

Applicant / Proposed Class Representative
W H Merricks
Second
Exhibit WHM2
12 February 2021

Case Number: 1266/7/7/16

IN THE COMPETITION APPEAL TRIBUNAL

BETWEEN:-

WALTER HUGH MERRICKS CBE

**Applicant / Proposed Class
Representative**

and

**(1) MASTERCARD INCORPORATED
(2) MASTERCARD INTERNATIONAL INCORPORATED
(3) MASTERCARD EUROPE S.P.R.L.**

Proposed Defendants

**SECOND WITNESS STATEMENT OF
WALTER HUGH MERRICKS CBE**

I, **WALTER HUGH MERRICKS CBE**, of a private residential address in London, United Kingdom will say as follows:

1. I am the proposed class representative in respect of the above proposed collective action (hereinafter, the “**Proposed Claim**”). This is my second witness statement in these proceedings. This statement is being made to update the Tribunal on matters which have changed since my first witness statement, dated 6 September 2016.

2. This statement only addresses any relevant updates I consider necessary in respect of the matters set out in my first witness statement and the documents relied on therein, and any other necessary updates arising from the passage of time. To the extent that matters set out in my first witness statement remain substantively unchanged, I do not repeat or address them in this statement.
3. The facts and matters set out in this witness statement are true to the best of my knowledge, information and belief. Where they are not within my own knowledge, I state the source of my information or belief.
4. I refer to the defined terms as set out in my first witness statement unless indicated otherwise.
5. There is now shown and produced to me a number of exhibits marked respectively “**WHM2-1**” to “**WHM2-4**”, which comprise true copies of the documents to which I shall refer in this witness statement. I also cross-refer throughout this witness statement to certain exhibits to my first witness statement and I do so in the form of “**WHM-[X]**”.

Ability to meet any adverse costs order – the third party litigation funding arrangement

6. Following the Tribunal’s judgment dated 21 July 2017 refusing to grant a CPO (the “**Tribunal’s Judgment**”), the funding arrangements in place at the time were terminated by the funder. New funding was secured with an established and experienced litigation funder, Innsworth Capital Limited (“**ICL**”). A copy of the funding arrangement that is now in place, which covers the remittal of the application for a CPO and, should a CPO be granted, the proceedings that will follow (the “**ICL Funding Agreement**”) is exhibited at **WHM2-1**¹. The terms of the

¹ The version exhibited to this witness statement was restated on 12 February 2021. The original funding agreement was entered into on 5 June 2019, and was then amended by Deed of Amendment, to cover the remittal phase of the application, on 1 February 2021.

ICL Funding Agreement are substantially the same as the previous funding arrangements, save that: (i) they are more clearly drafted and therefore easier to understand (as the Tribunal noted at the case management conference on 5 February 2021); (ii) there are no longer allocations of the litigation budget to the specific phases of the litigation, thereby giving greater flexibility in the conduct of the proceedings; and (iii) the amount of adverse costs cover and the separate funding available for these proceedings have been substantially increased, as addressed below at paragraphs 7 and 8, respectively. I also note that ICL's management entity, Innsworth Advisors Limited, is a member of the UK Association of Litigation Funders.

7. In light of the above, the statement at paragraph 29 of my first witness statement regarding adverse costs cover requires updating. Specifically, under the ICL Funding Agreement I now have access to up to £15 million to cover any adverse costs award that may be made against me in the proceedings. This is £5 million more than the £10 million adverse costs cover that I had previously secured, and which the Tribunal considered to be sufficient: see paragraph 131 of the Tribunal's Judgment, where it was stated that "*The Tribunal has no basis at this stage to find that £10 million is likely to be inadequate for Mastercard's potential recoverable costs, which (on the standard basis) would have to be proportionate and reasonable.*"
8. Also, paragraph 30 of my first witness statement requires consequential amendments given that the ICL Funding Agreement provides me with access to up to £45.1 million (in addition to the £15 million in adverse costs cover) to fund the costs of pursuing the Proposed Claim up until trial. This is a very significant sum on any view, and substantially more than the £30 million of funding available under the previous funding arrangements, which the Tribunal implicitly considered sufficient in paragraph 141(b) of the Tribunal's Judgment.
9. Further, given the passage of time since the previous funding arrangements were concluded, the ICL Funding Agreement also contains an updated budget at

Schedule 2.² Even the budget, at a total sum of 32,466,000, is an increase on the amount that was provided for under the former funding agreement.

Plan for the proceedings

10. In the preparation of this witness statement, I have considered the contents of the litigation plan, exhibited at **WHM6** to my first witness statement. Insofar as the litigation plan is concerned: (i) paragraphs 13 to 16 are no longer relevant in light of the ICL Funding Agreement, and (ii) paragraphs 54 to 56 should be read as superseded by paragraphs 7 to 9 of this witness statement.

11. While there is no need to update the substantive provisions of the litigation plan, certain amendments are required to annexes 2 and 3 thereto, concerning (i) the costs budget for the proceedings, and (ii) the anticipated timetable, respectively. The updates I have made to these documents can be summarised as follows:
 - 11.1 In respect of the costs budget, this now reflects what is available under the ICL Funding Agreement. A copy of the updated costs budget is exhibited at **WHM2-2** While the costs budget reflects the current estimate of the time (and therefore costs) that will be incurred in the proceedings, I note that the budget may need to be revisited in due course as the proceedings progress, not least given the Proposed Defendants' indication that they may make an application for the Tribunal to hear certain preliminary issues should the Tribunal make a CPO. As noted at paragraph 6 above, there is scope for further amounts to be added to the budget from the total funding that is committed in the ICL Funding Agreement.

² The budget set out at Schedule 2 of the ICL Funding Agreement represents the position as it was in June 2019 when the LFA was entered in to. There are discussions on-going with the funder in respect of the need for updates to Schedule 2 to reflect changes to the team and rates. Any amendments, including any that impact the budget which forms part of my CPO application (as addressed at paragraph 11.1 below), will be communicated to the Tribunal in due course.

- 11.2 In respect of the litigation timetable, the amendments reflect the fact that over four years has passed since the date upon which the initial litigation timetable was prepared, meaning that the dates set out therein are no longer accurate. A copy of the updated litigation timetable is exhibited at **WMH2-3**. This may also need revisiting should the Tribunal grant the CPO and then make case management orders that provide for the determination of any preliminary issues.
12. In addition, and for the sake of good order, I have also made one very minor amendment to my draft collective proceedings order to reflect my current address for service, which is at **WHM2-4**.
13. One final update concerns the claims website (www.MasterCardConsumerClaim.co.uk), which had not yet “gone live” at the date I made my first witness statement. However, following the first case management conference in the Proposed Claim, the claims website was made publicly accessible on 23 November 2016. I have continued to update the website with documents relevant to the Proposed Claim throughout the appeals process. I recently instructed Epiq to update the format and layout of the website in light of the passage of time, to ensure that it remains as user-friendly and informative as possible for the proposed class members and other interested parties.
14. I understand my obligations to keep the Tribunal and the proposed class and other interested parties apprised of matters of substance that are relevant to the proceedings. As such, and should any additional updates be required to documents filed in connection with the proceedings in 2016 (or at any point thereafter), following the hearing of the remitted application for a CPO on 25 and 26 March 2021, I will provide any necessary updates diligently and expeditiously.

