



CONDITIONAL FEE AGREEMENT STANDARD TERMS (APIL PIBA 5 & 6 form) Civitas CFA Standard Terms 1303

INDEX OF PARAGRAPHS

Part I : Conditions Precedent

- 1 Papers provided to Counsel
- 2 Compliance with statute

Part II : Obligations of Counsel

- 3 Diligence
- 4 Inappropriate instructions

Part III : Obligations of the Solicitor

- 5 Obligations of the Solicitor

Part IV : Termination

- 6 Termination of the agreement by Counsel
- 7 Termination of agreement by Solicitor
- 8 Automatic termination of the agreement
- 9 Client becomes under a disability
- 10 Queen's Counsel

Part V : Counsel's Fees & Expenses

- 11 Counsel's base fees
- 12 Counsel's Success fee
- 13 Counsel's expenses

Part VI (A) : Counsel's entitlement to fees if the agreement is not terminated

- 14 Success
- 15 CPR36 Payments/Offers
- 16 Failure
- 17 Errors and Indemnity for Fees

Part VI (B) : Counsel's entitlement to fees on termination of the agreement

- 18 Fees on termination
- 19 Challenge to fees

Part VII : Returns

- 20 Return of work

Part VIII : Costs assessment and payment of fees

- 21 Interlocutory costs assessment
- 22 Solicitor's obligation to pay Counsel's fees and expenses
- 23 Interest on Counsel's fees
- 24 Challenge to Success fee
- 25 Disclosing the reasons for the Success Fee
- 26 Reductions on Assessment
- 27 Opponent's offers as to costs

Part IX : Miscellaneous

- 28 Definitions
- 29 Basis of instruction
- 30 Scope of agreement
- 31 Enforceability
- 32 Formalities

CONDITIONAL FEE AGREEMENT

between
COUNSEL AND SOLICITOR AND CLIENT

PART I: CONDITIONS PRECEDENT

in default whereof unless waived by Counsel all instruction of Counsel shall be deemed to be upon conventional private disbursement basis at the fee rates provided for as base fees at paragraph 11 below and in the case-specific CFA Detail Sheet (hereinafter referred to as "the CFA Detail Sheet") :

1. Papers provided to Counsel The application of these terms to individual cases is conditional upon Counsel having been provided with:

- (1) a copy of the Conditional Fee Agreement entered into by the Solicitor and Client ("the Solicitor/Client Agreement") and the Law Society's Conditions as they apply to the claim;
- (2) written confirmation that After The Event (hereinafter "ATE") or other insurance or other similar insurance is in place (for the avoidance of doubt, this agreement will cease to have effect if such cover lapses or is withdrawn or not renewed or continued); and
- (3) all relevant papers and risk assessment material which was available to the Solicitor when this agreement was made, including all advice from experts and other solicitors or barristers to the Client or any Litigation Friend in respect of the claim; and
- (4) any offers of settlement already made by the Client or the Defendant.

2. Solicitor's Compliance with Statute The Solicitor confirms and warrants that (and hence the application of these terms to individual cases is conditional upon the correct confirmation that) the Solicitor/Client Agreement complies with sections 58 and 58A of the Courts and legal Services Act 1990 and the Conditional Fee Agreements Order 2000 and or any successor provisions governing CFA agreements.

PART II - OBLIGATIONS OF COUNSEL

3. Diligence Counsel agrees to act diligently on all proper instructions from the Solicitor subject to paragraph 4 hereof.

4. Inappropriate Instructions Counsel is not bound to accept instructions:

- (1) to appear at an interlocutory hearing where it would be reasonable
 - (a) to assume that Counsel's fees in respect thereof would not be allowed on assessment, or
 - (b) to instruct a barrister of less experience and seniority, provided that Counsel has first used his best endeavours to ensure that an appropriate barrister will act for the Client on the same terms as this agreement;
- (2) if a barrister of similar seniority would not ordinarily be instructed so to do if not instructed on a conditional fee basis;
- (3) outside the scope of this agreement.

