to finance some or all of the costs (including Disbursements) of pursuing the Claim on the Claimants behalf.
- (F) The Claimants' costs in pursuing the Claim will be met (in the first instance) by us on your behalf, under the terms of the Conditional Fee Arrangement ("CFA") at Part 2, and also by the Litigation Funder. Any adverse costs that might become payable to the Defendant should be paid by the insurer, subject to the level of cover and the other terms of the ATE Policy as approved by the Committee. The indemnity principle applies to the recovery of your costs so that at no stage can you recover from the Defendant more than the amount payable under this Agreement.
- (G) This Agreement and our terms of business is the only agreement regulating payment due from you to us. The effect of any Funding Agreement we enter into is to ascertain the priority to be given to the distribution and allocation of Case Proceeds on a Win. The Funder and we are cooperating in a wider funding programme which is intended to enable you and other clients to obtain access to justice should they wish to do so and so long as they meet our funding criteria. This means that we will be sharing with the Funder the sums to which we are entitled under the agreements to which you are a party in order to maintain a funding portfolio. Our separate arrangement with the Funder is not relevant to our arrangements with you, it does

not affect either the contents of this Agreement or any Funding Agreement. Most importantly, it does not impact upon our independence or professional judgment.

(H) You are free to obtain independent legal or other advice if you wish to do so to ensure that this Agreement and any Funding Agreement are appropriate and suitable for your needs.

## AGREED TERMS

### 1 Definitions

In this Agreement, unless the context otherwise requires, the following words and expressions have the following meanings:

**ATE Policy: An insurance policy granted by a licenced insurer to cover the risk of the Defendant seeking a contribution towards its legal costs and disbursements from the Claimants.**

**Base Costs: the sums we charge for the work we do on the Claim (including any applicable tax).**

**Claim: The claim we run on the Claimants behalf against the Defendant including all work carried out by us prior to and including court proceedings, any form of alternative dispute resolution or arbitration *but excluding any appeal against a judgment or order by you or the Defendant or any counter claim by the Defendant*. For the avoidance of doubt the Claim does not include or encompass any individuals who have not agreed to the terms of this Agreement.**

**Claim Proceeds: All and any value received by, on behalf of, or in lieu of payment to, the Claimants (or any of them) in connection with the Claim as a result of any judgment, award, order, settlement or compromise whatsoever, including payment of any Damages, compensation, interest, restitution, recovery, judgment sum, arbitral award, settlement sum, costs and interest on costs, whether in monetary or non-monetary form, before deduction of any taxes which the Claimants (or any one of them) may be liable to pay.**

**Claimants: the individuals, including you, who have signed up to these terms and/or are listed in the Register maintained by us and who form part of the Claim.**

**Committee: a group of representative Claimants and other independent people we appoint so that we can obtain timely and binding instructions on key aspects of the Claim. The Committee's decisions will be binding upon you and all other Claimants.**

**Counsel: any barrister instructed to represent the Claimants in the Claim.**

**Damages: Money that the Defendant is ordered to pay (either by way of an interim decision or final determination) or that the Defendant agrees to pay in settlement of the Claim.**

**Defendant: Daimler AG, Mercedes-Benz Cars UK Limited, leading independent UK dealerships such as Mercedes Benz Retail Group UK Limited, and any other person against whom the Committee and we consider it prudent to claim against on your behalf.**

**Disbursements: payments we make or agree to make on the Claimants' behalf in the course of the Claim, including but not limited to Counsel's fees, expert fees, court fees, and **copying charges, e-Disclosure platform costs, ATE premiums, trial presentation technology costs**, fees of PR professionals, the suppliers of case management and document management software, and costs draftsmen, **claimant aggregations activity** and other expenses.**

**Funder: any third party entity that provides litigation funding pursuant to a Funding Agreement but does not provide legal services.**

**Funding Agreement:** any agreement with a Funder for the provision of litigation funding to meet the costs of Disbursements.

**Generic Costs:** common Base Costs and Disbursements incurred in dealing with common elements of individual claims that are run jointly.

**Group Litigation Order:** any court order made pursuant to Civil Procedure Rules, Practice Direction 19B or other court order concerning the management of the Claim through the courts on behalf of the Claimants.