Size of the proposed class

15. My first witness statement set out, at paragraph 1, the proposed class on behalf of whom I bring the Proposed Claim. I understand that the scope of the class is ultimately a matter for the Tribunal to consider after hearing submissions at the hearing on 25 and 26 March 2021. However, the Tribunal will be aware that, at the original hearing of my application for a CPO in January 2017, it was confirmed by my legal team that the estates of deceased persons³ should be regarded as forming part of the proposed class. That this is my position was also made clear at the case management conference that took place on 5 February 2021. That being the position, and by way of update, I can confirm that the size of the class I seek to represent once those deceased persons are included, according to the best estimate of my forensic accounting advisors, Mazars, as at the time of making this witness statement, is 59.8 million (59,800,000) members. This updated figure for the total size of the class also takes account of updated data from the Office of National Statistics⁴ that has become available since my application for a CPO was originally filed in 2016.

Conclusion

16. For the foregoing reasons, and for the reasons set out in my first witness statement, I consider that I continue to meet the requirements for authorisation as class representative pursuant to Section 47(8) of the Competition Act 1998 and Rule 78 of the CAT Rules, as the Tribunal found at paragraph 141(b) of the Tribunal's Judgment and which Mastercard has never sought to challenge in any

³ Being the estates of those individuals within the proposed class who have since passed away, either during the infringement period or since that period came to an end.

⁴ I understand that using the updated ONS data, as opposed to the ONS data which was used for the purpose of arriving at the estimate of the size of the class given in my First Witness Statement, accounts for less than 0.1% of the cumulative difference between the two figures. The majority of the increase in the class size, as stated in this paragraph, is due to the inclusion of the estates of deceased persons in this updated class size estimate.

of the appeals.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings of contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



.....

Walter Hugh Merricks CBE

Dated: 12 February 2021

Case Number: 1266/7/7/16

IN THE COMPETITION

APPEAL TRIBUNAL

BETWEEN:

WALTER HUGH MERRICKS CBE

Applicant / Proposed Class

Representative

-and-

(1) MASTERCARD INCORPORATED

**(2) MASTERCARD INTERNATIONAL
INCORPORATED**

(3) MASTERCARD EUROPE S.P.R.L.

Proposed Defendants

**SECOND WITNESS STATEMENT
OF WALTER HUGH MERRICKS CBE**

Quinn Emanuel Urquhart & Sullivan UK
LLP

90 High Holborn
London
WC1V 6LJ

Ref: BB/NC/LK/RC/07078-00005

**Solicitors for the Applicant / Proposed
Class Representative**

Applicant / Proposed Class Representative
W H Merricks
Second
Exhibits WHM2-1 to WHM2-4
12 February 2021

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BETWEEN:-

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EXHIBIT WHM2-1

This is the exhibit marked "WHM2-1" referred to in the Second Witness Statement of Walter Hugh Merricks CBE dated 12 February 2021.



.....
Walter Hugh Merricks CBE

12 February 2021

Amendment and Restatement Deed

This deed (“**Agreement**”) is made this 12th day of February 2021 between:

- (i) Walter Hugh Merricks CBE of [redacted] (“**Merricks**”);
and
- (ii) Innsworth Capital Limited of 44 Esplanade, St Helier, Jersey, JE4 9WG
(with company number 125002),

each one a “Party”, and together the “Parties”.

WHEREAS:

- (A) The Parties entered into a litigation funding agreement dated 5 June 2019 in relation to the proposed collective proceedings sought to be brought by Merricks against Mastercard Incorporated and other related entities (with case number 1266/7/7/16) before the Competition Appeal Tribunal in London, England (the “**LFA**”);
- (B) The Parties entered into a deed of amendment dated 1 February 2021 to vary certain terms of the LFA (the “**Amendment**”);
- (C) The Parties wish to amend and restate the LFA in its entirety, to include (*inter alia*) the amendments made pursuant to the Amendment, in the form set out at Appendix 1 to this Deed (the “**Restated LFA**”).

Amendment and Restatement

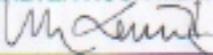
1. In accordance with clause 23.1 of the LFA, with effect on and from the date of this Deed, the parties agree that the LFA be amended and restated in the form set out in Appendix 1 so that the rights and obligations of the parties shall, on and from that date, be governed by and construed in accordance with the provisions of the Restated LFA in place of the LFA.

Miscellaneous

2. Clause 11 (Duration of Agreement), clause 12 (Termination), clause 13 (Further Assurances), clause 14 (Assignment), clause 18 (Governing Law and Disputes), clause 20 (Acknowledgement and Exclusion of Liability), clause 21 (Entire Agreement), clause 24 (Severance), clause 26 (Third Party Rights), clause 27 (Counterparts) and clause 28 (Language) of the LFA shall apply to this Agreement *mutatis mutandis* as if set out in full and so that references in those provisions to “this Agreement” shall be construed as references to this Agreement.

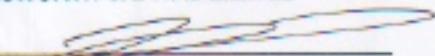
This Agreement is executed and delivered as a deed on the date stated at the beginning of this Agreement.

EXECUTED and DELIVERED as a DEED
by **WALTER HUGH MERRICKS CBE**



In the presence of: H. J. Cook
Witness name: HILARY JULIA COOK
Witness address: 20 THE CHINE
LONDON N10 3PY

EXECUTED and DELIVERED as a DEED
by **INNSWORTH CAPITAL LIMITED**

By: 

Name: JAMES DEVINE
Title: DIRECTOR
Date: 12th Feb. 2021

By: 

Name: Chris Bowden
Title: Director
Date: Feb 12, 2021

Appendix 1

THIS AGREEMENT IS MADE THIS 12th DAY OF FEBRUARY 2021 BETWEEN:

- (i) Walter Hugh Merricks CBE of [redacted] (the “Applicant”); and
- (ii) Innsworth Capital Limited of 44 Esplanade, St Helier, Jersey, JE4 9WG (with company number 125002) (the “Funder”).

BACKGROUND

- (A) The Applicant is the proposed class representative acting for the benefit of the Class (as defined in this Agreement) that have Claims (as defined in this Agreement) against the Defendants.
- (B) The Applicant has requested, and the Funder has agreed, to provide funding to the Applicant, on the terms and conditions set out in this Agreement.

1. DEFINITIONS and INTERPRETATION

- 1.1. The following definitions and rules of interpretation in this clause shall apply in this Agreement.

“Adverse Costs Order” Any quantified costs order made in favour of the Defendant(s) and/or any other party and/or non-party in connection with the Proceedings in respect of costs of the Defendants and/or any other party and/or non-party incurred following the Commencement Date (the Funder having no liability under this Agreement for any such costs preceding that date, and such liability in respect of the Appeals being governed by the Appeals Funding Agreement).

“Affiliate” in relation to a Person:
(a) any investment fund of which: (i) that Person (or any group undertaking of, or any (direct or indirect) shareholder in, that Person); or (ii) that Person’s (or any group undertaking of, or any (direct or indirect) shareholder in, that Person’s) general partner, trustee, nominee, manager or adviser, is a general partner, trustee, nominee, manager or adviser;
(b) any group undertaking of that Person, or of any (direct or indirect) shareholder in that Person, or of that Person’s or of any (direct or indirect) shareholder in that Person’s general partner, trustee, nominee, manager or adviser; or
(c) any general partner, limited partner, trustee, nominee, operator, arranger or manager of, adviser to, or holder of interests (whether directly or indirectly) in, that Person, or in any (direct or indirect) shareholder in that Person, (or of, to or in any group undertaking of that Person, or of any (direct or indirect) shareholder in that Person) or of, to or in any Investment Fund referred to in (a) above or of, to or in any group undertaking referred to in (b) above.

“Appeals” The appeal and judicial review applications to the High Court and the Court of Appeal, seeking to set aside the CAT’s Judgement dated 21 July 2017 dismissing the Applicant’s application for a CPO in respect of the Claims, any subsequent appeal to the Supreme Court and any remittal to the CAT to re-determine the application for a CPO.