PART III: OBLIGATIONS OF THE SOLICITOR

5. The Solicitor agrees:

- (1) to comply with all the requirements of the Civil Procedure Rules ("CPR"), the practice direction about costs supplementing CPR43-48 ("PDCosts"), any relevant pre-action protocol and any court order relating to conditional fee agreements, and in particular promptly to notify the Court and the Opponent of the existence and any subsequent variation of the the

Solicitor/Client Agreement and or this agreement and whether s/he has taken out an insurance policy or made an arrangement with a membership organisation and of the fact that additional liabilities are being claimed from the Opponent;

(2) promptly to apply for relief from sanction pursuant to CPR3.8 if any default under CPR44.3B(1)(c) or (d) occurs and to notify Counsel of any such default;

(3) to act diligently in all dealings with Counsel and the prosecution of the claim;

(4) to liaise with or consult Civitas about the likely amount of Counsel's fees before filing any estimate or statement of costs in the proceedings, and to provide a copy of any such estimate/statement to Civitas;

(5) to consult Counsel on the need for advice and action following

(a) the service of statements of case and if possible before the allocation decision; and

(b) the exchange of factual and expert evidence;

(6) to deliver within a reasonable time papers reasonably requested by Counsel for consideration;

(7) promptly to bring to Counsel's attention:

(a) any priority or equivalent report to insurers;

(b) any CPR36 or other offer to settle;

(c) any CPR36 payment into Court;

(d) any evidence information or communication which may materially affect the merits of any issue in the case;

(e) any application by any party to have the client's costs capped;

(f) any costs capping order;

(g) any other factor coming to the Solicitor's attention which may affect Counsel's entitlement to Success fees whether before or after the termination of this agreement.

(8) promptly to communicate to the Client any advice by Counsel:

(a) to make, accept or reject any CPR36 or other offer;

(b) to accept or reject any CPR36 payment in;

(c) to incur, or not incur, expenditure in obtaining evidence or preparing the case;

(d) to instruct Leading Counsel or a more senior or specialised barrister;

(e) that the case is likely to be lost.

(9) promptly to inform Civitas of any listing for hearing;

(10) to deliver the brief for trial (see paragraph 28 below) not in any event less than 7 days before the trial and otherwise in accordance with Counsel's specific advice if any in the case or otherwise as agreed with Counsel; further in any case where Counsel has been retained for the trial hearing (in circumstances where the Solicitor considers that Counsel has an obligation to appear at the hearing and Counsel's diary has been marked to reflect that obligation) cancellation fees for Counsel shall where success is achieved be due upon early settlement as follows:

(a) in the case of a fast track case (or one not allocated to track) as to 50% of full brief fee if Civitas is notified of settlement of the case during the period 14-8 days (inclusive) prior to the trial date, and 100% if notification of settlement is received by Civitas in the period 7-1 days inclusive prior to the trial date;

(b) in the case of a multi track case (or appeal) as to 25% of full brief fee if Civitas is notified of settlement of the case during the period 21-15 days (inclusive) prior to the trial date, as to 50% if notification of settlement is received by Civitas in the period 14-8 days (inclusive) prior to the trial date, and as to 100% if notification of settlement is received by Civitas in the period 7-1 days (inclusive) prior to the trial date.

(11) to notify Civitas promptly if the case settles including by stating whether the case is then unallocated, or, if allocated, to which track, and the period of time left from the date of notification to the trial date.

(12) if any summary assessment of costs takes place in the absence of Counsel, to submit to the court a copy of Counsel's risk assessment and make representations on Counsel's behalf in relation to Counsel's Success fees;

(13) to inform Counsel in writing within 2 days of any reduction of Counsel's Success fees on

summary assessment in the absence of Counsel and of any directions given under PDCosts 20.3(1) or alternatively to make application for such directions on Counsel's behalf;

(14) where points of dispute are served pursuant to CPR47.9 seeking a reduction in any fee charged by Counsel, to give the Client the written explanation required by CPR PDCosts paragraph 20.5 on Counsel's behalf;

(15) where more than one Defendant is sued, the Solicitor will write to the ATE insurers clarifying whether and when Defendants' costs are to be covered if the Claimant does not succeed or win against all of the Defendants, and send that correspondence to Counsel;

(16) prior to settlement or assessment of costs at any stage of the case to agree with Counsel's clerk the amount of interest payable upon Counsel's fees (see paragraph 14(2) below) and to reclaim Counsel's fees including that interest in the costs settlement/proceedings (including by provision of Schedule of Costs for Summary Assessment and Bill of Costs for Detailed Assessment) and pay the same to Counsel forthwith upon receipt;

(17) within 7 days of Success to request from Counsel's clerk a finalised fee note in respect of the case as a whole or if appropriate that part of the case in which Success has been achieved;

(18) promptly upon Success to pursue and obtain costs from any paying party by agreement or assessment to include Counsel's fees and any interest thereupon and pay that part referable to Counsel's fees/costs to Counsel forthwith upon receipt .