**Individual Costs:** Base Costs and Disbursements relating to elements of Claimants' individual claims which are unique to individual Claimants.

**Issue Costs:** Base Costs and Disbursements of dealing with specific issues which apply to some but not all Claimants.

**Lose:** where the court (or other tribunal) dismisses the Claim without making any award of damages in the Claimants' and/or your favour or where the Committee decides to discontinue the Claim on our advice with no agreement or order for payment of Damages in the Claimants' and/or your favour.

**Order: (in respect of any order relating to costs) an order of the court and/or any settlement or compromise in relation to costs.**

**Register:** a list of those individuals who have agreed to the terms of this Agreement and who are part of the Claim. The Register will be maintained by us and updated from time to time.

**Success fee:** The percentage by which the Base Costs are to be increased in the event of a Win, together with VAT thereon as appropriate. The Success Fee is 100% of the Base Costs as further explained at Schedule 2.

**we/ us:** Milberg Limited

**Win:** Where the Claim is finally decided in the Claimants' favour, whether as a result of the court (or other tribunal) ordering the Defendant to pay Damages or the Defendant agreeing to pay Damages, irrespective of whether a costs order is made in the Claimants' favour. "Finally" means one of the following:

- 1.1.1 The Defendant is not allowed to appeal against the court decision.
- 1.1.2 The Defendant has not appealed in time.
- 1.1.3 The Defendant has lost any appeal.

**you/ your: the Client**

## **Part 1 - How we will run the Claim**

### **2 Declaration of Common Interest and Purpose**

- 2.1 This section of the agreement is between you and the other Claimants and you and us.
- 2.2 The Claimants' individual circumstances vary considerably. Despite this, you agree that the Claimants all have a common interest in pursuing the Claim to secure the largest possible sum in damages for distribution to the group and warrant by joining the Claim that you have no adverse interest. It is understood that if the Claim is successful some Claimants may be compensated in a different way from others.
- 2.3 If there is a settlement before trial, the Claimants agree that no detailed account will be taken of the individual merits of individual cases (if any) and accept that adjudicating between individual

cases would be disproportionately expensive and burdensome, so that it is agreed that the Case Proceeds will be distributed fairly in accordance with advice received from Counsel and accepted by the Committee. In consequence of treating Claimants fairly, the Claimants accept that it may be necessary to distinguish between different categories of Claimant.

### **3 Sharing Information, Confidentiality and Legal Professional Privilege**

- 3.1 The Claimants accept responsibility for the accuracy of the information they supply to us and for the consequences of it being inaccurate. In particular, each Claimant is responsible for ensuring that a claim is made on their behalf in respect of the correct Daimler AG vehicle and the correct number of Daimler AG vehicles and for ensuring that the information supplied as to the purchase and sale prices is accurate. We rely on the accuracy of this information and have no duty to the Claimants to check the accuracy.
- 3.2 The Claimants agree that the duty of confidentiality owed by us in respect of the facts of your individual claim and any documents produced by you or to you through disclosure, shall be waived as against your fellow Claimants and the Committee. In either case, your confidential information will be shared on terms of confidentiality and without any waiver of privilege.
- 3.3 We are authorised to report to the Committee on the facts underlying each Claimant's claim, including your claim. These facts will include those stated in the evidence disclosed by the Defendant. Reporting shall only be undertaken which is consistent with the implied obligation to the Defendant only to use the documents disclosed in the Claim for the purpose of the Claim. Further, this provision is subject to any specific requests by Claimants that their anonymity be preserved.
- 3.4 The Claimants agree that the fact and terms of any offer to settle made may be disclosed by us to any other Claimant and to the Committee.
- 3.5 The Claimants further agree that, if we consider it to be necessary or helpful, we may use information or documents derived from one Claimant's individual claim in any other Claimant's individual claim or in the Claim in general.
- 3.6 Any information shared amongst the Claimants and between the Claimants and the Committee pursuant to the clauses above shall remain confidential. The Claimants undertake to keep all such information fully confidential and not to disclose any such information to any third party except for the purposes of obtaining professional advice, and strictly on the basis that such disclosure shall be subject to terms of confidentiality, or as required to the proper authorities or the court. Should an individual cease to be a Claimant this duty of confidentiality shall continue in full force and effect.
- 3.7 The Claimants agree that our duty to report to the Claimants shall be satisfied by us reporting to the Committee.
- 3.8 All communications between the Claimants and us or any of them shall be subject to legal professional privilege and the Claimants agree that this privilege shall not be waived or abrogated from in any way by the passing of confidential information amongst the Claimants.
- 3.9 The Claimants recognise the commercial sensitivity of the terms of the ATE Policy and the Funding Agreement and waive any requirement there may be to send them full copies, which will instead be approved by the Committee.
- 3.10 The Claimants agree that we may instruct a third party to manage some of the administration of the Claim and to maintain a secure website to facilitate communication and the exchange of information between the Claimants, the Committee and us.
- 3.11 The Claimants will keep this Agreement and its terms confidential unless required to disclose it by the proper regulatory authorities or by the court.