“Appeals Funding Agreement” The Litigation Funding Agreement entered into between BVBV and the Applicant on 3 August 2017 under which (amongst other matters) the Funder agreed to fund certain project costs relating to the Appeals

“Approved Budget”	The itemised budget accepted in writing by the Funder and the Lawyers attached at Schedule 2 and any amended or varied budget which may subsequently be prepared by the Lawyers and approved in writing by the Funder (at its sole and absolute discretion) and the Applicant.
“ATE Insurances”	Any insurance(s) effected by the Manager and/or the Funder and/or the Applicant and/or the Affiliates of the Funder or the Manager (in all cases following advance notification to the Applicant) by which the insurer(s) agrees, in return for the payment of a premium, to underwrite any specified financial risks (including any order to provide security for the Defendants’ costs and any Adverse Costs Orders) in relation to the Proceedings, and which shall include any liability of the Elliott Guarantors.
“Alternative Dispute Resolution Process”	Any form of negotiation, discussions, mediation, conciliation, expert determination or other form of consensual dispute resolution process (other than arbitration) which seeks to Settle the Claims and/or the Proceedings.
“BVBV”	Innsworth Ventures B.V. (Company number 60248521) of Prinsbernhardplein 200, 1097 JV, Amsterdam, the Netherlands (formerly named Bentham Ventures B.V.).
“CAT”	Competition Appeals Tribunal.
“Claims”	All rights, title and interests of the Class in and to the claims for damages, loss, interest and expenses (including legal expenses) against the Defendants that are set out in the pleadings filed with the CAT in the Proceedings, as the same may be supplemented and/or amended from time to time, based on the facts and findings contained in the EC’s decision dated 19 December 2007.
“Class”	Each and every person who purchased goods and/or services from businesses selling in the UK that accepted MasterCard cards, at a time at which those individuals were both (1) resident in the UK for a continuous period of at least three months, and (2) aged 16 years or over, in the period 22 May 1992 to 21 June 2008 or such Class as may be certified by the CAT under a CPO in respect of the Claims.
“Costs Award”	Any amount ordered to be paid by any Defendant or any other party or non-party to the Proceedings in respect of the Applicant’s costs and disbursement and/or expenses incurred in connection with the Claims and/or the Proceedings.
“CPO”	Collective Proceedings Order.
“Damages”	The damages awarded in favour of the Applicant and/or Class or agreed by way of Settlement in respect of the Claims and/or Proceedings;
“Date of Commencement”	11 December 2020;
“Defendant(s)”	The person(s) named in Schedule 1 and any others against whom Proceedings are commenced in respect of the Claims.
“Distribution”	The formal process of distribution of the Damages amongst the Class in accordance with the directions of the CAT.
“Distribution Period”	The period, approved by the CAT, during which Distribution takes place.

“Elliott Group”	The Guarantors and each of their Affiliates.
“External Controller”	(a) in relation to an individual, the Official Trustee in Bankruptcy, an Official Receiver in Bankruptcy, a trustee in bankruptcy and a controlling trustee; and (b) in relation to a body corporate, an administrator (including a voluntary administrator and an administrator under a deed of company arrangement, scheme of arrangement, compromise or other arrangement), a provisional liquidator and a liquidator.
“Guarantors”	Elliott Associates, L.P. and Elliott International, L.P.
“Lawyers”	The firm named in Schedule 1 or any firm of lawyers appointed in their place by the Applicant, along with the counsel named in Schedule 1 or any other counsel appointed in their place by the Applicant (all such replacements requiring the approval of the Funder, which shall not be unreasonably withheld).
“Legal Privilege”	Privilege against disclosure, including any joint interest privilege or common interest privilege.
“Legal Services”	Advice and other legal services provided by the Lawyers to the Applicant pursuant to the Retainer Agreement.
“Managers”	Innsworth Advisors Limited (Company No. 08945649) of 1 Chancery Lane, London WC2A 1LF, and their successors and assigns.
“Other Confidential Information”	All information that is supplied by the Elliott Group in connection with this Agreement, including information on the Elliott Group and its business and affairs (and the business and affairs of its Affiliates) and the existence and contents of this Agreement and any guarantee to which any member of the Elliott Group is a party and the Elliott Group’s name, whether orally, in writing or in any form, whether before or after the date of this Agreement, including all notes, analyses, compilations, studies, memoranda or other documents or information which contain or reflect or are generated from such information
“Overarching Purpose”	To facilitate the just resolution of the Claims and the Proceedings according to law and as quickly, inexpensively and efficiently as possible in accordance with the Approved Budget with the aim of maximising Settlement or judgment proceeds net of Project Costs and minimising all risks, including in particular the risk of the Proceedings being unsuccessful.
“Parties”	The parties to this Agreement.
“Person”	Any person, natural or otherwise, including, without limitation, a corporation, partnership, limited liability company, company, association, trust or organization, whether or not a legal entity.
“Proceedings”	Any proceedings before the CAT including applications for a CPO following the determination of the Appeals and any court proceedings, arbitration or other legal process to prosecute and resolve all or some of the Claims, including any proceedings for pre-action disclosure, any Alternative Dispute Resolution Process. If any of the Defendants (or any of the Defendants’ assets) comes under the control of an External Controller, the Proceedings will also include all relevant methods of pursuing the Claims in the external administration, including the filing of proofs of debt.
“Project”	The pursuit of the Claims and the conduct of the Proceedings, acting

consistently with the Overarching Purpose.

“Project Costs”	<p>The costs and expenses of the Project, after the Date of Commencement, comprising:</p> <ul style="list-style-type: none">(a) all costs and expenses referred to in the Approved Budget, including the reasonable legal costs and disbursements of the Lawyers, at all times within and subject to the Approved Budget for the sole purpose of prosecuting and resolving the Claims;(b) any other costs stated to be treated as Project Costs according to the terms of this Agreement;(c) the costs involved in the provision and maintenance by the Funder of any Security for Costs, which are in addition to the Approved Budget;(d) any costs incurred by the Funder in quantifying, challenging or referring to assessment, any Adverse Costs Order(s), which are in addition to the Approved Budget;(e) any costs and expenses including premium and IPT incurred in connection with ATE Insurances or such fee as the Guarantors may charge for underwriting the adverse costs, in either case such costs and expenses being in addition to the Approved Budget;(f) any third party direct expenses incurred by the Funder or the Manager in connection with the investigation, evaluation, development and promotion of the Project, such as fees paid to experts (including loss assessors and/or economists), counsel (including independent counsel or lawyers providing a second opinion) and investigators, which are in addition to the Approved Budget;(g) any VAT or other taxes charged to or assessed against the Funder associated with the costs and activities described above.
“Project Information”	<p>All information, communications and documents provided to or acquired, exchanged or generated by or between either of the Parties, the Manager or the Lawyers in relation to the Project.</p>
“Resolution Sum”	<p>The amount or amounts of money payable in respect of any Costs Award(s) and/or out of the Undistributed Damages, including any interim payment, any interest and costs, fees, expenses and disbursements.</p>
“Retainer Agreement”	<p>Any agreement entered into between the Lawyers and the Applicant for the Lawyers to act on behalf of the Applicant in relation to the investigation, prosecution and resolution of the Claims and which includes advice in connection with, and the conduct of, the Claims and/or Proceedings.</p>
“Return”	<p>An amount equal to the greater of (i) £179 million; or (ii) 30% of the Undistributed Damages up to £1 billion, plus 20% of the Undistributed Damages in excess of £1 billion.</p>
“Security for Costs”	<p>Any security in respect of the costs of any Defendant that is ordered by the Court to be provided by the Applicant within the Proceedings.</p>
“Settlement”	<p>Any agreement, compromise, discontinuance, waiver, payment (including any ex gratia payment), release, understanding or any other arrangement whatsoever (and whether before or after any Proceedings have been commenced) where money, value or a benefit passes from or on behalf of a Defendant to the Applicant and/or the Class in respect of some or all of the Claims, including in circumstances where the Proceedings do not continue, as against that Defendant in respect of those Claims as a result of, or in connection with, the passing of that money, value or benefit and “Settle”, “Settles” and “Settled” have corresponding meanings.</p>

“Standard Lawyers Terms”	The terms and conditions attached as Schedule 3.
“Total Commitment Amount”	The amount set out in Clause 3.2.
“Trust Account”	A separate interest bearing client account held by the Lawyers at a first class bank in England, and designated in the joint names of the Applicant and the Funder for the sole purpose of the Project.
“Undistributed Damages”	The Damages less any sums that are distributed to the Class through Distribution.
“VAT”	Value added tax charged under the United Kingdom Value Added Tax Act 1994 and any similar taxes charged to or assessed against the Funder in connection with the Project or payment by it of Project Costs.

