

STANDARD TERMS AND CONDITIONS OF CONTRACT FOR THE SUPPLY OF LEGAL SERVICES

Dated 1 January 2023

These terms and conditions should be read alongside the Barrister's Privacy Notice which can be accessed at stkatharines.com/privacy

1. Definitions and Interpretation

1.1. In these Terms and Conditions of Contract for the Supply of Services dated 1 January 2023 ("the Terms"):

- (a) reference to a clause is to the relevant clause of these Terms;
- (b) references to the masculine include the feminine and references to the singular include the plural and vice versa in each case;
- (c) references to an Act of Parliament, statutory provision or statutory instrument include references to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- (d) references to a person include bodies corporate (including limited liability partnerships) and partnerships, in each case whether or not having a separate legal personality, except where the context requires otherwise;
- (e) references to a person or body include references to its successor and assigns;
- (f) references to "parties" or a "party" are references to the parties or party to the Agreement;
- (g) reference to a document includes anything in which information is recorded, whether on paper, electronically or otherwise;
- (h) references to any provision of the BSB Handbook include references to that provision as amended, replaced or renumbered from time to time;
- (i) an "invoice" includes a fee note not amounting to a VAT invoice; and
- (j) headings are included for convenience only and do not affect the interpretation of these Terms.

1.2. In these Terms, the following words have the following meanings, except where the context requires otherwise:

the "Agreement" means the engagement letter, schedule of services and these Terms which together constitute the agreement between the Barrister and the Instructing Party for the Barrister to provide the Services;

the "Barrister" means Katherine Mary Bullock, who practises as a member of the Bar of England and Wales from St Katharine's Chambers, St Katharine's House, Main Street, York (VAT no. GB 301 364 744) and who is registered with the Bar Standards Board under that name and who holds a current Bar Practising certificate;

the "BSB Handbook" means Part 2 of the Bar Standards Board Handbook, as amended from time to time;

a "Business Day" means a day that is neither a weekend nor a public holiday in England;

the "Case" means the particular legal dispute or matter, whether contentious or non-contentious, in respect of which the Barrister is instructed to supply the Services;

"Conduct of Litigation" means the organisation and management of a case proceeding through litigation including but not limited to providing an address for service, filing and serving court documents and "Conducting Litigation" or "Conduct Litigation" shall have corresponding meanings;

"Data Protection Law" means all applicable privacy and data protection legislation and regulations including the Data Protection Act 2018 as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2020 (UK GDPR) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2020 (PECR), and any other applicable national laws, regulations and secondary legislation in England and Wales relating to the processing of personal data and the privacy of electronic communications as amended, extended or re-enacted from time to time;

"HMRC" means His Majesty's Revenue & Customs

the "Instructing Party" means the individual, firm, company or other person instructing the Barrister, whether for and on their or its own benefit and behalf, or for the benefit or on behalf of some other, specified, person;

the "Instructions" means the briefs, instructions and requests for work to be done (and all

accompanying materials), whether written or oral, given by the Instructing Party to the Barrister for the purposes of the provision of the Services by the Barrister and "Instruct" and "Instructing" shall have corresponding meanings;

the "Lay Client" means, where the Instructing Party is instructing the Barrister on behalf or for the benefit of some other, specified, person, that specified person;

"Loss" means loss or damage of whatsoever nature, including interest and legal and other professional fees, costs and expenses;

'Privacy Notice' means the Privacy Notice on the Barrister's website at stkatharines.com/privacy; and

the "Services" means the legal services provided or to be provided by the Barrister in connection with the Case pursuant to the Instructions and under this Agreement and in respect of which they have been supplied.

2. Application of these Terms

- 2.1. These Terms apply, subject to any amendment expressly agreed in writing (including by exchange of emails) between the Instructing Party and the Barrister, to all Services supplied by the Barrister on the Instructions in relation to the Case.
- 2.2. By instructing the Barrister to provide further Services in relation to the Case, the Instructing Party accepts these Terms in relation to those further Services, as well as in relation to the Services which the Barrister is initially instructed to provide.
- 2.3. The Instructing Party will specify the person who is to be the Barrister's Lay Client in the Case.

3. The Instructions to the Barrister

- 3.1. The Services the Barrister is to supply in relation to the Case will be described in the Instructions and as may subsequently be agreed in writing between the Barrister and the Instructing Party.
- 3.2. Where practicable, the Instructing Party will send the Barrister Instructions in writing or will confirm in writing oral Instructions retaining the Barrister to provide the Services.
- 3.3. The Instructing Party shall ensure the Instructions provided to the Barrister are adequate to supply the Barrister with the information and documents reasonably required and in reasonably sufficient time for the Barrister to provide the Services within the time required by clause 5.3 below.
- 3.4. The Instructing Party must respond promptly to any requests for further information or Instructions made by the Barrister.
- 3.5. The Instructing Party must inform the Barrister immediately if there is reason to believe that

any information or document provided to the Barrister is not true and accurate.

- 3.6. If the Instructing Party is instructing the Barrister in accordance with the terms of a licence issued or deemed to be issued by the Bar Standards Board, a copy of the licence issued to the Instructing Party by the Bar Standards Board shall be sent with every set of instructions or alternatively the Instructing Party shall specify in the Instructions why they are deemed to hold a licence under the Licensed Access Recognition Regulations.