## 4 The Committee

- 4.1 The Committee and the chairperson of the Committee shall be appointed by us. The Committee is to constitute no less than 3 individuals selected from the claimant pool.
- A list of the committee members will be maintained by us and maybe updated from time to time (the “**Committee Members**”).
- 4.2 A list of the rules that govern Committee meetings, the appointment, removal and resignation of Committee Members can be found at Schedule 1 to this Agreement.
- 4.3 The main role of the Committee is to:
- 4.3.1 act as the Claimants’ representatives to us in relation to the Claim;
  - 4.3.2 ensure that we are, by reporting to the Committee, satisfying our professional obligations to the Claimants from time to time on the progress of the Claim including any costs budgeting or costs updates;
  - 4.3.3 ensure that we report to any funder and insurer in accordance with their requirements under the Funding Agreement or ATE Policy respectively;
  - 4.3.4 arrange for the distribution of Claim Proceeds to the Claimants.
- 4.4 In addition the Committee will be responsible and duly authorised to give instructions to us in relation to the conduct of the Claim, including but not limited to:
- 4.4.1 negotiation with the funder and any insurer for priority of payments and distribution of sums recovered;
  - 4.4.2 entry into any ATE Policy or other instrument of insurance and/or Funding Agreement;
  - 4.4.3 discontinuance of any individual claim by a Claimant;
  - 4.4.4 entry into and conduct of settlement negotiations;
  - 4.4.5 the acceptance and making of offers to settle;
  - 4.4.6 entry into an agreement in full and final settlement of all claims the Claimants may have against the Defendant;
  - 4.4.7 commencement or response to an appeal of any interlocutory order in the Claim;
  - 4.4.8 applying for any assessment of our costs under s70 of the Solicitors Act 1974;
  - 4.4.9 negotiation of new terms with us for our costs;
  - 4.4.10 appointment of any third parties and the incurring of any other disbursements or third party liability or insurance arrangements and the terms any such appointment; and
  - 4.4.11 the running of the claim.
- 4.5 In relation to all matters other than the acceptance and making of offers to settle, the business of the Committee will be resolved by a simple majority of Committee Members voting and in the event of a split vote the Chairman shall have the casting vote.
- 4.6 In relation to the acceptance and making of offers to settle and the operation of the distribution of global damages clause (see below), the votes of Committee Members shall be equal, provided that no vote in favour of the acceptance or making of an offer shall be passed unless by majority and we advise it to be in the best interests of the Claimants as a whole.

- 4.7 The Claimants agree that as a matter of practicality the level of detail of our reports to the Claimants must be restricted because of the risk that they may be passed to the Defendants.
- 4.8 The Committee will at all times act in accordance with the terms of this Agreement and use its reasonable endeavours to act in the best interests of the Claimants as a group.
- 4.9 Subject to clause 4.8 above, no member of the Committee shall be:
- 4.9.1 liable to the Claimants (or any of them) for his or its own acts, neglects or defaults or for any loss to the Claimants incurred in connection with his role as a Committee Member, unless caused through his own fraud or dishonesty; and
- 4.9.2 liable for the acts, neglects or defaults of any other Committee Member.
- 4.10 The Committee Members shall be indemnified by the Claimants against any costs, losses or expenses to which they may become liable as a result of the proper exercise of their duties as Committee Members. The Claimants agree that the Committee Members shall be entitled to reimbursement of their reasonable expenses.
- 4.11 The Claimants agree to respond promptly to any requests from the Committee and/or us, and to provide all possible assistance in connection with the Claim including disclosure of documents and data and the drafting of witness statements. The Claimants recognise that if they do not, they may damage the Claim and the Claims of fellow Claimants. If in our reasonable opinion you or any other Claimant has persistently failed to comply with requests for cooperation that it is obstructing the efficient progress of the Claim (“**Obstructive Claimant**”), we may ask the Committee to take steps formally to discontinue the Claim of any Obstructive Claimant, and all Claimants accept that if they become an Obstructive Claimant, the authority they have given to the Committee will extend to the Committee being empowered to require an Obstructive Claimant’s Claim to be discontinued.
- 4.12 The Claimants must not mislead us or ask us to work for you in an unreasonable or improper way.
- 4.13 The Claimants agree that we can instruct Counsel to represent them at any court hearing. The Claimants agree not to represent themselves or instruct anyone else to represent them at any hearing unless we agree in advance.