- 1.2. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.3. A reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other agreement or document as varied or novated in accordance with its terms from time to time.
- 1.4. A reference to a “**person**” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5. A reference to any Party shall include that Party's successors and permitted assigns.
- 1.6. A reference to a “**subsidiary**” means a subsidiary undertaking as defined in section 1162 of the Companies Act 2006 and for the purposes only of the membership requirement contained in sections 1162(2)(b) and (d), a company shall be treated as a member of another company even if its shares in that other company are registered in the name of:
 - (i) another person (or its nominee), by way of security or in connection with the taking of security; or
 - (ii) its nominee.
- 1.7. Any words following the terms “**including**”, “**include**”, “**in particular**”, “**for example**”, “**such as**”, “**other**” and “**otherwise**” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.8. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

2. CAPACITY

- 2.1. The Applicant named in Schedule 1 represents and warrants that he has the power, authority and all necessary permissions and consents to enter into this Agreement as the proposed class representative seeking to pursue the Proceedings.
- 2.2. The Applicant represents and warrants that he will follow all reasonable advice of the Lawyers to comply with the requirements, whether mandated by the orders or requirements or recommendations of the CAT or otherwise, of his role as the proposed class representative and support the application for a CPO in the Proceedings.
- 2.3. The Applicant represents and warrants that he will avoid any act or omission that may compromise his ability to perform the role of class representative in connection with the Claims and the Proceedings.

3. FUNDING

3.1. The Funder agrees that:

- i. it will provide funding by paying the Project Costs according to the terms of this Agreement up and not exceeding the Commitment Amount specified in Clause 3.2;
- ii. it will provide or effect in such manner as it determines in its sole and absolute discretion (provided that the same is acceptable to the CAT) any Security for Costs, but limited to costs incurred by the Defendant(s) during the term of this Agreement; and
- iii. it will pay any Adverse Costs Order(s) made after the Commencement Date, less any sums received by the Defendants pursuant to the Security for Costs referred to in sub-clause ii above.

3.2. The Funder's maximum aggregate commitment under sub-clause (i) of Clause 3.1 is £45,100,000 and under sub-clauses (ii) and (iii) of Clause 3.1 is £15,000,000, and its aggregate total commitment under Clause 3.1 is £60,100,000 ("Total Commitment Amount").

3.3. The Funder has retained the Manager to provide certain management services to the Funder in respect of the Project (and the Applicant agrees that the Manager is authorised, and that it shall cooperate with the Manager to enable it, to perform such services) during the term of this Agreement, which include:

- i. investigating and evaluating the merits of the Claims and the Proceedings or any aspect of them;
- ii. discussing strategy with the Applicant and the Funder;
- iii. investigating the credit standing and capacity of the Defendant to pay any judgment or award or other order against it;
- iv. monitoring the Claims and the Proceedings and liaising with the Lawyers to obtain information;
- v. reporting periodically to the Funder;
- vi. monitoring, and seeking compliance with, the Approved Budget;

participating in all meetings between all participants in the Project to ensure all parties are kept appropriately informed (subject to there being no waiver of legal privilege); ; and

- vii. carrying out such other functions as the Manager deems appropriate in fulfilling its services to the Funder (subject to clauses 4.1 and 4.2).

3.4. The Applicant acknowledges and agrees that the Manager, in carrying out its management services, is not assuming any liability or duty of care to the Applicant or the Class.

4. ROLE OF THE APPLICANT

4.1. The Funder acknowledges that the Applicant remains independent and is solely responsible for the conduct of the Claims and the Proceedings, and that any and all decisions regarding the conduct of the Proceedings are for the Applicant to make in the best interests of the Class and in accordance with his obligations as a representative. The Applicant also acknowledges that in the conduct of the Claims and the Proceedings he will at all times have regard to his obligations under this Agreement.

4.2. Without prejudice to clause 4.1 the Applicant shall:

- i. ensure that any Retainer Agreement with the Lawyers is at all times consistent with, and in no way conflicts with, the Standard Lawyers Terms;

- ii. promptly provide full, frank and honest instructions to the Lawyers and counsel;
- iii. provide such signed, written witness statements as the Lawyers may request for use in the Claims and the Proceedings, attend the Court to give evidence in person if required by the Lawyers to do so and actively participate in any Alternative Dispute Resolution Process;
- iv. diligently prosecute the Claims and the Proceedings and do all things necessary to enable the Lawyers to ensure that the Claims and the Proceedings are conducted consistently with the Overarching Purpose, unless the Applicant has proper and reasonable grounds for not doing so;
- v. comply with all orders of the CAT and all statutory provisions, regulations, rules and directions which apply to the Applicant in relation to the Claims or Proceedings;
- vi. immediately inform the Lawyers and the Manager of any information, circumstance or change in circumstances which is, in the reasonable opinion of the Applicant, will likely to affect the Claims, any issue in any Proceedings or the recoverability of any Damages or Resolution Sum or any proceeds of any ATE Insurances (if any);
- vii. do all that is necessary to effect any Settlement that the Parties agree on and which is approved by the CAT or that is otherwise determined in accordance with clause 7.2, including but not limited to signing any reasonably worded settlement deed, confidentiality agreement and/or release required by any Defendant;
- viii. use his best endeavours to cause any Resolution Sum to be received and applied according to the terms of this Agreement;
- ix. take all appropriate action to diligently enforce any judgment or award obtained in the Proceedings against the Defendant

4.3. The Applicant agrees to instruct the Lawyers to:

- i. comply with all orders of the CAT and all statutory provisions, regulations, rules and directions which apply to the Applicant in relation to the Claims and the Proceedings;
- ii. conduct the Proceedings efficiently and effectively, within the Approved Budget and in accordance with the Overarching Purpose;
- iii. keep the Manager fully informed of all material developments in the Proceedings and in relation to the Claims, including immediately informing the Manager if, in the Lawyers' opinion, the Applicant's prospects of achieving success in the Proceedings or the Defendant's capacity to pay any judgment is or is likely to be impaired;
- iv. provide the Manager with a copy of all advice given by the Lawyers or counsel to the Applicant in relation to the Claims and the Proceedings (subject to there being no waiver of legal privilege) and, if requested to do so by the Manager, a copy of all documents obtained from, or provided to, any Defendant in the Proceedings, subject to any confidentiality restrictions that prevent any document being shared with a third party;
- v. immediately inform the Manager of any Settlement offer or offers to engage in an Alternative Dispute Resolution Process received from the Defendant and to use all reasonable endeavours to allow the Manager and the Funder the opportunity to attend any Alternative Dispute Resolution Process

agreed with the Defendant;