4. Receipt and Acceptance of the Instructions

- 4.1. Upon receipt of the Instructions, the Barrister will within a reasonable time review the Instructions and inform the Instructing Party whether or not the Barrister accepts the Instructions.
- 4.2. The Barrister may accept or refuse the Instructions in the circumstances and for the reasons set out in the BSB Handbook and the Barrister incurs no liability if the Barrister refuses any Instructions in accordance with the BSB Handbook.
- 4.3. Notwithstanding acceptance of the Instructions in accordance with Clause 4.2 above, the Barrister shall be entitled to carry out any customer due diligence required by the Money Laundering Regulations 2017. The Instructing Party will provide the Barrister with all necessary information and all other reasonable assistance to enable the Barrister to carry out any necessary customer due diligence including (if required to do so) consenting to the Barrister relying upon the Instructing Party under Regulation 39 of the Money Laundering Regulations 2017.
- 4.4. In the event that the Barrister reasonably considers that the requirements of the Money Laundering Regulations 2017 have not been satisfied, the Barrister may within a reasonable period after receipt of the Instructions withdraw any acceptance of those Instructions without incurring any liability.
- 4.5. If the Barrister withdraws acceptance of the Instructions in accordance with clause 4.4, the Instructing Party shall be liable for the Barrister's fees in respect of work done before the withdrawal of acceptance notwithstanding that by reason of failure to comply with Money Laundering Regulations 2017 the Barrister has not provided the Services.
- 4.6. Subject to the preceding provisions of this Clause 4 and unless otherwise agreed in the Barrister's engagement letter, the Agreement comes into effect upon the later of:
 - (a) the Barrister receiving the Instructing Party's implicit or explicit acceptance of the Barrister's engagement letter;

- (b) the receipt by the Barrister of any agreed payment in advance in accordance with clause 24; and
- (c) the satisfaction of the requirements of the Money Laundering Regulations 2017.

5. Providing the Services

- 5.1. The Barrister will exercise reasonable skill and care in providing the Services.
- 5.2. The Barrister supplies the Services on the basis set out in these Terms and subject to the Barrister's professional obligations under the BSB Handbook.
- 5.3. The Barrister will provide the Services by or on such date or dates as may be agreed with the Instructing Party or, where no specific date has been agreed, will do so within a reasonable time having regard to the urgency and nature of the Instructions and the Barrister's other pre-existing obligations as referred to in the BSB Handbook.
- 5.4. Where the Instructing Party requires the Barrister to perform all or any part of the Services urgently, the Instructing Party must ensure that:
 - (a) all relevant Instructions are clearly marked "Urgent"; and
 - (b) at the time the Instructions are delivered the Barrister is informed in clear and unambiguous terms of the timescale within which the Services are required and the reason for the urgency.
- 5.5. In order to enable the Barrister to supply the Services in an effective, professional and proper manner, the Instructing Party shall co-operate with and assist the Barrister throughout the duration of this Agreement.
- 5.6. The Instructing Party will provide all necessary information and all other reasonable assistance to enable the Barrister to comply with Directive 2011/16/EU (as amended from time to time) and any UK legislation implementing it and/or imposing a similar requirement. This includes providing evidence (if applicable) that the Instructing Party has itself filed or returned a report under the relevant regime.

6. Reliance on oral and draft advice

- 6.1. The Barrister will endeavour to record all advice on important matters in writing. Advice given orally should not be relied upon unless confirmed in writing. Therefore, if the Barrister provides oral advice (including but not limited to advice in conference, in the course of a meeting or a telephone conversation) and the Instructing Party wishes to be able to rely on that advice, the Instructing Party must ask for the advice to be confirmed by the Barrister or settled by the Barrister in writing.

- 6.2. The Instructing Party may not rely on any advice contained in any draft opinion or note prepared by the Barrister until that opinion or note has been confirmed by the Barrister in writing as a final opinion or note.
- 6.3. Where the Barrister sets out the facts upon which the Barrister's advice is based, the Instructing Party must check to confirm that those facts are complete and correct, as incomplete and incorrect factual information can alter the advice that the Barrister gives.

7. Conduct of litigation

- 7.1. The Barrister is not authorised to conduct litigation. The Barrister will not perform the functions of a solicitor or other person who is authorised to conduct litigation and will not fulfil obligations arising out of or related to the Conduct of Litigation.
- 7.2. If in the Barrister's reasonable professional judgement, it may be in the interest of the Instructing Party (where the Instructing Party is not a person authorised to conduct litigation) or the Lay Client or the interests of justice to instruct a person authorised to conduct litigation together with the Barrister or in their stead, the Barrister will notify the Instructing Party of this in writing as soon as practicable.

8. Benefit of Services

- 8.1. Unless otherwise agreed in writing, the Barrister's Services are provided to the Instructing Party as the Barrister's client, acting on behalf of and/or for the benefit of the Lay Client. Subject to the duties of the Barrister and the Instructing Party to the court, the Barrister and the Instructing Party acknowledge and agree that each owes a primary duty to the Lay Client.
- 8.2. The Barrister acknowledges the existence of a duty of care owed to the Lay Client at common law, subject to the Barrister's professional obligations to the court and under the BSB Handbook, and subject also to the limitation of liability provisions in clause 19.
- 8.3. Subject to clause 8.4, no one other than the Instructing Party and the Barrister has any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any provision of this Agreement.
- 8.4. The Lay Client may enforce this Agreement subject to and in accordance with clause 32 and the provisions of the Contracts (Rights of Third Parties) Act 1999.
- 8.5. The Instructing Party and the Barrister must obtain the written consent of the Lay Client before they rescind by agreement this Agreement so as to extinguish or alter the Lay Client's rights to enforce this Agreement. This requirement applies instead of the circumstances set out in section 2(1)(a) to (c)

of the Contracts (Rights of Third Parties) Act 1999.

- 8.6. None of the Instructing Party, the Barrister or the Lay Client may assign or transfer the benefit or burden of this Agreement or any rights arising from or in connection with this Agreement (including, without limitation, rights under the Contracts (Rights of Third Parties) Act 1999) without the prior written consent of all parties.

9. Responsibility for the Barrister's Services

- 9.1. The Barrister will be solely responsible for providing the Services under this Agreement.
- 9.2. The Barrister may delegate the provision of any part of the Services but will remain responsible for the acts, omissions, defaults or negligence of any delegate as if they were the acts, omissions, defaults or negligence of the Barrister.
- 9.3. The Barrister will only advise on the implementation of the Barrister's advice or work if specifically instructed to do so and if the Barrister specifically agree to do so in writing.