## **5 Authority of the Committee**

- 5.1 The Claimants irrevocably appoint the Committee to be his, her or its agents in relation to the Claim and grants authority to the Committee to enter into the Funding Agreement, the ATE Policy and any other document necessary to progress the Claim, including without limitation those matters listed in clause 4 above.
- 5.2 The Claimants agree further to ratify and to confirm anything the Committee does or executes on their behalf in relation to the Claim in the proper execution of its role.

## **6 Claimants’ Costs: General**

- 6.1 The Claimants agree to the common elements of individual claims being run jointly, and to Generic Costs being shared. The Claimants agree that Individual Costs and Issue Costs may also be treated as Generic Costs.
- 6.2 The Claimants agree to the Claim being managed under a Group Litigation Order and that the costs of any test case within the Claim will be treated as Generic Costs.
- 6.3 The Claimants authorise us to incur the Base Costs and the Disbursements notwithstanding that any element of these professional costs and Disbursements may be irrecoverable from the Defendant.

- 6.4 The Claimants agree that we are entitled to charge for all work undertaken from the date we started to work on the Claim (for the avoidance of doubt, this includes all work undertaken from the 1 May 2020 onwards).
- 6.5 The Claimants recognise that the actual relationship between a Claimant's damages and the overall damages awarded may differ.

## **7 Cost Sharing**

- 7.1 The Claimants agree that, unless the Court orders otherwise, the amount of costs referable to each Claimant and payable under the CFA shall be a '**Proportionate Share**', which shall be calculated by reference to the number of vehicles in respect of which each Claimant claims. For the purposes of this Agreement the meaning of 'Proportionate Share' includes Base Costs, Success Fees, Disbursements and any amount due to the funder under the terms of the Funding Agreement in the event of a Win.
- 7.2 The Claimants agree that we may apply to the Court for an order reflecting this Agreement as to the sharing of costs.

## **8 Sharing of the risk of adverse costs**

- 8.1 The Claimants agree collectively that their liability for the Defendant's costs is several and not joint. No single Claimant should, in the event of an adverse costs order in respect of Generic Costs being made, bear more than a Proportionate Share of the other side's costs. In respect of each Claimant's adverse Individual Costs each Claimant will bear a several liability. In entering into this Agreement, you authorise the Committee and us to enter into any ATE Policy on your behalf which will be designed to cover this adverse cost risk, subject to the terms of the ATE Policy and the level of cover.
- 8.2 The Claimants agree that we should apply to the Court for an order reflecting this agreement where it is necessary to do so.
- 8.3 If no such order is made, the Claimants each accept that any Claimant who is burdened with a greater share should be entitled to recover the difference from his fellow Claimants: any Claimant who has initially borne a greater burden of such liabilities shall have a right of recovery, which the Claimants agree will not be contested, against any of his or her fellow Claimants who have not paid their share.
- 8.4 Nothing in this Agreement shall make the Committee or any Committee Member of it liable for such costs save to the extent that any such Committee Member faces a liability in respect of his capacity as a Claimant.