- vi. immediately inform the Manager of any application for security for costs made by the Defendant;
 - vii. immediately inform the Manager of any Adverse Costs Order or of any circumstances which might reasonably give rise to an Adverse Costs Order;
 - viii. seek to obtain a taxation or assessment of the Defendant's costs comprising any Adverse Costs Order and provide a copy of all documents relating to the taxation or assessment to the Manager, subject to the Funder providing an appropriate budget for such taxation or assessment; and
 - ix. provide full assistance and co-operation to the Manager and/or the Funder in relation to opposing, taxing, assessing or resolving any application for Security for Costs or any Adverse Costs Order or recovering any Security for Costs that is no longer needed, subject to the Funder providing an appropriate budget for such taxation or assessment or resolution of any assessment.
- 4.4. The Applicant hereby irrevocably authorises the Manager and/or Funder to take all appropriate actions, at the Funders expense and in the name of the Applicant to tax or assess any of the Lawyers' invoices. Any costs of any taxation or assessment will be paid by the Funder and will be in addition to the Approved Budget.
- 4.5. The Applicant hereby irrevocably authorises the Manager and the Funder to take all appropriate actions, at the Funder's expense and in the name of the Applicant to tax or assess any costs claimed by any Defendant or any other party or non-party to the Proceedings in an Adverse Costs Order. Any costs of any taxation or assessment will be paid by the Funder and will be in addition to the Approved Budget.
- 4.6. The Applicant agrees to instruct the Lawyers to co-operate with the Manager in the performance of his services to the Funder (subject always to clause 4.1).
- 4.7. The Applicant warrants that, to the best of the Applicant's knowledge there is no information in the custody, possession or control of the Applicant that is materially relevant to the Claims or the Proceedings that has not been disclosed to the Manager and/or the Funder.
- 4.8. Subject to the confidentiality provisions of clause 9 and any CAT ordered confidentiality, the Applicant will provide, or procure the provision of, all information, documents and assistance as the Manager may reasonably request for the purpose of the Claims and/or Proceedings.

5. LAWYERS RETAINER

- 5.1. Subject to such costs being within the Approved Budget, the Lawyers' costs and disbursements will be invoiced to the Applicant according to the terms of the Retainer Agreement (subject always to the Standard Lawyers Terms), and shall be payable by the Applicant, but will be funded by the Funder on behalf of the Applicant pursuant to the terms of this Agreement.
- 5.2. The Applicant agrees, for the purposes of this Agreement, that if there is any inconsistency between the terms of any Retainer Agreement between the Applicant and the Lawyers and this Agreement or the Standard Lawyers Terms, the terms of this Agreement or the Standard Lawyers Terms, as applicable, will prevail.
- 5.3. If the Lawyers notify the Manager and/or the Funder and the Applicant that the Lawyers believe that circumstances have arisen such that they may be in a position of conflict with respect to any obligations they owe to the Funder and those they owe to the Applicant, the Parties agree that, in order to resolve that conflict the Lawyers may (but are not obliged to):
- i. give advice to the Applicant and take instructions from the Applicant, even though such advice and instructions are, or may be, contrary to the Funder's interests; and

- ii. refrain from giving the Manager or the Funder advice or taking any action sought by the Manager and/or the Funder where that advice or action is, or may be, contrary to the Applicant's instructions.
- 5.4. The Parties agree that, should any conflict arise as between the interests of the Funder and the interests of the Applicant, then the Lawyers may continue to provide the Legal Services to the Applicant and the Funder will raise no objection to them doing so.
- 5.5. If the appointment of the Lawyers to provide the Legal Services to the Applicant is terminated pursuant to clause 7 of the Standard Lawyers Terms, the Manager will inform the Applicant whether the Funder wishes the Applicant to appoint other solicitors and/or counsel, acceptable to the Applicant (such agreement by the Applicant not to be unreasonably withheld or delayed) in place of the Lawyers.
- 5.6. The Manager may require the Applicant to terminate the retainer of the Lawyers:
 - i. upon 14 days' written notice to the Lawyers setting out the grounds for the requested termination, provided the Applicant agrees to such a course, such agreement not to be unreasonably withheld or delayed; or
 - ii. if the Funding Agreement is terminated.
- 5.7. If the Manager requests, for cause, that the Applicant appoint other solicitors selected by the Funder in place of the Lawyers, provided those solicitors agree with the Funder to terms that are the same as, or substantially the same as, the Standard Lawyers Terms, and the change and the other solicitors are acceptable to the Applicant (such agreement by the Applicant not to be unreasonably withheld or delayed), those solicitors will become the Lawyers for the purposes of this Agreement in place of the previous Lawyers.
- 5.8. Replacement of the Lawyers pursuant to clause 5.6 will:
 - i. not result in a termination of this Agreement; and
 - ii. not result in the replacement solicitors assuming any obligations of the previous Lawyers accrued to the date the appointment of the previous Lawyers is terminated.
- 5.9. If the Manager informs the Applicant the Funder does not wish the Applicant to appoint replacement solicitors in place of the Lawyers, this Agreement will terminate as at the date of such notice. If this occurs then the provisions of clause 12.3 will apply.

6. APPEAL

- 6.1. The funding obligations of the Funder under this Agreement do not include any appeal against judgement or award. If there is an appeal against a judgment or award in the Proceedings, whether by the Applicant or by the Defendant, the Applicant may request funding for the appeal; and the Funder may, at its sole and absolute discretion, either decline or agree to extend his funding for the appeal. If the Funder agrees in writing to extend the funding, this shall be recorded as an amendment to the terms of this Agreement and the appeal shall be treated as part of the Proceedings for the purpose of this Agreement.

7. SETTLEMENT

- 7.1. The Applicant shall immediately inform the Manager (or cause the Lawyers to inform the Manager) of any proposed settlement offers or proposals. The Applicant shall consult (and cause the Lawyers to consult) the Manager and provide such assistance as may be requested by the Manager to evaluate the proposed Settlement. The Applicant will actively consider and seek to initiate (subject to clause 7.2 below) offers of Settlement when appropriate to do so.
- 7.2. If the Applicant:
 - i. wants to Settle the Claims or the Proceedings for less than the Funder considers

appropriate; or

- ii. does not want to Settle the Claims or the Proceedings or make an offer to do so when the Funder considers it appropriate for the Applicant to do so,

then the Funder and the Applicant shall seek to resolve their difference of opinion by referring it to a Queen's Counsel according to the process set out in clause 18.4. Any decision of Queen's Counsel will be non-binding in respect of any reference under this clause. The decision as to whether to accept or reject a proposed Settlement will ultimately be solely for the Applicant to determine.

8. RESOLUTION SUM

- 8.1. Without prejudice to clause 4.1, the Applicant undertakes to use his best endeavours to obtain a Costs Award(s) in respect of all of his costs and disbursements in connection with the Claims and/or Proceedings (or any Settlement relating thereto). The Parties agree that any Resolution Sum in respect of a Costs Award is to be paid to the Lawyers in the first instance, and the Applicant hereby irrevocably agrees to direct the Lawyers to immediately pay any such Resolution Sum received by them into the Trust Account and to distribute such sums to the Funder in and towards reimbursement of the Project Costs funded pursuant to this Agreement.
- 8.2. The Applicant undertakes to use his best endeavours to obtain approval by the CAT (in the course of the Proceedings and Settlement) for the payment, out of the Undistributed Damages, of the Return, less any costs recovered by the Applicant pursuant to Clause 8.1.
- 8.3. Subject to such approvals and orders as may be made by the CAT, the Applicant undertakes to immediately pay to the Funder the Return, limited to such amount as determined by the CAT to be payable to the Applicant pursuant to Competition Act 1998, s.47C(6) or s.49A(5) (and/or rule 94 of the Competition Appeal Tribunal Rules). The Parties agree that any payment made pursuant to clause 8.2 is to be paid to the Lawyers in the first instance, and the Applicant hereby irrevocably agrees to direct the Lawyers to immediately pay any such sums received by them into the Trust Account and to distribute such sums to the Funder.
- 8.4. Subject to any order of the CAT, the Applicant hereby assigns to the Funder all of his right, title and interest in any Costs Award(s) and Resolution Sums.
- 8.5. As the Funder will make payments in respect of VAT as part of the Project Costs, the Applicant shall provide the Manager with such information as the Manager may request as regards the Applicant's input VAT recovery position. If the Applicant is entitled to obtain a credit or a payment in respect of such VAT, it shall, at the Manager's request, pay to the Funder an amount equal to such credit or payment (the "**Input Tax Amount**"). Any such Input Tax Amount is payable at the earliest time the Applicant receives the payment or can claim the credit. If there is any Input Tax Amount not paid to the Funder, that is payable to the Funder pursuant to this clause 8, or would be payable if the Manager had made a request under this clause 8.3, then that amount shall be included as part of the Project Costs.