10. Confidential information and publicity

- 10.1. The Barrister will keep confidential all information provided to the Barrister in connection with the Case (the Information) unless:
- (a) the Barrister is authorised by the Instructing Party or the Lay Client to disclose it;
 - (b) the Information is in or comes into the public domain without any breach of confidentiality on the part of the Barrister;
 - (c) the Barrister is required or permitted to disclose the Information by law, or by regulatory or fiscal authorities or by any professional rules applicable to Barristers practising in England and Wales, in which case, the Barrister will inform the Instructing Party of any such disclosure as soon as the Barrister is lawfully able to do so.
- 10.2. If circumstances arise such that the Barrister discloses information to the National Crime Agency (NCA), due to the restrictions imposed by law, the Barrister may be prevented from discussing such matters with the Instructing Party or from proceeding with the Services pending consent from the NCA. If this arises, the Barrister shall have no liability to the Instructing Party as a result of any suspension or termination of the Services.
- 10.3. The Barrister may not disclose to third parties that the Lay Client is or has been a client of the Barrister, or that the Barrister is acting on a

Case, unless the contrary is agreed or these matters are in the public domain other than as a result of breach by the Barrister of the Barrister's obligations.

- 10.4. Information may be referred to, disclosed and adduced by the Barrister as evidence in court or in an arbitration by the Barrister or the Instructing Party in the event of litigation or a dispute between them, insofar as may be necessary for the Barrister to protect or defend the Barrister's interests.
- 10.5. The Barrister owes the same duty of confidentiality to other lay clients and will therefore not disclose or make use of any information that might be given to the Barrister in confidence in relation to any other matter without the consent of his other lay client, even if it is material to providing the Services.
- 10.6. Unless the Instructing Party expressly informs the Barrister to the contrary in advance in writing, the Barrister may allow the Instructions to be reviewed by another barrister, on terms that that other barrister complies with clauses 10.1 and 10.2, where the Barrister reasonably considers that it is in the best interest of the Lay Client to do so. This includes any circumstances where the Barrister decides at the Barrister's own expense to take independent expert advice or a second opinion on an issue (usually a technical issue).

11. Disclosure regimes

- 11.1. There are specific disclosure regimes in place which may require disclosure to HMRC of certain arrangements where a main benefit is obtaining an advantage in relation to specific taxes and duties. The Barrister will only advise the Instructing Party on any obligations that may arise under these regimes or otherwise if requested to do so but will not owe any duty to pro-actively advise on such regimes unless instructed to do so.
- 11.2. Subject to the Barrister's professional obligations under the BSB Handbook, the Barrister will determine at the Barrister's sole discretion whether the Barrister should notify HMRC of any arrangements on which the Barrister advises the Instructing Party. The Barrister will provide the Instructing Party with any Scheme Reference Numbers (SRNs) issued to the Barrister by HMRC relating to arrangements on which the Barrister has advised the Instructing Party where such information is required to be entered into the returns of the Instructing Party and/or the Lay Client or otherwise separately reported to HMRC. Where the Barrister has provided the Instructing Party with a reference number, the Barrister is also required to notify HMRC of the relevant taxpayer's name, address, unique taxpayer reference or Tax Identifier Number National Insurance number and the SRN within 30 days of the end of the calendar quarter in

which the obligation to provide the Instructing Party and/or the Lay Client with the reference number arises.

12. Conflicts of interest

- 12.1. The Barrister's entering into this Agreement shall constitute the Barrister's confirmation that, to the best of the Barrister's knowledge based on the information available to the Barrister at the time of entering into this Agreement, the Barrister has at the time of entering into this Agreement no conflict of interest or other professional impediment that would render it professionally inappropriate for the Barrister to act for the Instructing Party or the Lay Client on the Case.
- 12.2. If, in the course of this Agreement, information emerges that leads the Barrister to consider that it is or may be professionally inappropriate for the Barrister to continue to act for the Instructing Party or the Lay Client, the Barrister shall inform the Instructing Party immediately.
- 12.3. Neither the Instructing Party nor the Lay Client shall have any claim in damages against the Barrister for breach of this clause 12 unless:
 - (a) the Barrister has admitted in writing that the Barrister has acted in breach of this clause 12; or
 - (b) the Lay Client or the Instructing Party has made a complaint to the Bar Standards Board or the Legal Ombudsman that the Barrister has acted in breach of rule rC21 of the BSB Handbook and that complaint has been upheld.
- 12.4. Clause 12.3 does not prevent the Instructing Party or the Lay Client from seeking relief other than damages (including without limitation an interim or final injunction) in respect of any breach by the Barrister of clause 12.

13. Internal disputes within the Instructing Party or the Lay Client

- 13.1. Subject to the Barrister's obligations under the BSB Handbook, if the Barrister becomes aware of a dispute between the parties who own or are in some way involved in the ownership and management of the Instructing Party or the Lay Client (whether that be a business or a trust or otherwise), the Barrister will not provide Services to one party without the express knowledge and permission of all such parties. Unless otherwise agreed by all parties the Barrister will continue to provide Services to the normal place of business for the attention of the Instructing Party. If conflicting Instructions are received from different parties, the Barrister will refer the Instructions back to the Instructing Party and take no further action until the Instructing Party has agreed the Instructions. The Barrister will owe no duty to take any action

or give any advice until the Barrister receives unified Instructions from the Instructing Party.