PART IV: TERMINATION

6. Termination by Counsel Counsel may terminate the agreement if :

- (1) Counsel discovers the existence of any document which should have been disclosed to him under paragraph 1 above and which materially affects Counsel's view of the likelihood of Success and/or the amount of financial recovery in the event of Success;
- (2) Counsel discovers that the Solicitor is in breach of any obligation in paragraph 5 hereof;
- (3) the Solicitor, Client or any Litigation Friend rejects Counsel's advice in any respect set out in paragraph 5(8) hereof;
- (4) Counsel discovers the existence of any set-off or counter-claim which materially affects the likelihood of Success and/or the amount of financial recovery in the event of Success;
- (5) Counsel discovers the existence of information which has been falsified or withheld by the Solicitor in breach of paragraph 5(7), by the Client or any Litigation Friend, of which Counsel was not aware and which Counsel should not reasonably have anticipated, which materially affects the merits of any substantial issue in the case;
- (6) Counsel is required to cease to act by the Code of Conduct of the Bar of England and Wales ("the Code") and or by the managers of the Withdrawal of Credit Scheme and or Counsel's professional conduct is being impugned;
- (7) A costs capping order is made which Counsel reasonably believes may adversely affect the recoverability of costs and unfairly prejudice the Client; or
- (8) The Opponent receives Community Legal Service funding;

provided that Counsel may not terminate the agreement if so to do would be a breach of the Code, and notice of any termination must be communicated promptly in writing to the Solicitor.

7. Termination by the Solicitor The Solicitor may terminate the agreement at any time on the **instructions** of the Client or any Litigation Friend.

8. Automatic Termination This agreement shall **automatically** terminate if:

- (1) Counsel accepts a full-time judicial appointment;
- (2) Counsel retires from practice;
- (3) the Solicitor/Client Agreement is terminated and or the Client's insurance cover (see paragraph 1(2) above) ends before the conclusion of the case;
- (4) Legal Services Commission funding is granted to the Client;

- (5)(subject to paragraph 9 below) the client dies; or
- (6)the Court makes a Group Litigation Order covering this claim; or
- (7)by effluxion of time where a time limit or review event is provided for in the Detail Sheet and that time limit or event is reached without the claim being settled.

9.Client becoming under a Disability If the Client at any time becomes under a **disability** or dies in circumstances where the claim is maintained by the **Estate** and or a claim is made for the Dependants under the **Fatal Accidents Act 1976**, then the Solicitor will:

- (1)consent to a novation of this agreement with the Client to the Litigation Friend or conducting representative of the Estate/Dependants; and
- (2)where appropriate, apply to the Court to obtain its consent to acting under a conditional fee agreement with the Litigation Friend or conducting representative of the Estate/Dependants.

Thereafter, the Litigation Friend or conducting representative of the Estate/Dependants shall, for the purposes of this agreement, be treated as if he/she was and has always been the Client.

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

PART V: COUNSEL'S FEES & EXPENSES

11. Counsel's Base Fees

- (1)Counsel's fees upon which a Success fee will be calculated (the "base fees") will be as set out in the CFA Detail Sheet.
- (2)The base fees will be subject to review with effect from the end of each calendar year following the date of this agreement but Counsel will not increase the base fees by more than 5% above any increase in the rate of inflation measured by the Retail Prices Index.

12. Counsel's Success Fees

The rate of Counsel's Success fees will be as set out in the CFA Detail sheet or otherwise as fixed by CPR45. For the avoidance of doubt, Counsel's Success fees will not be capped or limited by reference to the level of damages recovered.

13.Travel Expenses It being agreed that Counsel is not expected to incur significant expenses without reimbursement pending the outcome of the case and including in the event of failure, if a hearing, conference or view takes place more than 25 miles from Civitas' address the Solicitor shall pay Counsel's reasonable travel and accommodation **expenses** in any event and irrespective of whether Success is achieved. Those expenses shall:

- (1)appear separately on Counsel's fee note;
- (2)not be "fees" and accordingly attract no Success fee; and
- (3)be immediately payable 3 months after first notified to the Solicitor in Counsel's fee note or forthwith upon earlier termination of this agreement.