9. CONFIDENTIALITY AND PROVISION OF DOCUMENTS

- 9.1. In providing to the Manager and/or the Funder any documents or information about the Claims and the Proceedings, the Applicant does not intend to waive any Legal Privilege that may attach to such documents or information.
- 9.2. The Lawyers will, upon request, provide to the Manager and/or, if requested by the Manager, the Funder, for use in relation to these Proceedings only, a copy of any document obtained in the Proceedings by way of discovery, subpoena or any other coercive power of the CAT, subject to such disclosure not being in contravention of any law, rule of the CAT or regulation, or CAT order.
- 9.3. The Parties agree that all Project Information is provided, acquired, exchanged or generated in circumstances where the Applicant is contemplating or conducting litigation against the Defendant(s). As a result, the Parties acknowledge that:

- (a) all the Project Information is confidential; and
- (b) the Project Information may be subject to a claim of Legal Privilege by the Applicant,
- unless any part of the Project Information is already in the public domain through no breach of this Agreement.
- 9.4. The Parties will maintain the confidentiality of, and any Legal Privilege attaching to, the Project Information and the Parties agrees to maintain the confidentiality of all Other Confidential Information that is not in the public domain unless the disclosure of any part of that Project Information and/or Other Confidential Information is:
- i. agreed in writing to be made by the Parties; or
 - ii. expressly authorised by this Agreement; or
 - iii. required by law, regulation, the rules of any recognised stock exchange or by a court of competent jurisdiction (in which case disclosure should only be to the minimum extent it is required to do so); or
 - iv. to the Manager; or
 - v. to the Funder's or Manager's respective Affiliates or to the Applicant or any member of the Class and/or the directors, officers, advisors, insurers or ultimate investors (on a confidential basis) of the Funder or Manager or the Funder's or Manager's Affiliates, where such disclosure is for a purpose relating to the operation or evaluation or enforcement of this Agreement or any guarantee provided to the Applicant by the Guarantors and provided that the disclosing Party remains liable for any breach of confidentiality by that person in respect of the Project Information and Other Confidential Information disclosed to that person; or
 - vi. to such Party or the Class as may be ordered by the CAT; or
 - vii. to a court to the extent that such disclosure is necessary to enforce the Party's rights under this Agreement.
- 9.5. The Applicant consents to the disclosure by the Manager and/or Funder of Project Information to all service providers participating in the Project provided that any recipient must first be bound to keep such information strictly confidential.
- 9.6. Nothing in this Agreement shall restrict or limit or be deemed to restrict or limit the Elliott Group from engaging in transactions in securities of issuers directly or on behalf of accounts that the Funder or its Affiliates manage while in possession of the Project Information.
- 9.7. Notwithstanding anything herein to the contrary, neither the Applicant nor any other person acting on his behalf shall provide the Funder, the Manager or the Elliott Group or their representatives with any information that it is aware constitutes material non-public information concerning any public company, unless prior thereto the Funder, Manager or relevant member of the Elliott Group (as applicable) expressly agrees in writing to the receipt by it of any such non-public information regarding such company.
- 9.8. Subject to clause 9.9, no Party shall make, or permit any person to make, any public announcement, communication or circular with reference to this Agreement and/or its terms (each an "**announcement**") without the prior written consent of both Parties. In any event, the Applicant undertakes not to disclose or divulge any pricing or other commercial information concerning this Agreement to any person except in accordance with sub-clauses (iii), (v) and (vi) of clause 9.4 above.
- 9.9. Either Party shall be permitted to make an announcement where required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange), or by any court or other authority of competent jurisdiction. If the Applicant is required to make any announcement, it shall, to the extent legally permitted, promptly notify the Managers. The Applicant shall take reasonable steps to seek to agree the contents of the

announcement with the Manager before making it.

10. NO CHARGE OR OTHER ENCUMBRANCE

- 10.1. The Applicant represents and warrants that, as at the Date of Commencement, there is no interest, charge, lien or other encumbrance or right in, over or otherwise attaching to the Claims or rights, title or interest of the Applicant to any Resolution Sum and there is no other funding agreement or arrangement in respect of the Claims and no creditor holds security over property of the Applicant that might interfere with his obligations under this Agreement, save for the Funder's rights pursuant to a litigation funding agreement between Colfax FundingCo, LLC and the Applicant dated 22 June 2016 as assigned by Colfax FundingCo, LLC to the Funder pursuant to an Assignment Agreement dated 4 February 2021.
- 10.2. The Applicant shall not dispose of, transfer, assign or cause, permit, assert or consent to any interest, charge, lien or other encumbrance or right in, over or otherwise attaching to the Claims or rights, title or interest of the Applicant to any Costs Award(s) and Undistributed Damages, except with the prior written consent of the Funder, which consent may be withheld by the Funder in its absolute discretion.

11. DURATION OF AGREEMENT

- 11.1. This Agreement comes into full force and effect on the date of execution hereof and, subject to rights of termination under clause 12 herein, continues in force until all Resolution Sums (if any) have been fully disbursed in accordance with this Agreement.

12. TERMINATION

- 12.1. The Funder is entitled to terminate this Agreement upon giving not less than forty-five (45) days' written notice to the Applicant if:
- i. the Funder reasonably ceases to be satisfied about the merits of the Claims and/or Proceedings; or
 - ii. the Funder reasonably believes that the Claims and/or the Proceedings are no longer commercially viable for the Funder to fund because the Funder is unlikely to obtain at least £179 million as a return on its funding of the Proceedings; or
 - iii. the Funder reasonably believes that there has been a material breach of this Agreement by the Applicant; or
 - iv. the Class certified under a CPO by the CAT is substantially narrower than the Class for which the CPO is sought such that the Claims and/or the Proceedings are no longer commercially viable as provided for in sub-paragraph (ii) above, and/or the CAT otherwise disapproves, or provides any negative commentary regarding, the transactions contemplated by this Agreement or the terms hereof.
- 12.2. Should the Funder seek to exercise the right to terminate pursuant to clause 12.1, the Funder shall, before doing so, provide the Applicant a reasonable opportunity to address the Funder's concerns.
- 12.3. The Applicant may terminate this Agreement forthwith by written notice to the Funder if the Funder commits a material breach of this Agreement and does not remedy the breach within thirty (30) days after receiving written notice from the Applicant requiring it to do so.
- 12.4. In the event that this Agreement is terminated pursuant to clause 12.1 or 12.2:
- a. all obligations of the Funder under this Agreement shall cease upon the effective date of termination, save for
 - i. payment by the Funder of any outstanding Project Costs incurred up to the effective date of termination; and
 - ii. payment of any Adverse Costs Order to the extent that it relates solely to costs

which arise in, or are attributed to, the period beginning on the Date of Commencement and ending on the effective date of termination, even where such costs are not quantified until after the effective date of termination; and

- b. the Funder will be entitled to (i) any and all sums to be distributed to it pursuant to clauses 8.1 and (ii) subject to giving credit for any such sums received by the Funder, and in lieu of the Return, all costs funded by the Funder (including Project Costs) plus interest thereon at the rate of 3 month LIBOR as published by Reuters plus two per cent from the effective date of termination until the date of payment to the Funder of all such costs, in respect of which the Applicant undertakes to use his best endeavours to obtain approval by the CAT for the payment of such sums to the Applicant out of the Undistributed Damages. Subject to such approvals and orders as may be made by the CAT, the Applicant undertakes to immediately pay to the Funder all such costs, limited to such amount as determined by the CAT to be payable to the Applicant pursuant to Competition Act 1998, s.47C(6). The Parties agree that any payment made pursuant to this sub-clause b. is to be paid to the Lawyers in the first instance, and the Applicant hereby irrevocably agrees to direct the Lawyers to immediately pay any such sums received by them into the Trust Account and to distribute such sums to the Funder.