## **9 Distribution of Global Damages and Priority of Payments**

- 9.1 The Claimants recognise that if there are negotiations to settle the Claim with the Defendant, it is highly likely that any offers made will be on a global basis.
- 9.2 The Claimants specifically authorise the Committee to instruct us to make offers on a global basis and to allocate and distribute any Claim Proceeds, subject to the terms for priority of payments contained in the Funding Agreement, the ATE Policy and payment of our fees under this Agreement, by reference to the amounts claimed or by any other method which we advise, and the Committee accepts, is an appropriate method of determining a global settlement of damages. The Claimants agree that the Committee has a discretion to decide which of these methods (and/or a combination of these) is most appropriate and in accordance with advice received from Counsel.
- 9.3 In giving this authority, the Claimants appreciate that the effect of this clause is that no detailed account will be taken of the individual merits or demerits of individual Claimants' cases (if any) and accept that adjudicating between individual Claimants' cases would be disproportionately expensive and burdensome.

- 9.4 The Claimants agree that the Claim Proceeds shall be paid direct to us for distribution.
- 9.5 Notwithstanding any other provision of this Agreement, if any Claim Proceeds are paid prior to the disposal of any part of the Claim or prior to any payment in respect of costs, a retention will be made from the Claim Proceeds of an amount which in our reasonable view will be sufficient to fund the costs to be incurred in connection with the following:
- 9.5.1 such parts of the Claim that have not at that stage been settled or finally determined by the Court; and/or
  - 9.5.2 assessment proceedings or negotiating the recovery of costs with the Defendant.
- 9.6 The Claimants agree that the distribution of any Claim Proceeds shall be affected by or through us and/or any third party appointed we may appoint. The costs of distributing the Claim Proceeds will be paid out of the Claim Proceeds.

## **Part 2 - How we will charge you for the work we do**

### **10 What this Fee Agreement Does Not Cover**

- 10.1 This Agreement is limited to pursuit of the Claim defined above. It does **not** cover:
- 10.1.1 any claims or counterclaims that the Defendant may bring against the Claimants or any of them;
  - 10.1.2 any appeal against a final judgment or order that the Claimants or the Defendants may make;
  - 10.1.3 any steps taken to enforce a judgment or order; or
  - 10.1.4 any reference to the Court of Justice of the European Union.

### **11 Base Costs and Disbursements**

- 11.1 Under this agreement, the Base Costs are calculated by reference to the hourly rates set out in Schedule 1.
- 11.2 From time to time other lawyers may work on this matter in which event their hourly rates will be the same as the lawyer they are replacing, unless notified to you separately. Our hourly rates may change from time to time and any changes will be notified to you separately.
- 11.3 On obtaining Funding we will invoice the Claimants Disbursements (which are funded by the funder under the Funding Agreement) throughout the Claim.

### **12 If the Claimants Win**

- 12.1 For the avoidance of doubt, in accordance with clause 7 of this Agreement, all reference to payments due shall mean the Proportionate Share.
- 12.2 In accordance with the terms of this Agreement, in the event of a Win, the Claimants will be liable for 100% of the Base Costs, together with Disbursements and the Success Fee. The amount is not based on or limited by the Damages or Case Proceeds. In addition the Claimants will be liable to pay any sums due under the terms of the ATE Policy and Funding Agreement. However, taken together, the Base Costs, Success Fee, Disbursements and any sums due under the ATE Policy or the Funding Agreement will not exceed 50% of the Damages or Case Proceeds.
- 12.3 Normally, the Claimants are entitled to seek recovery of the Base Costs and Disbursements from the Defendant. If these cannot be agreed, the court will decide how much can be recovered. If the amount agreed or allowed by the court does not cover the full amount of the Base Costs and Disbursements, the Claimants remain liable to pay the difference. The Success Fee (or any insurance premium or fees under the Funding Agreement) cannot be recovered from the



Defendant and is payable by the Claimants. These sums are usually paid out of the Case Proceeds.

- 12.4 If the Claimants are successful with an interim application during the case and the court orders the Defendant to pay the costs of that application, the Claimants will be liable for the Base Costs and Disbursements for that application, but the Claimants will only become liable to pay the Success Fee on those fees if they Win the Claim.
- 12.5 If the Defendant is ordered to pay some or all of the costs, interest can be claimed on the amounts due from the date of the award. We are entitled to keep this interest.
- 12.6 The Claimants agree that we shall receive all Case Proceeds that the Defendant is ordered or agrees to pay. Out of the Case Proceeds, you agree that we can take any sums due to us and the Funder under the Funding Agreement and the insurer under the ATE Policy and that distribution will be in accordance with clauses 7 and 9 above.
- 12.7 If the Defendant does not pay all or any of the Case Proceeds, we have the right, at our sole discretion, to take recovery action in the Claimants' names to enforce any judgment, order or agreement. The cost of doing so will be payable by the Claimants under the terms of this agreement. You agree to cooperate fully with us in any recovery action.