14. Retention and storage of documents

- 14.1. The Instructing Party will provide the Barrister with copies of all documents relevant to the matter. It is for the Instructing Party to determine what documents are relevant. In the event that a document is not capable of being copied, the Instructing Party will contact the Barrister to make arrangement for the delivery and safe return of the documents.
- 14.2. Subject to any agreement to the contrary, during the course of the Case the Barrister shall retain those documents as in the Barrister's reasonable professional judgement it is proper to retain and for this purpose the Barrister may make or keep copies of documents.
- 14.3. Subject to any agreement to the contrary and to clause 14.4 below, at the completion of the Case the Barrister:
 - (a) may, and shall at the Instructing Party's request, return to the Instructing Party all documents in the Barrister's possession in connection with the Case, save that the Barrister may retain personal notes, a copy of the Instructions and the Barrister's work products;
 - (b) may otherwise retain such documents relating to the Case as in the Barrister's reasonable professional judgement it is proper to retain, and for this purpose the Barrister may make or keep copies of such documents and, after obtaining the Instructing Party's consent (such consent not to be unreasonably withheld), destroy the documents originally supplied; and
 - (c) may, and shall at the Instructing Party's request, return to the Instructing Party any property (such as exhibits and models) to which the Instructing Party, the Lay Client or any third party is entitled, and otherwise retain such property as in the Barrister's reasonable professional judgement it is proper to retain.
- 14.4. Whilst certain documents may legally belong to the Instructing Party and/or the Lay Client, the Barrister may destroy correspondence and other papers that the Barrister stores electronically or otherwise, which are more than 16 years old. This includes the documents of the Instructing Party and/or the Lay Client if they have not been reclaimed by the Instructing Party within the 16 year period. The Instructing Party must notify the Barrister in writing if the Instructing Party requires the return of any specific documents or their retention for a longer period.
- 14.5. The Instructing Party and the Lay Client have a legal duty to retain documents and records

relevant to their tax affairs. The Instructing Party and the Lay Client should therefore familiarise themselves with the necessary time limits for retention of any documents and records in respect of the Services. For the avoidance of doubt, unless specifically otherwise agreed in writing the Barrister will not provide advice on such time limits and will not be liable for any Loss arising as a result of failure by the Instructing Party, the Lay Client or any other person to retain such documents or records for the required period.

14.6. In addition the Instructing Party agrees to retain for at least seven years after the date of the last item of work that undertaken by the Barrister:

- (a) Copies of all Instructions;
- (b) The original documents and/or a copy of those documents and/or a list of those documents enclosed with the Instructions;
- (c) Copies of all advice that the Barrister has provided to the Instructing Party and all documents that the Barrister has drafted or approved for the Instructing Party; and
- (d) Notes of conference and of all oral advice settled or confirmed in writing by the Barrister to the Instructing Party.

15. Electronic communication

15.1. Subject to any agreement to the contrary, the Barrister may communicate with the Instructing Party and with others that the Instructing Party instructs the Barrister to communicate (including but not limited to HMRC) by e-mail or by other electronic means. The recipient shall be responsible for virus-checking e-mails and any attachments. Documents sent to the Instructing Party or to others by e-mail need not be encrypted. Such use will not in itself constitute a breach of any confidentiality obligations under this Agreement. The Barrister and the Instructing Party agree to accept the risks of using unencrypted email, including but not limited to the risks of non-receipt, delayed receipt, viruses, interception and unauthorised access.

15.2. The Barrister does not accept any liability for problems or accidental errors relating to electronic communication, especially in relation to commercially sensitive material. These are risks that the Instructing Party accepts in return for greater efficiency and lower costs. If the Instructing Party does not wish to accept these risks, the Instructing Party must notify the Barrister in writing and the Barrister will communicate by hard copy, other than where electronic submission is mandatory, from receipt of the notification.

15.3. If the Instructing Party requires a greater level of security in electronic communications, the Instructing Party shall notify the Barrister of this in writing, and the Instructing Party and the

Barrister shall use their best endeavours to agree and implement an e-mail protocol, incorporating encryption standards, on the basis of best commercial practice at that time.

15.4. The Instructing Party and the Barrister, together with any party that the Instructing Party instructs the Barrister to communicate with on the Instructing Party's behalf, shall use industry standard firewall and anti-virus protection.

15.5. The Instructing Party accepts HMRC terms and conditions relating to electronic media communications as amended from time to time. The Instructing Party agrees that the Barrister will not be responsible for assessing the risk of corresponding with HMRC by electronic media nor will the Barrister be liable to the Instructing Party for any breach of confidentiality or data privacy obligations by HMRC.

16. Data protection

16.1. The Barrister is a data controller for the purposes of Data Protection Law and is bound, amongst other things, to implement appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. The Barrister is entitled to process in accordance with Data Protection Law personal data of the Lay Client, the Instructing Party and others to enable the Barrister to provide the Services, to liaise with the Instructing Party in respect of the Case or on the Lay Client's behalf, to maintain and update client records, to produce management data, to prevent crime, to comply with regulatory requirements and as permitted or required by law.

16.2. The Barrister will process and retain personal data in accordance with the [Barrister's Privacy Notice](#).

16.3. The Instructing Party confirms that the Instructing Party has read the Barrister's Privacy Notice and that the Instructing Party specifically agrees that the retention of personal data for the periods specified in the Barrister's Privacy Notice is in accordance with the law and is not unreasonable in the circumstances.

16.4. The Lay Client and the Instructing Party each have, subject to the exemptions provided in Data Protection Law

(a) a right of access to their personal data for the purposes of rectification or erasure of their personal data or restriction of processing concerning the data subject or to object to processing or to exercise their right to data portability;

(b) a right to withdraw consent to the processing of personal data (it being understood that, in the event of such withdrawal of consent, the Barrister may no longer be able to continue to act and

that the Barrister may continue to process the personal data for purposes which are permitted by law notwithstanding the withdrawal of consent);

- (c) the right to lodge a complaint with the Information Commissioner.

16.5. The Instructing Party consents to the processing and the retention of the Instructing Party's personal data in accordance with clauses 16.1 and 16.2 hereof. The Instructing Party agrees that the Barrister may retain such personal data for as long as the Barrister considers necessary (although the Barrister will not retain it for longer than the Barrister considers it necessary) and that reasons to retain such personal data include the risk of litigation. The Barrister retains records for 16 years as set out in the Barrister's Privacy Notice, which the Barrister considers a reasonable period and the Instructing Party agrees that the retention of personal data for that period is in accordance with the law and is not unreasonable in the circumstances.