- 12.5. Termination of this Agreement shall be without prejudice to the rights and remedies of the Parties arising out of any breach of this Agreement.

13. FURTHER ASSURANCES

- 13.1. The Parties will promptly sign all documents and do all things that either of them from time to time reasonably requires of the other to perform, perfect or complete the provisions of this Agreement or any transaction contemplated by it. The Parties will, save as otherwise expressly provided in this Agreement, not do or permit to be done anything likely to deprive any Party of the benefit for which the Party entered this Agreement.
- 13.2. If this Agreement or any part of it is annulled, avoided or held unenforceable, the Parties will forthwith do all things necessary, including without limitation signing any further or other agreement or instrument, to ensure that the Funder receives any remuneration, entitlement or other benefit to which this Agreement refers or which is contemplated by this Agreement.
- 13.3. The Parties irrevocably agree that production of a copy of this Agreement shall be conclusive evidence of the Parties respective obligations as set out in this sub-clause. The Parties will not seek any order from any court that may detrimentally affect each other's rights under this Agreement other than with the consent of both parties or as arises out of any material breach of this Agreement.

14. ASSIGNMENT

- 14.1. Save as provided in this Agreement, the Applicant shall not assign this Agreement (or any of his rights and/or obligations) to any person without the Funder's prior written consent.
- 14.2. The Funder shall be entitled to assign, novate, transfer pledge or otherwise dispose (by way of security or otherwise) of all or any part of their rights, benefit, economic or beneficial interests, title and obligations under this Agreement without the consent of the Applicant, provided that (i) the Funder gives the Applicant 45 days' written notice of any proposed assignment, novation, transfer or pledge, (ii) the Applicant has had reasonable opportunity to notify the CAT of the Funder's proposal, (iii) the CAT raises no objection following prior written notification and (iv) the guarantee of the Guarantors remains in full force and effect.

15. PARTICIPATION

- 15.1. Subject to any objection of the CAT following prior written notification, the Funder may, in its absolute discretion, decide to share any of the financial risks of, and obligations under, this Agreement with a co-funder of the Funder's choice, in accordance with clause 14. For these purposes only, the Funder may provide any Project Information to a third party provided the Funder first ensures that the third party is required to keep such information strictly confidential and takes all reasonable steps to ensure that any Legal Privilege in respect of such information is maintained by it. In the event that the Funder enters into a co-funding, sub-participation or

similar agreement, the Funder's entitlements and obligations under this Agreement shall remain unaffected to the extent not assigned, transferred or novated pursuant to clause 14.

16. KNOW YOUR CLIENT

16.1. To assist in the fight against the funding of terrorism and money laundering activities, applicable law or regulations may require either of the Funder or the Manager to obtain, verify, and record information relating to the Applicant and take such other steps as may, from time to time, be required to be taken by the Terrorism Act 2000 (UK), the Proceeds of Crime Act 2002 (UK), the Money Laundering Regulations 2007 (UK), and any other applicable legislation and regulations. Accordingly, for the purposes of complying with such legislation (including, without limitation, complying with obligations in respect of customer identification, customer due diligence, record-keeping and reporting), either or both of the Funder and the Manager may ask for the name, address, date of birth, (for individuals), and/or other information and documents of the Applicant. The Applicant also agrees that either or both of the Funder and the Manager also may request and obtain certain information from third parties regarding the Applicant.

17. DATA PROTECTION

17.1. The Funder and the Manager may collect, use and disclose personal information about the Applicant that may constitute "personal information" under the Data Protection Act 2018 (UK) ("Act" and "Personal Data"). Without limiting the generality of the foregoing, the Personal Data may be used and disclosed by being shared, for the purposes described below, within the Funder or the Manager and/or to service providers in any country in which the Funder or the Manager conduct business. This may include some countries that do not provide the same statutory protection for Personal Data as applies under the Act and applicable data protection laws. The Personal Data may also be used for purposes including: administering the relationship under this Agreement; compliance with any requirement of law or regulation; and the prevention of crimes and malpractice. The Personal Data may be disclosed by the Funder or the Manager or their service providers if permitted or compelled by applicable law, or in response to court orders, requests from regulators, government or law enforcement agencies.

18. GOVERNING LAW AND DISPUTES

18.1. This Agreement and any dispute or claim arising out of, or in connection with, it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of England and Wales.

18.2. For the purpose of any ancillary relief and subject to clause 18.3, each of the Parties irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Agreement or its subject matter or formation (including non-contractual disputes or claims).

18.3. Any dispute, controversy or claim in relation to or arising out of this Agreement, including any question about its existence, validity, meaning, performance or termination or the rights, duties and liabilities of any party to it ("**Dispute**") shall be referred to and finally resolved by arbitration under the London Court of International Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three. The seat, or legal place, of arbitration shall be London. The language to be used in the arbitral proceedings shall be English.

18.4. Where in this Agreement provision is made for any matter to be referred to Queen's Counsel for determination the following provisions shall apply:-

- a. Queen's Counsel shall be independent of the Parties and shall be selected in consultation between the Lawyers, the Applicant, the Manager and the Funder.
- b. If the selection of Queen's Counsel cannot be agreed, then Queen's Counsel will be appointed by the Chairman of the Bar Council of England and Wales for that purpose.
- c. Unless otherwise stated expressly to the contrary, the opinion of Queen's Counsel will be final and binding on both the Applicant and the Funder. Queen's Counsel may proceed as he or she sees fit to inform himself or herself before delivering his or her opinion.

- d. The Funder will pay the costs of Queen's Counsel providing his or her opinion and such costs will be Project Costs for the purposes of this Agreement.

19. NOTICES AND COMMUNICATIONS

- 19.1. All notices given under this Agreement must be in writing and have to be served personally, by post, by facsimile or by email.
- 19.2. The Parties agree that the most efficient way for them to communicate with each other is by email and that, wherever possible, written communications between them will be by email.
- 19.3. The Manager will, at the Date of Commencement and subsequently if necessary, provide the Applicant with the email address of the Manager's personnel involved in the Project. All notices and other communications the Applicant needs to serve on or have with the Manager and/or the Funder may be communicated to this email address or, if any email to that address is unsuccessful, to the email address specified in sub-clause 19.6.
- 19.4. The Applicant will, at the Date of Commencement, provide the Manager with an email address for the Applicant and will, consistently with paragraph 4.4.7, immediately notify The Manager of any change to that email address.
- 19.5. The Parties agree that, for the duration of this Agreement, they will take all reasonable steps to ensure that their respective email addresses remain fully operational, allow unimpeded access to each party's inbox for the emails of the other party, and are checked daily.
- 19.6. The address for service of the Funder is:

Innsworth Capital Limited
44 Esplanade
St Helier
Jersey
JE4 9WG
Attention: Chris Bowden
Email: InnsworthJersey@Intertrustgroup.com

- 19.7. The address for service of the Applicant is included in Schedule 1.