### **13 If Claimants Lose**

- 13.1 If the Claimants lose an interim application or lose the Claim, in accordance with clause 8 above the Claimants may be required to pay a share the Defendant's costs, unless the Claimants have the benefit of an ATE Policy of insurance which covers that risk.
- 13.2 The Claimants will not have to pay the Base Costs or Success Fee, or the Disbursements (as these will be funded by the Funder pursuant to the Funding Agreement).

### **14 Value Added Tax**

- 14.1 VAT will be added at the rate which applies when the work is done to all of the Base Costs and the Success Fee. VAT is also payable on certain Disbursements.

### **15 Right to Apply for and Assessment**

- 15.1 The Claimants have the right to an assessment by the court in England and Wales of the amount of the Base Costs, Success Fee and/ or Disbursements which are payable under this Agreement, by making an application under section 70 of the Solicitors Act 1974. But there are time limits for such an application and a gradual reduction of the right over time, which we will inform the Claimants about if asked.

## **PART 3 – General Contractual Provisions**

### **16 Termination**

- 16.1 In entering this Agreement it is our intention to reach a successful conclusion of the Claim either at trial or through settlement. However, there are circumstances in which either one of us may wish to end this Agreement before then.
- 16.2 With the exception of the circumstances in paragraph 16.4 below (in which the Claimants agree not to terminate this Agreement), the Claimants may terminate this Agreement at any time. However, each Claimant is then liable to pay their Proportionate Share of the Base Costs, Success Fee, Disbursements incurred up to the date of termination.
- 16.3 Further, as a consequence of the provisions of Part 38 of the Civil Procedure Rules, the Claimants may only be able to withdraw from the Claim with the permission of their fellow Claimants or with the permission of the court. The normal position is that a discontinuing claimant is ordered by the court to pay a share of the defendants' costs up to the date of discontinuance. Any such court order would be the sole responsibility of the discontinuing

claimant. It is very unlikely that the payment under any such court order would be covered by the ATE Policy. This does not affect the Claimants right to cancel this Agreement.

- 16.4 The Claimants agree not to terminate this Agreement after any settlement has been agreed or in the 21 days before a date set for the commencement of trial.
- 16.5 We can end this Agreement if we consider:
- 16.5.1 that the Claimants or any of them have not behaved reasonably, for example because they fail to meet their obligations as set out in this Agreement;
  - 16.5.2 we believe that the Claim no longer has reasonable prospects of success;
  - 16.5.3 we are unable to obtain litigation funding;
  - 16.5.4 there are not enough individual Claimants to warrant bringing the Claim;
  - 16.5.5 that the Claimants or any of them are bringing their Claim dishonestly.

If we are forced to terminate this Agreement because of the Claimants conduct (such as in sub-clauses 16.5.1. and 16.5.5), the Claimants will be liable to pay their Proportionate Share of the Base Costs, Success Fee and Disbursements incurred up to the date of termination. In any other termination by us under this clause, we will be entitled to recover our Base Costs and Disbursements from the Claimants.

- 16.6 For the avoidance of doubt, we consider that failing to accept our advice on the prospects of success **AND/OR** whether any offer of settlement should be accepted **AND/OR** whether any offer of settlement should be made (and, if so, on what terms) will amount to unreasonable behaviour on the Claimants' part.
- 16.7 If this Agreement ends in any of the circumstances referred to in this paragraph 16, we will tell the court, the Defendant and anyone who may be representing them that we are no longer representing the Claimants or any of them. The Claimants will be free to deal with its Claim on its own behalf or to instruct someone else to do so, subject to: payment of our Base Costs in full; payment of all Disbursements; and the terms of any Funding Agreement and the ATE Policy. If the Claimants instruct someone else and go on to Win the Claim, they will also be liable to pay the Success Fee. Until we are paid any money owed to us under this Agreement, we are entitled to a "lien" over any property that is in our possession. Therefore, until we are paid, we will be entitled to keep all documents concerning the Claim.