PART VI (A) : COUNSEL'S ENTITLEMENT TO FEES WHERE THE AGREEMENT IS NOT TERMINATED: WINNING & LOSING

14.Success

(1)"Success" means:

- (a)the claim for damages is finally decided in favour of the Client, whether by a court decision or an agreement to pay the Client damages or in any way that the Client derives benefit from pursuing the claim (being the current standard Law Society definition of "win" for CFA agreements in personal injury cases); and or
- (b)as defined in any additional definition of Success as may be set out in the

Solicitor/Client Agreement; and

(c) further or in the alternative, Success is achieved at trial of a preliminary issue, or upon determination of an interlocutory issue when any favourable costs order in favour of the Client is obtained; for the avoidance of doubt, counsel's entitlement to immediate payment of fees arising upon such Success will be limited to the base costs (fees) of such preliminary issue or interlocutory issue and this does not affect the overall costs of the Action and counsel's entitlement to be paid fees (including success fees) beyond those discrete preliminary/interlocutory base costs;

and

(d) further or in the alternative, Success hereunder is achieved where a like claim arising out of the same facts is pursued (to Success as herein otherwise defined) for the Estate or Dependents of the Client following death of the Client prior to conclusion of his/her claim and this Agreement is subject of novation in accordance with paragraph 9 hereof; and

(e) as defined in any additional definition of Success as may be set out in the CFA Detail Sheet.

For the avoidance of doubt any of these meanings of "success" is met if the definition applies to the outcome as against one or more of a number of opponents in a single case covered by the Detail Sheet.

(2) Subject to paragraphs 15 & 18(1)(a) hereof, in the event of Success the Solicitor will pay Counsel his base and Success fees together with interest in accordance with paragraph 23 hereof.

(3) If Success is achieved at an interim hearing Counsel may apply for summary assessment of costs including his fees and if such application is successful then Counsel shall be entitled to payment of such sums as are ordered as payment for his fees and the Solicitor shall make appropriate claim for interest and forthwith upon receipt of sums ordered to be paid in respect of Counsel's base fees pay them to Counsel together with any interest awarded thereupon in accordance with paragraphs 5(16)-(18) and 23 hereof above.

15. Part 36 Offers and Payments If the amount of damages and interest awarded by the court is less than an offer or payment into Court effective under CPR36 then:

- (1) if during the currency of this agreement Counsel advised its rejection Counsel is entitled to base and Success fees for work up to expiry of the time for acceptance of the CPR36 offer or payment but base fees only for subsequent work;
- (2) otherwise Counsel is entitled to base and Success fees for all work done.

16. Failure Subject to paragraph 17 hereof, if the case is lost or on Counsel's advice ends without Success then Counsel is not entitled to any fees (see paragraph 13 above in respect of travel expenses). For the avoidance of doubt it is agreed that these are the only circumstances in which Counsel is not entitled to any fees and if the specific provisions of this agreement do not otherwise apply, then in default Counsel is entitled to reasonable remuneration for work done, which shall be the level of base fees billed unless and to the extent that any billed fee has been queried within 3 months of receipt of Counsel's fee note first including that fee.

17. Errors and Indemnity for Fees

(1) If, because of a breach by the Solicitor but not Counsel of the Solicitor's obligations under this agreement and or the Solicitor's duty to the Client, the Client's claim is dismissed or struck out short of trial:

- (a) for non compliance with an interlocutory order; or
- (b) for want of prosecution; or
- (c) otherwise under the CPR or other rules of court; or
- (d) is from the outset or becomes unenforceable against the MIB for breach of the terms of the relevant Agreement,

the Solicitor shall (subject to sub-paragraphs (3)-(6) hereof) pay Counsel his/her base fees hereunder.

(2) If, because of a breach by Counsel but not the Solicitor of Counsel's duty to the Client, the Client's claim is dismissed or struck out:

- (a) for non compliance with an interlocutory order; or
- (b) for want of prosecution; or
- (c) otherwise under the CPR or other rules of court;

Counsel shall (subject to sub-paragraphs (3)-(6) hereof) pay the Solicitor such basic costs as would have been recoverable under the Solicitor/Client Agreement.