16.6. The Instructing Party hereby warrants that the Instructing Party has authority to provide personal data to the Barrister in connection with the performance of the Service and that any personal data provided to the Barrister has been processed in accordance with applicable law.

16.7. If and to the extent that the Barrister and the Instructing Party are joint controllers (whether or not with anyone else) for the purposes of Data Protection Law, each shall, unless otherwise agreed, be individually responsible for ensuring that the processing each undertakes is in accordance with Data Protection Law, for ensuring so far as each is able the implementation of appropriate technical and organisational measures in accordance with Data Protection Law, and as regards the exercising of the rights of the data subject, but the Instructing Party shall be responsible for the provision of information referred to in articles 13 and 14 of the GDPR if and to the extent that the provision of information is required by Data Protection Law.

16.8. In the event that the Barrister is required in accordance with article 33 of GDPR to notify a supervisory authority of a personal data breach affecting the personal data of the Lay Client, the Instructing Party or others referred to in data supplied with the Instructions, the Barrister shall notify the Instructing Party as soon as practicable after notifying the supervisory authority.

17. The Instructing Party's duty to inform the Lay Client

17.1. The Instructing Party hereby warrants that they have or will as soon as practicable:

- (a) inform the Lay Client in writing of the processing and retention by the Barrister of the personal data in accordance with clauses 16.1 and 16.2, provide a copy of these terms and the Barrister's Privacy Notice to the Lay Client and obtain a written confirmation from the Lay Client recording both the consent from the Lay Client to the processing and retention for the purposes of clauses 16.1 and 16.2 and the acknowledgement from the Lay Client that he has been notified of his rights under clause 16.4, which confirmation the Instructing Party undertakes to produce on demand;
- (b) inform the Lay Client in writing of the restrictions on the Barrister's liability in clause 19;
- (c) inform the Lay Client in writing of the Lay Client's right to make a complaint under the Barrister's [complaints procedure](#) (details of which are obtainable from the Barrister's website);
- (d) inform the Lay Client in writing of the fact that the Barrister cannot be expected to perform the functions of a person authorised to conduct litigation and of the fact that circumstances may require the lay client to retain a person authorised to conduct litigation at short notice and possibly during the Case; and send to the Lay Client a copy of any advice received by the Instructing Party from the Barrister to the effect that the Barrister considers it in the interests of the Lay Client or the interests of justice that a person authorised to conduct litigation be instructed either together with or in place of the Barrister.

18. Intellectual property rights

18.1. All copyright and other intellectual property rights of whatever nature in or attaching to the Barrister's work product, including all documents, reports, written advice or other materials provided by the Barrister to the Instructing Party or the Lay Client belong to and remain with the Barrister. The Instructing Party and the Lay Client have the right and licence to use the Barrister's work product for the particular Case and the particular purpose for which it is prepared. If the Instructing Party or the Lay Client wishes to use copies of the Barrister's work product for purposes other than those for which it is prepared, this will require the express written permission of the Barrister. The moral rights of the Barrister in respect of the Barrister's work product are asserted.

18.2. All copyright and other intellectual property rights attaching to the materials provided by the Instructing Party to the Barrister in or with any Instructions ("Material") belong to the Instructing Party, the Lay Client or a third party,

as the case may be. The Barrister is permitted to make use of the Material in order to provide the Services. If the Barrister wishes to use the Material for any other purpose, the Barrister must obtain the prior written consent of the Instructing Party and/or the Lay Client.

19. Limitation of liability

19.1. The Barrister's liability to the Instructing Party and the Lay Client shall be limited to any Loss directly caused by the Barrister's negligence, fraud or wilful default arising directly as a result of any of the Barrister's breaches of the Barrister's obligations in providing (or failing to provide) the Services.

19.2. The Barrister is not liable to any person for any indirect or consequential Loss however suffered.

Limitation of liability solely as a result of breach of contract

19.3. If the Barrister is liable to the Instructing Party or to the Lay Client solely as a result of breach of any contractual provision of this Agreement and would not otherwise have been liable (whether at common law, in equity or otherwise), that liability shall be limited to £100,000, being the highest limit of cover for such liabilities provided to barristers by the Bar Mutual Indemnity Fund.

Limitation of liability for breaches other than solely in contract

19.4. Subject to clause 19.3, the maximum liability in aggregate that the Barrister will owe to the Instructing Party or to any other person to whom the Barrister may owe a duty is stated in the engagement letter and is the maximum amount that can be recovered for losses arising as a result of any Loss suffered or arising directly or indirectly in consequence of the Barrister's breaches of the Barrister's obligations in providing (or failing to provide) the Services.

19.5. Where the engagement letter does not state a limitation of liability by amount or if the limitation of liability in the engagement letter is not effective for any reason, then the total liability in aggregate that the Barrister will owe to the Instructing Party or to any other person to whom the Barrister may owe a duty in respect of any loss suffered or arising directly or indirectly in consequence of the Barrister's obligations in providing (or failing to provide) the Services to pay any amount in aggregate which would or might otherwise be payable by way of damages, compensation and costs as a result of such Loss shall be limited to the sum of £5million.

19.6. In a case where a claim is made against the Barrister by more than one person, the limitation of liability amount shall be allocated equally among the claimants, save where an allocation is expressly agreed among them and

stated in this Agreement. The parties agree that they shall not dispute the validity, enforceability, or operation of the limitation of liability on the ground that no allocation was expressly stated in this Agreement.

19.7. In a case where the Barrister is liable to any person under this Agreement or otherwise in connection with the Services for any Loss to which any other persons have also contributed, the Barrister's liability shall be several and not joint with such others and shall be limited to the Barrister's fair share of that total Loss based on the Barrister's contribution to the Loss relative to the others' contributions. No exclusions or limitations on the liability of other responsible persons imposed or agreed at any time shall affect any assessment of the Barrister's proportionate liability hereunder, nor shall settlement of or difficulty enforcing any claim or the death, dissolution or insolvency of any such other responsible persons or their ceasing to be liable for the Loss or any portion thereof affect any such assessment.