## 17 Disputes and Independent Assessment and Determination

- 17.1 If a dispute arises in relation to any aspect of this Agreement and/or the running of the Claim then the Claimants, the Committee or we may serve a Dispute Notice ("**Dispute Notice**"), which must set out the nature and grounds of the dispute, the outcome sought and must require the appointment of a suitably experienced Queen's Counsel ("**QC**") to undertake an independent assessment and determination.
- 17.2 If the parties do not, within 7 days of deemed receipt of the Dispute Notice, reach an agreement, then the party seeking a determination (the "**Disputing Party**") shall, within 21 days of service of the Dispute Notice, appoint a QC (to be agreed or failing this nominated by the Chairman of the Bar Council of England and Wales) to make an independent assessment and determination.
- 17.3 Within 7 days of the appointment of the QC, the Disputing Party shall send to the QC and to the other party a paper setting out its position, arguments and the evidence upon which it proposes to rely. The other party shall send to the QC and the Disputing Party a response paper within 7 days of deemed receipt of the papers from the Disputing Party.
- 17.4 The QC shall determine in his or her absolute discretion the procedures and rules to apply in the conduct of the independent assessment and determination.

- 17.5 In the circumstances where the dispute relates to part of the Agreement and the QC determines that severing that part would either be or bring about an unexpected result or result in an apparently unworkable Agreement, the QC may determine amendments to be made to the remaining parts of the Agreement and the parties shall be bound to agree to the terms of the revised Agreement.
- 17.6 If the effect of the determination by the QC is that the Agreement continues in force, nothing shall prevent either party from later seeking to exercise its rights under the Agreement to seek a further determination, where the circumstances are materially changed from those considered by the QC.
- 17.7 The parties agree that the decision of the QC shall be final and binding.
- 17.8 The parties agree that each will pay its own costs and expenses in relation to the independent assessment, save that the costs of the QC appointed to make the independent assessment and determination shall be paid by the unsuccessful party.

## **18 Notices**

- 18.1 All notices required or permitted under this Agreement shall be in writing and delivered by First Class Recorded Delivery, by hand or sent by courier to the address listed above or email to Brendan Casey (bcasey@milberg.co.uk) or at such other address as may be specified in writing by a party.
- 18.2 Any notice shall be deemed to have been delivered and received the second Business day after taking any of the actions set out in this clause.

## **19 Assignment**

- 19.1 This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors, assigns, and legal representatives. Except as otherwise provided herein, neither this Agreement, nor any rights, interests, obligations nor duties arising hereunder, may be assigned or otherwise conveyed by the Claimants without our express consent in writing.
- 19.2 We may assign our rights and obligations under this Agreement without the consent of the Claimants and may also appoint a servicing entity to administer this Agreement.

## **20 Severance and Inconsistency**

- 20.1 If any provision or part-provision of this Agreement is or is deemed invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 20.2 If any provision or part-provision of this Agreement is deemed deleted under *clause 20.1* the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 20.3 If there is any inconsistency between the provisions of parts 1,2 and 3 of this Agreement as between the parties, the provisions of part 2 shall prevail.

## **21 Governing Law and Jurisdiction**

- 21.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.
- 21.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

## 22 Client Identification

- 22.1 Under the Money Laundering, Terrorist Financing, Transfer of Funds (Information on the Payer) Regulations 2017, we must obtain satisfactory evidence of your identity before we can act for you. Examples of the documents we require to verify your identity and address are a copy of your passport and/or photo driver's license along with a utility bill (but not a mobile phone bill) or bank statement containing your address and dated in the last three months. We will carry out an electronic search to verify the identification documentation you provide.

## 23 Distance Selling

- 23.1 We have not met with the Claimants, so the Consumer Contracts Regulations 2013 apply to this work. This means the Claimants have the right to cancel their instructions to us within 14 working days of receiving this Agreement. The Claimants can cancel their instructions by contacting us by email, post or fax at:

[clientcare@milberg.co.uk](mailto:clientcare@milberg.co.uk)

4 Flag Business Exchange

Vicarage Farm Road

Peterborough

PE1 5TX

- 23.2 Once we have started work on the file, the Claimants may be charged if they then cancel their instructions.