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

Adjudication on disagreement

(4) In the event of any disagreement as to whether there has been an actionable breach by either the Solicitor or Counsel, or as to the amount payable under sub paragraph (1) or (2) hereof, that disagreement shall be referred to adjudication by a panel consisting of a Barrister nominated by PIBA and a Solicitor nominated by APIL who shall be requested to resolve the issue on written representations and on the basis of a procedure laid down by agreement between PIBA and APIL. The costs of such adjudication shall, unless otherwise ordered by the panel, be met by the unsuccessful party;

(5) In the event of a panel being appointed pursuant to sub-paragraph (4) hereof;

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

(6) Cap

The amount payable in respect of any claim under sub paragraph (1) and or (2) shall be limited to a maximum of £30,000.

PART VI (B) : COUNSEL'S ENTITLEMENT TO FEES ON TERMINATION OF THE AGREEMENT

18.

(1) Termination by Counsel If Counsel terminates the agreement under paragraph 6 then, subject to sub-paragraph (2) hereof, Counsel may elect either

- (a) to receive payment of base fees without Success fees which the Solicitor shall pay not later than three months after termination: ("Option A"), or
- (b) to await the outcome of the case and receive payment of base and Success fees if it ends in Success: ("Option B").

(2) If Counsel terminates the agreement because the Solicitor, Client or Litigation Friend rejects advice under paragraph 5(8)(e) above (that the case is likely to be lost) "Option B" will apply.

(3) Termination by the Solicitor

If the Solicitor terminates the Agreement under paragraph 7, Counsel is entitled to elect between "Option A" and "Option B".

(4) Automatic Termination and Counsel becoming Queen's Counsel

(a) If the agreement terminates under paragraph 8(1) (judicial appointment) or paragraph 8(2) (Counsel's retirement) paragraph 8(4) (LSC funding) or paragraph 8(5) (death of client) or paragraph 8(6) (GLO) or 8(7) (effluxion of time) or 10 (Counsel becoming Queen's Counsel) "Option B" will apply.

(b) If the agreement terminates under paragraph 8(3) (termination of the Solicitor/Client Agreement) then Counsel is entitled to elect between "Option A" and "Option B" save that

(i) if the Solicitor has ended the Solicitor/Client Agreement because s/he considers that the Client is likely to lose and at the time of that termination Counsel considers that the Client is likely to win, and the Client goes on to win, the Solicitor will pay Counsel's base and Success fees irrespective of Counsel's election;

(ii) if the Solicitor has ended the Solicitor/Client Agreement because the Client has rejected the advice of the Solicitor or Counsel about making a settlement the Solicitor will pay Counsel's base fee in any event and, if the Client goes on to win the case, will also pay Counsel's Success fee.

19. Challenge to Fees If the Client or any Litigation Friend wishes to challenge:

(1) the entitlement to fees of Counsel or the level of such fees following termination of the agreement; or

(2) any refusal by Counsel after signing this agreement to accept instructions;

the Solicitor must make such challenge in accordance with the provisions of paragraphs 14 and 15 of the Terms of Work upon which barristers offer their services to solicitors (Annex D to the Code of Conduct of the Bar of England and Wales).

PART VII: RETURN OF WORK

20. If Counsel in accordance with the Bar's Code of Conduct is obliged to return any brief or instructions in this case to another barrister, then

(1) Civitas will use its best endeavours to ensure that an appropriate barrister agrees to act for the Client on the same terms as this agreement but if Civitas is unable to secure an appropriate replacement barrister to act for the Client on the same terms as this agreement Counsel will not be responsible for any additional fee incurred by the Solicitor or Client;

(2) subject to paragraph 20(3) hereof, if the case ends in Success Counsel's fees for work done shall be due and paid on the conditional fee basis contained in this agreement whether or not the replacement barrister acts on a conditional fee basis; but

(3) if the Solicitor or Client rejects any advice by the replacement barrister of the type described in paragraph 5(8) hereof, the Solicitor shall immediately notify Counsel who shall be entitled to terminate this agreement under paragraph 6(3).