Total exclusion of liability where advice not confirmed in writing

19.8. To the fullest extent permitted by law, the Barrister shall not be liable to any person at all, as a result of any Loss suffered or arising directly or indirectly in consequence of advice given orally by the Barrister, to pay any amount which would or might be otherwise payable by way of damages and costs as a result of any such Loss, unless that advice is confirmed in writing by an opinion or note settled by or signed by the Barrister.

Total exclusion of liability where advice marked "draft" not confirmed in writing as final

19.9. To the fullest extent permitted by law, the Barrister shall not be liable to any person, as a result of any Loss suffered or arising directly or indirectly in consequence of advice marked "draft" by the Barrister, to pay any amount which would or might be otherwise payable by way of damages and costs as a result of any such Loss, unless that advice is confirmed in writing as final by the Barrister.

Total exclusion of liability for Loss caused by others

19.10. To the fullest extent permitted by law, the Barrister shall not be liable to any person for any Loss, however suffered, which is caused by the acts or omissions of any other person or due to the provision to the Barrister of inaccurate, incomplete, misleading, false or late Instructions or by a failure to provide the Barrister with relevant, accurate or correct Instructions or to act on the Barrister's advice.

19.11. In particular, if the Barrister refers the Instructing Party to another professional adviser with whom the Instructing Party engages

directly, the Barrister shall not be responsible in relation to the work of that professional adviser and shall not be liable at all for any Loss caused by them.

Total exclusion of liability relating to non-disclosure and misrepresentation

- 19.12. To the fullest extent permitted by law, the Barrister shall not be responsible or liable for any Loss incurred or sustained if information material to the Service is withheld or concealed from or misrepresented to the Barrister unless such misrepresentation, withholding or concealment is or should (in carrying out the Services that the Barrister has agreed to provide with reasonable skill and care) have been evident to the Barrister without further enquiry beyond that which it would have been reasonable for the Barrister to have carried out in the circumstances.

Total exclusion of liability in relation to circumstances beyond the Barrister's control

- 19.13. To the fullest extent permitted by law, the Barrister will not be liable to any person for any Loss incurred or sustained as a result of any delay or failure to perform the Barrister's obligations under this Agreement if the delay or failure is caused by circumstances beyond the Barrister's reasonable control.

Professional Indemnity Insurance and time limits for bringing claims

- 19.14. The Barrister shall arrange and maintain professional indemnity insurance as required by the BSB Handbook. The Barrister shall if so requested provide the Instructing Party with details about the insurer and coverage.
- 19.15. Any claim against the Barrister relating to the Services or otherwise under this Agreement shall be made no later than 3 years after the act or omission alleged to have given rise to the claim and this time limit shall override any statutory time limits available to the claimant.
- 19.16. This clause is without prejudice to any other limitation of liability.
- 19.17. Nothing in this clause shall exclude or limit the Barrister's liability for death or personal injury or arising as a result of fraud or fraudulent misrepresentation on the Barrister's part or any liability which cannot lawfully be excluded or limited.

20. Limitation of third-party rights

- 20.1. The Services are provided by the Barrister for the sole use of the Instructing Party. The Barrister will owe no duty to any other person other than the Instructing Party and the Lay Client and no other person may rely on the Services provided by the Barrister without the Barrister's prior written consent so to do.

- 20.2. If the Instructing Party or the Lay Client discloses any of the Barrister's work product (or a portion thereof) neither the Instructing Party nor the Lay Client shall alter, edit or modify it from the form provided by the Barrister and the Instructing Party or the Lay Client shall inform those to whom they disclose it in advance of such disclosure that they may not rely on it for any purpose without the Barrister's prior written consent. The Instructing Party will remain responsible for those other than the Lay Client who receive the work. The Instructing Party will remain liable for any losses suffered in any form by any person (other than the Lay Client) who receives the Barrister's work without the Barrister's written consent.

- 20.3. The Barrister is not liable for any Loss, however suffered, by any person other than the Lay Client and the Instructing Party. The Barrister accepts no responsibility to third parties, including any affiliates to whom the engagement letter is not addressed for any advice, information or material produced as part of the Services provided by the Barrister that the Instructing Party or the Lay Client makes available to them.

- 20.4. To the fullest extent permitted by applicable law and professional regulations, the Instructing Party agrees to fully indemnify the Barrister in full in the event that any claim is brought against the Barrister (including any claim for negligence) for any Loss arising to the Barrister as a result of any unauthorised disclosure (whether by the Instructing Party, the Lay Client or others) of the Barrister's advice or work or work product provided under this Agreement and whether in writing or otherwise and whether in draft or otherwise. This indemnity will extend to the costs of investigating and defending any such claim, including the cost of the Barrister's fees at the Barrister's normal hourly rates for any time that the Barrister spends for so doing, as well as any costs incurred (including legal costs) at the full indemnity rate.

21. Fees

- 21.1. The Instructing Party agrees to pay the Barrister's fees and all reasonable disbursements in connection with the Services.
- 21.2. Unless otherwise agreed, the Barrister's fees do not include the costs of any third party, other barrister or other professional fees.
- 21.3. The Barrister's fees will be calculated as agreed between the Barrister and the Instructing Party, whether prospectively or retrospectively.
- 21.4. The Barrister may agree to provide the Services for a fixed fee (including an indicative range of fees) or on the basis of an agreed hourly rate, or on such other basis as may from time to time be agreed. If an hourly rate is agreed, the agreed hourly rate will be subject to reasonable

periodic review by the Barrister and in addition may be reviewed by the Barrister to reflect any reasonably significant changes to the Barrister's seniority or status. The Barrister reserves the right to increase the hourly rate on review. Any variation of the agreed hourly rate and the date on which it shall take effect shall be agreed with the Instructing Party and in default of agreement the Barrister shall be entitled to treat the Agreement as having been terminated by the Instructing Party, subject to the Barrister's obligations under rules rC25 to rC27 and related guidance of the BSB Handbook.