## 24 Personal Data

- 24.1 While working for the Claimants we may collect personal data. For more information on how we use personal data, please see our privacy policy at:

[GDPR Privacy Policy for Milberg Ltd.](#)

## 25 Counterparts

- 25.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 25.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

Signed by: \_\_\_\_\_

Date Signed: \_\_\_\_\_

For and on behalf of: \_\_\_\_\_

Signed by: \_\_\_\_\_

Date Signed: \_\_\_\_\_

For and on behalf of: \_\_\_\_\_

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## Schedule 1

### Basic charges

These are for all work done in relation to your claim from the date that you first instructed us (or, in the case of common costs from the date that such costs began to be incurred). These are subject to annual review.

Our basic charges are calculated for each hour engaged on your case, in units of one tenth of an hour. Routine letters and telephone calls will be charged as one unit. Other letters and telephone call will be charged on a time basis. The hourly rates are:

<b>Grade of Fee Earner</b>	<b>Hourly Rate</b>
1. Staff with at least eight years litigation experience.	£550
2. Staff with at least four years litigation experience but less than eight years litigation experience.	£450
3. Professionally qualified staff with less than four years litigation experience, and other fee earners with equivalent experience or responsibilities.	£350
4. Trainee solicitors, paralegals and other fee earners with equivalent experience or responsibilities.	£175

Where we delegate work to agents, we may charge for their work as part of our basic charges, as if we had performed the work ourselves.

You will be notified of any increase in our basic charges in writing.

## Schedule 2 – the Success fee

The success fee is set at 100% of our basic charges.

The reasons for setting the success fee at 100% are:

- (a) it is the remuneration which we require to agree to act on conditional fee terms, which we would not be prepared to act on if you did not agree to the percentage stated above;
- (b) the fact that our Charges are capped;
- (c) the fact that if you lose, we will not earn anything;
- (d) our assessment of the risks of your case, which include the fact that the vehicle manufacturers have stated that these claims will be defended, and that there is extant group litigation in England and Wales which is being defended robustly
- (e) the postponement of payment of our fees and disbursements until the end of the case;
- (f) the fact that we fund your disbursements;
- (g) the fact that we take the risk of you not beating a formal offer to settle;

Accordingly, although the success fee percentage includes the risk of an adverse outcome to your claim as a factor, it is not merely a charge for risk, but the price that we require for acting on conditional payment terms which we would not otherwise offer.

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### Schedule 3

- 1) The following rules shall govern Committee meetings:
  - a. Committee meetings must be held in the presence of us, may be called by any Committee Member and may be held in person on seven days' notice or by conference call on 24 hours' notice, such notice to be provided by email or by other means if so agreed by a Majority of Committee Members' votes cast ('Majority' in this Agreement means more than 50%);
  - b. Committee meetings shall be considered quorate only if three or more members are in attendance, whether in person, by telephone or by Skype or similar, save where the number of Committee Members has is below three; in which case a Committee meeting shall be quorate if all remaining members are in attendance;
  - c. No one who is not a Committee Member, a representative of us or counsel shall be entitled to attend a Committee meeting other than by the invitation of three Committee Members or by the invitation of us;
  - d. Minutes must be kept by us of all meetings and approved by the Committee by simple majority;
  - e. The Chairwoman/Chairman may exercise a casting vote in the event of a tied vote;
  - f. The Committee may dismiss a Chairwoman/Chairman by majority vote and appoint a new Chairwoman/Chairman by simple majority.
- 2) The following rules shall govern the appointment, removal, and resignation of Committee Members:
  - a. a person shall cease to be a Committee Member as soon as he or she:
    - i. retires by notifying each member of the Committee and us in writing (but only if enough Committee Members remain in office to form a quorum for meetings);
    - ii. dies;
    - iii. becomes incapable by reason of mental disorder, illness or injury of managing and administering his or her own affairs;
    - iv. has a bankruptcy order made against him or her; or
    - v. a majority of the Committee Members resolve at a properly convened meeting of the Committee, and with the prior or simultaneous consent of the us, that he or she should cease to be a member of the Committee;
  - b. a person shall be appointed a member of the Committee by the resolution of a majority of the Committee Members at a properly convened meeting of the Committee, providing that the number of Committee Members shall not exceed twelve and providing that we have given our consent.
  - c. We will maintain a record of the Committee Members.