PART VIII: COSTS ASSESSMENT AND PAYMENT OF FEES

21. Interlocutory Costs Assessment

(1) If:

(a) a costs order is made in favour of the Client at an interlocutory hearing and the costs are summarily assessed at the hearing; or,

(b) the costs of an interlocutory hearing are agreed between the parties in favour of the Client; or

(c) an interlocutory order or agreement for costs to be assessed in detail and paid forthwith is made in favour of the Client, then

- (i) the Solicitor will include in the statement of costs a full claim for Counsel's base fees and interest thereupon; and
- (ii) the Solicitor will promptly conclude by agreement or assessment the question of such costs including interest; and
- (iii) within one month of receipt of such costs the Solicitor will pay to Counsel the amount recovered in respect of Counsel's fees (such sum to be set off against Counsel's entitlement to base and Success fees by virtue of this agreement) together with such proportion of interest agreed or awarded upon costs as the costs agreed or awarded in respect of Counsel's fees bears to the overall costs awarded in accordance with clause 23 of this agreement.

22. Solicitor's obligation to pay Counsel's fees and expenses

- (1) The amount of fees and expenses payable to Counsel under this agreement
 - (a) are not limited by reference to the damages which may be recovered on behalf of the Client; and
 - (b) are payable whether or not the Solicitor is or will be paid by the Client or Opponent.
- (2) Upon Success the Solicitor will immediately obtain from Counsel's clerk finalised fee note (in accordance with 5(17) above) and thereafter promptly conclude by agreement or assessment the question of costs and within one month after receipt of such costs the Solicitor will pay to Counsel the full sum due under this agreement (including VAT and interest) but Counsel's fees (including VAT and interest) will in any event be paid within 1 year of the making of the final order in favour of the Client. For the avoidance of doubt, Counsel will thus allow a reasonable time for the Solicitor to deal with costs claims against the losing party or any relevant insurer without prejudice to Counsel's entitlement to be paid fees due immediately upon delivery of final fee note. . Upon payment of Counsel's fees as aforesaid formal VAT invoice will be issued to the Solicitor.

23. Interest

- (1) In accordance with the Late Payment of Commercial Debts Act 1998 as amended and further in accordance with any prevailing Terms of Work upon which barristers offer their services to solicitors, interest is payable upon Counsel's fees when due for payment and will be charged and payable hereunder upon the totality of Counsel's fees not at the statutory rate provided for by the 1998 Act but at the rate of 2% above Bank of England Base Rate from time to time prevailing from 1 calendar month from the date of submission of the finalised fee note or from 3 calendar months from the date of settlement or judgment whichever is sooner.
- (2) Further the Solicitor will use his best endeavours to recover interest on costs from any party ordered or agreeing to pay costs to the Client and shall (without prejudice to any other entitlement of Counsel to be paid interest under paragraph 23(1) hereof and on account of any greater such entitlement) pay Counsel the proportionate share of such interest that has accrued on Counsel's outstanding fees.

24. Challenge to Success Fee

- (1) The solicitor will inform Civitas in good time of any challenge made to Counsel's Success fees and of the date, place and time of any detailed costs assessment the client or opponent has taken out pursuant to the Civil Procedure Rules and unless Counsel is present or represented at the assessment hearing will place Counsel's risk assessment, relevant details and any written representations before the assessing judge and argue Counsel's case for the Success fees set out in Counsel's final fee note.
- (2) If Counsel's Success fees are reduced on any assessment then:
 - (a) the solicitor will inform Civitas within seven days and confer with Counsel as to whether to apply for an order that the client should pay the whole Success fee and

make such application on Counsel's behalf;
(b)subject to any appeal or order, Counsel will accept such Success fees as are allowed on that assessment and will repay forthwith to the solicitor any excess previously paid.

25. Disclosing the reasons for the Success Fee

If:

- (1)a Success fee becomes payable as a result of the Client's claim and
- (2)any fees subject to the increase provided for by paragraph 12 hereof are assessed and
- (3)Counsel, the Solicitor or the Client is required by the court to disclose to the court or any other person the reasons for setting such increase as the level stated in this agreement, then s/he may do so.

26. Reduction on Assessment

If any fees subject to the said percentage increase are assessed and any amount of that increase is disallowed on assessment on the ground that the level at which the increase was set was unreasonable in view of the facts which were or should have been known to Counsel at the time it was set, such amount ceases to be payable under this agreement unless the court is satisfied that it should continue to be so payable.