- 21.5. If no fee or hourly rate is agreed, the Barrister is entitled to charge a reasonable fee for the Services taking into account all the relevant circumstances of the Case. The Barrister's fee depends not only on the time spent providing the Services but also on the level of skill, responsibility, importance, risk, and value of the Services.
- 21.6. The Barrister may charge additional fees if events beyond the Barrister's control, including acts, omissions or delays of the Instructing Party or the Lay Client affect the Barrister's ability to perform the Services as originally planned (including but not limited to where the Barrister is required to carry out substantial further work due to changes in law or tax authority practice) or if the Instructing Party asks the Barrister to perform additional Services.
- 21.7. A fee agreed for the Barrister's Services shall be exclusive of any applicable Value Added Tax (or any tax of a similar nature), which shall be added to the Barrister's fee at the appropriate rate.
- 21.8. If the Barrister is required by applicable law, legal process or government action to produce information or to act as a witness with respect to this Agreement or to the Services, the Instructing Party shall reimburse the Barrister for any professional time or expenses (including reasonable legal costs) incurred to respond to the request, unless the Barrister is a party to the proceedings or the subject of the investigation.
- 21.9. If the Instructing Party or the Lay Client is entitled to assistance with their professional fees (including but not limited to payments as a result of insurance policies held or membership of a professional or trade body in relation to any investigation into the tax affairs of the Instructing Party or the Lay Client), then the Instructing Party must advise the Barrister of any such assistance. The Instructing Party will remain liable for the Barrister's fees regardless of whether all or part are liable to be paid by the insurers or other relevant body.

22. Estimate of costs/time

- 22.1. If requested to do so, the Barrister shall provide the Instructing Party with an estimate of the Barrister's likely fees and disbursements in relation to any Services or the Case. Any estimate of likely fees and disbursements does not, unless the Barrister explicitly states otherwise, amount to a promise or agreement that the Barrister will perform those Services within a fixed time or for a fixed fee, but represents the Barrister's best estimate based on the information available to the Barrister at the time.
- 22.2. The Barrister shall notify the Instructing Party promptly if any estimate of time and/or fees and disbursements that the Barrister has provided needs to be revised for any reason.
- 22.3. If for any reason any Instructions or the Case do not proceed to completion, the Barrister shall only charge fees for work actually done and for disbursements actually incurred, unless otherwise agreed (including, without limitation, where stage payments have been agreed and fallen due prior to termination of this Agreement).

23. Billing, payment and interest

- 23.1. The Barrister shall be entitled to deliver an invoice to the Instructing Party in respect of the Services or any completed part of the Services and any disbursements at any time after providing the Services or the relevant part of the Services or otherwise as may be appropriate given the nature and circumstances of the Case.
- 23.2. If the Barrister ceases to act for any reason, the Barrister will be entitled to issue an invoice for all time incurred to the date the Barrister ceased to act at the Barrister's usual hourly rate, together with any disbursements incurred.
- 23.3. If, in accordance with these Terms, the Barrister is requested to provide an invoice setting out the Barrister's fees, the Barrister shall provide that invoice as soon as reasonably practicable.
- 23.4. Any invoice setting out the Barrister's fees sent by the Barrister shall state the period it covers, the Services provided, (where the fees are payable on an hourly rate) an itemised description of the time spent in supplying the Services, the fees charged, any disbursements incurred and the cost of those disbursements, and Value Added Tax (or any tax of a similar nature), if any.
- 23.5. The Instructing Party shall pay the Barrister's invoice within 30 days of receipt by the Instructing Party of the invoice, time being of the essence, whether or not the Instructing Party has been put in funds by the Lay Client. The invoice must be paid without any set-off (whether by reason of complaint made or dispute with the Barrister or otherwise), and

without any deduction or withholding on account of any taxes or other charges.

- 23.6. If the Instructing Party does not consider that the Barrister's invoiced fee is fair and reasonable, the Instructing Party must notify the Barrister within 14 days of receipt, failing which the Instructing Party will be deemed to have accepted that payment is due in full.
- 23.7. Where the Barrister has delivered a fee note, on request by the Instructing Party the Barrister will deliver a VAT invoice following receipt of payment.
- 23.8. If the invoice remains outstanding for more 30 days from the date of receipt, the Barrister is entitled:
- (a) to the fixed sum and interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 from the date upon which payment was due to the date of payment;
 - (b) to sue the Instructing Party for payment; and
 - (c) subject to the Barrister's obligations to the court and rules rC25 to rC27 of the BSB Handbook to refrain from doing any further work on the Case unless payment for that further work is made in advance.
- 23.9. The Barrister may disclose the invoice to a debt recovery agency to the extent necessary in order to recover any outstanding fees and any such disclosure will not in itself constitute a breach of any confidentiality obligations under this Agreement.

24. Payment in advance

- 24.1. If the Barrister has required payment in advance or the Instructing Party has agreed to pay the Barrister's fees in advance, then it is a condition of this Agreement that the Barrister cannot provide any Services until that payment has been made. For the avoidance of doubt, the Barrister is not instructed until the Barrister has received from the Instructing Party the payment in advance.
- 24.2. If the Barrister's fees are paid in advance, beneficial ownership of the money shall pass to the Barrister on receipt of the payment.
- 24.3. If it is agreed that:
- (a) the Barrister's fee for any work will be charged according to the time spent on it, but
 - (b) the Barrister will be paid a fixed fee in advance for it; and
 - (c) when the work has been done, the Barrister will pay the Instructing Party any difference between that fixed fee and the fee which has actually been earned the Barrister will not hold the difference between the fixed fee and the fee which

has been earned on trust for the Lay Client, but will be subject to a contractual liability to make the appropriate refund.