27. Agreement on Fees

If the Opponent offers to pay the Client's legal fees in a lower overall sum than is due under this agreement and otherwise for the Client's legal fees then the Solicitor:

- (1)will calculate any proposed pro-rata reductions of the base and Success fees of both Solicitor and Counsel, and
- (2)will inform Counsel of the offer and the calculations supporting the proposed pro-rata reductions referred to in sub-paragraph (1) above; and
- (3)will not accept the offer without Counsel's express consent.

If Counsel gives such consent then Counsel's fees shall be limited to the agreed sum unless the court orders otherwise.

PART IX: MISCELLANEOUS

28. Definitions In this agreement

"*This Agreement*" means these Standard Terms read together with the CFA Detail Sheet.

"*Civitas*" means Counsel's chambers Civitas Law and members and staff thereof acting as agents of Counsel and or other barrister members of chambers.

"*Counsel*" means **principal counsel identified in the CFA Detail Sheet** and any other counsel either from Civitas or recommended by Counsel in accordance with clause 20(1) who signs this agreement at any time at the Solicitors request;

"*the Solicitor*" and "*the Client*" mean respectively the persons identified as such in the CFA Detail Sheet.

"*Trial*" includes a hearing of specific preliminary issue/s and a substantive appeal hearing.

References in this Agreement to the "*claim*" includes the original claim of the Client together with any successor claim handled under the terms of this Agreement in accordance with paragraph 9 hereof (disability/claims of Estate and for Dependents).

29. Basis of Instruction

This agreement forms the basis on which instructions are accepted by Counsel from the Solicitor to act on a conditional fee basis for the Client in his/her/its claim against **the person(s) identified as Defendant in the CFA Detail Sheet** (together with any other Defendants who may be later added to the proceedings by amendment, herein compendiously referred to as "the Opponent") until:

- (1)the claim is won, lost or otherwise concluded; or
- (2)this agreement is terminated.

30. Scope of agreement

This agreement relates to:

- (1)issues of jurisdiction;
- (2)issues of breach of duty;
- (3)issues of causation;
- (4)issues of limitation;
- (5)issues of damages.

It does not cover:

- (6)appeals;
- (7)any counterclaim or defence by way of set-off;
- (8)any CPR20 claim
- (9)part only of the proceedings unless specifically incorporated in this agreement;
- (10)issues of financial viability of the claim in relation to costs/benefit analyses and solvency of the Defendant/s unless Counsel is specifically asked to advise as to those aspects and agrees to do so.

31. Enforceability

This Agreement is a contract enforceable at law made between Solicitor, Client and Counsel. Counsel's fees due under this agreement remain throughout by way of disbursement. The relationship of Counsel and Solicitor shall be governed by the Terms of Work under which barristers offer their services to solicitors and the Withdrawal of Credit Scheme as authorised by the General Council of the Bar as from time to time amended and set out in the Code of Conduct of the Bar of England and Wales, save that where such Terms of Work are inconsistent with the terms of this agreement the latter shall prevail. Likewise the terms of this agreement will prevail over any apparently inconsistent terms in other contractual provisions which might otherwise apply to the relationship of Counsel and Solicitor. For the avoidance of doubt:

- (1)If and to the extent that Counsel is entitled hereunder to payment of any fees, the Solicitor shall be primarily responsible for payment thereof and Counsel accepts no responsibility to look to the Client for payment albeit that in any event Civitas may if so advised enforce payment of unpaid fees due direct against the Client.
- (2)It is hereby agreed that the Solicitor has taken all reasonable steps to ensure that such liability to account for Counsel's fees is properly advised to the Client and (subject to the Client's express instructions) covered by a policy of "after the event" ("ATE") or other insurance.

32. Formalities

Counsel is not bound to act on a conditional fee basis until Counsel or his agent has signed the CFA Detail Sheet. "Signed" includes inclusion of electronic image file of signature if adopted for electronic delivery. The delivery of instructions to Counsel with a request to act upon conditional fee terms shall constitute in every individual case an offer to Counsel to undertake that case in accordance with the terms including as to Success fee uplift, as are set out herein and or in the CFA Detail Sheet. Signed completion of the CFA Detail Sheet by Counsel shall constitute acceptance of the offer to be acknowledged only by countersignature thereof by the Solicitor.