25. Outsourcing

- 25.1. The Barrister may engage a third party to assist the Barrister in carrying out the Instructions by providing services to assist in the delivery of the Services. Subject to clause 10.6, the Barrister will only do so, where in the Barrister's reasonable professional judgement, it is in the interests of the Instructing Party or the Lay Client so to do and where the Barrister has not misled the Instructing Party about the Services provided, who will carry out the work involved and the basis on which the Instructing Party is being charged for the Services. This may and usually will mean that the Barrister has ensured that the person to whom the work is outsourced is competent and capable and under the same duties to the Instructing Party and the Lay Client as the Barrister in respect of confidentiality, data protection and any other relevant professional obligations.

26. Termination

- 26.1. The Instructing Party or, if a party to the agreement incorporating these Terms, the Lay Client may terminate this Agreement with immediate effect by giving notice to the Barrister in writing at any time.
- 26.2. This Agreement will terminate automatically as soon as the Barrister is professionally obliged pursuant to rule rC25 of the BSB Handbook or otherwise to cease to act and has complied with any requirements in the BSB Handbook for doing so. The Barrister shall inform the Instructing Party immediately the Barrister becomes aware of such an obligation.
- 26.3. The Barrister may terminate this Agreement when the Barrister is entitled to withdraw from the Case pursuant to rule rC26 of the BSB Handbook and has complied with any requirements in the BSB Handbook for doing so.
- 26.4. The Barrister may terminate this Agreement if:
- (a) fees properly due to the Barrister have not been paid by their due date;
 - (b) the Barrister has given at least 10 Business Days' notice in writing to the Instructing Party of the Barrister's intention to terminate this Agreement because of non-payment; and
 - (c) the fees have not been paid by the expiry of the time given by that notice.
- 26.5. On termination of this Agreement, whether under this clause or otherwise, the Barrister shall not be required to carry out further work and shall not be responsible or liable for any consequences arising from termination of this Agreement.

26.6. Termination of this Agreement, whether under this clause or otherwise, does not prejudice any accrued liabilities, rights and/or remedies of the Barrister, the Lay Client or the Instructing Party under this Agreement.

27. Helping the Barrister to give the best service

27.1. The Barrister is committed to providing the Instructing Party and the Lay Client with a high-quality service that is both efficient and effective. If at any point the Instructing Party would like to discuss with the Barrister how the Barrister's service to the Instructing Party could be improved or if the Instructing Party is dissatisfied with the service the Instructing Party is receiving, the Instructing Party should contact the Barrister.

27.2. If the Barrister does not answer the Instructing Party's complaint to the satisfaction of the Instructing Party, the Instructing Party should make a formal complaint in accordance with the Barrister's complaint procedure which is available on the Barrister's website (stkatharines.com/complaints). If for any reason the Instructing Party's complaint cannot be resolved by the complaint procedure, then the Instructing Party may take up the matter with the Legal Ombudsman, provided that the Instructing Party falls within their jurisdiction and makes the complaint within the applicable time limit. There also exist alternative complaints bodies (such as ProMediate) which can deal with complaints about legal services should the Instructing Party and the Barrister agree to use such a scheme. Further information and contact details are provided in the Barrister's complaint procedure.

28. Waiver

28.1. Except where expressly stated, nothing done or not done by the Barrister, the Lay Client, or the Instructing Party constitutes a waiver of that party's rights under or arising from this Agreement.

29. Severability

29.1. If any term of these Terms is or becomes illegal, invalid or unenforceable, the remainder of the Terms will remain valid and enforceable.

29.2. If any term of these Terms is or becomes illegal, invalid or unenforceable, but would be legal, valid or enforceable if some part of the term were deleted, the term in question will apply with such deletions as may be necessary to make it legal, valid or enforceable.

29.3. If any term of these Terms is found to be invalid or unenforceable but would be valid or enforceable if its scope of operation were reduced, then the term in question will apply with such minimum diminution in the scope of

its operation as is necessary to make it valid and enforceable.

29.4. In the event of any conflict between any term of these Terms and the engagement letter or schedule of services, the relevant provision in the engagement letter or schedule of services will take precedence.

30. Entire agreement

30.1. These Terms may be varied if, but only if expressly agreed in writing.

30.2. Subject to clause 29 and 21.3, the Agreement, incorporating these Terms, comprises the entire agreement between the parties to the exclusion of all other terms and conditions and prior or collateral agreements, negotiations, notices of intention and representations and the parties agree that they have not been induced to enter into the Agreement on the basis of any representation.

31. Notices and delivery

31.1. Any notice or other written communication to be given or delivered under this Agreement may be despatched in hard copy or in electronic form (including fax and e-mail) and shall be given at the recipient's last known place of business, fax number or e-mail address.

31.2. Notices and other written communications under this Agreement shall be deemed to have been received:

(a) in the case of hard copy documents despatched by first class post, on the second working day next following the day of posting;

(b) in the case of hard copy documents despatched by second class post, on the fourth working day next following the day of posting;

(c) in the case of documents in electronic form, on the working day next following the day of despatch.

31.3. The Barrister and the Instructing Party shall each keep the other provided with accurate contact details at all times.

32. Applicable law

32.1. These Terms and this Agreement shall be governed by and construed in accordance with the law of England and Wales. The law applicable to any non-contractual obligation owed by any party arising out of or in connection with the Agreement or the Services shall also be the law of England and Wales.

32.2. Unless any alternative dispute resolution procedure is agreed between the parties, any claim, dispute or difference arising out of or in connection with this Agreement or the Services shall be subject to the exclusive jurisdiction of

the courts of England and Wales, to which the parties irrevocably submit.

- 32.3. The parties irrevocably waive any right to object to any action being brought in the courts of England and Wales, to claim that the action has been brought in an inappropriate forum, or to claim that the courts of England and Wales do not have jurisdiction.

33. Miscellaneous

- 33.1. Any individual giving or purporting to give the Instructions on behalf of any partnership, firm, company, individual or other person warrants to the Barrister that they are authorised by the latter to do so.
- 33.2. Any individual signing this Agreement represents and warrants that they are expressly authorised to execute the same and to bind the relevant parties to these Terms.
- 33.3. Each of the parties may execute the Agreement as well as any variations to it by electronic means and each of the parties may sign a different copy of the same document.