- 19.8. The contact details for the Manager are:

Innsworth Advisors Limited
1
Chancery Lane
London
WC2A 1LF
United Kingdom
Attention: Ian Garrard
Phone: +44 20 3750 1300
Email: IGarrard@innsworth.com

- 19.9. Notices shall be deemed to be received on the day after they are posted and on the day they are transmitted by facsimile or email (unless the sender receives notification that the transmission was unsuccessful). If either Party receives notification that an email or facsimile transmission to the other Party's notified address was unsuccessful, the Party must make all reasonable efforts to contact the other Party by telephone or mail. Neither Party shall be responsible to the other for any loss or damage of any nature arising out of any failure to notify or communicate with the other Party if the Party attempting to make the notification or communication has fully complied with all of the provisions of clause 19.

20. ACKNOWLEDGEMENT and EXCLUSION OF LIABILITY

- 20.1. By signing this Agreement, the Applicant acknowledges that the Applicant has sought and obtained independent legal advice and that he understands the nature and extent of his rights and obligations under this Agreement.

- 20.2. Save for the enforcement by the Applicant of the Funder's obligations to provide the funding stipulated in this Agreement and/or the Guarantor's obligations under the guarantees provided by the Guarantors, the Funder, the Manager, the Guarantors and each of their respective officers, directors, employees, shareholders, partners, representatives, consultants and agents (together the "Funder Parties") shall not be liable for any claims, liabilities, damages, losses, costs or expenses of any kind whether incurred as direct or consequential losses (together "Losses") of the Applicant arising out of any breach of this Agreement by the Funder or any other cause of action arising in relation to this Agreement or in connection with the Claims howsoever arising (including negligence), unless and only to the extent that such Losses are due to the fraud or willful misconduct of the Funder.

21. ENTIRE AGREEMENT

- 21.1. This Agreement, as varied from time to time, (together with any documents referred to in it) constitute the entire agreement between the Parties and, save for the Appeals Funding Agreement and its terms (which shall remain in full force and effect), supersede and extinguish all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations, arrangements and understandings between them, whether written or oral, relating to their subject matter.
- 21.2. Each Party acknowledges that in entering into this Agreement (and any documents referred to in it), it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement or those documents.
- 21.3. Without prejudice to the foregoing, the Applicant acknowledges and agrees that the Funder and the Manager have made no promise, representation or warranty as to the expected outcome of the Claims (in respect of their merit or the quantum of the Claims) in respect of which the Applicant shall rely exclusively on the advice of the Lawyers. The Applicant confirms that the Funder and the Manager have not assumed any duty of care or other form of legal responsibility for information provided by the Funder or the Manager in connection with the Claims, including any estimates of quantum/loss prepared by the Manager.
- 21.4. Nothing in this clause shall limit or exclude any liability for fraud.

22. NO PARTNERSHIP; NO AGENCY

- 22.1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership between the Parties or between the Applicant and the Manager or constitute any Party the agent of another Party or the Manager the agent of the Applicant.

23. AMENDMENTS and WAIVER

- 23.1. No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 23.2. A waiver of any right or remedy under this Agreement or by law is only effective if it is given in writing and is signed by the person waiving such right or remedy. Any such waiver shall apply only to the circumstances for which it is given and shall not be deemed a waiver of any subsequent breach or default.
- 23.3. A failure or delay by any person to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.
- 23.4. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 23.5. A person that waives any right or remedy provided under this Agreement or by law in relation to one person, or takes or fails to take any action against that person, does not affect its rights or remedies in relation to any other person.

24. SEVERANCE

- 24.1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision pursuant to this clause shall not affect the validity and enforceability of the rest of this Agreement.

25. SURVIVAL

- 25.1. This Agreement and the rights and obligations under it (other than obligations that have already been fully performed), unless otherwise expressly provided for in this Agreement, remain in full force after the Agreement is terminated.

26. THIRD PARTY RIGHTS

- 26.1. Except as provided for in clause 26.3, a person who is not a Party shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

- 26.2. Notwithstanding clause 26.3, the rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

- 26.3. The Parties agree that:

- i. each of Funder Parties may enforce and rely on the terms of this clause 26.3, clause 20 and any of their other respective rights under any other provision of this Agreement;
- ii. the Guarantors may enforce and rely on the terms of this clause 26.3, clauses 20 and 19 and any of their rights or entitlements under any other provision of this Agreement; and
- iii. the Manager may enforce and rely on the terms of this clause 26.3, clauses 20 and 19 and any of its other rights or entitlements under any other provision of this Agreement.

27. COUNTERPARTS

- 27.1. This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

28. LANGUAGE

- 28.1. If this Agreement is translated into any language other than English, the English language version shall prevail.

The Applicant

SIGNED by WALTER HUGH MERRICKS. CBE

in the presence of

_____ Signature of witness

_____ Print name of witness

_____ Address of witness

The Funder

EXECUTED by INNSWORTH CAPITAL LIMITED

_____ Signature of Director

SCHEDULE 1

Defendants: Mastercard Incorporated, Mastercard International Incorporated, Mastercard Europe S.P.R.L.

Lawyers (including counsel); Quinn Emanuel Urquhart & Sullivan UK LLP (Lead partner: Boris Bronfentrinker), 90 High Holborn, London, WC1V 6LJ

Paul Harris QC, Monckton Chambers

Marie Demetriou QC, Brick Court Chambers

Victoria Wakefield QC, Brick Court Chambers

Nicholas Bacon QC, 4 New Square

SCHEDULE 2

Walter Merricks CBE v MasterCard Inc & Ors

ESTIMATED BUDGETED COSTS	TOTAL COSTS	0. REMITTAL PHASE	1. PRELIMINARY ISSUE / APPLICATIONS	2. DISCLOSURE	3. WITNESS STATEMENTS	4. EXPERTS (Economic and accounting)	5. MEDIATION & SETTLEMENT DISCUSSIONS	6. PRE-TRIAL	7. TRIAL (8 weeks)	8. POST-TRIAL	9. NOTICING AND ADMINISTRATION OF PROCEEDS	10. CONTINGENCY
SOLICITORS*												
Boris Bronfenbrinker, Partner (£755 p/h)			83,050 (110 hours)	45,300 (60 hours)	60,400 (80 hours)	173,650 (230 hours)	109,475 (145 hours)	158,550 (210 hours)	566,250 (750 hours)	45,300 (60 hours)	33,975 (45 hours)	
Nicola Chesaites, Partner (£720 p/h)			68,400 (95 hours)	216,000 (300 hours)	64,800 (90 hours)	165,600 (230 hours)	104,400 (145 hours)	144,400 (200 hours)	252,000 (350 hours)	57,600 (80 hours)	118,800 (165 hours)	
Senior Associate (£655 p/h)			45,850 (70 hours)	786,000 (1,200 hours)	98,250 (150 hours)	111,350 (170 hours)	85,150 (130 hours)	131,100 (200 hours)	131,100 (200 hours)	26,200 (40 hours)		
Ji-Whan Bang, Associate (£520 p/h)			57,200 (110 hours)	780,000 (1,500 hours)	88,400 (170 hours)	114,400 (220 hours)	70,200 (135 hours)	130,000 (250 hours)	130,000 (250 hours)	67,600 (130 hours)	88,400 (170 hours)	
Junior Associate (£430 p/h)			34,400 (80 hours)	752,500 (1,750 hours)	73,100 (170 hours)	75,250 (175 hours)	64,500 (150 hours)	120,400 (280 hours)	94,600 (220 hours)	68,800 (160 hours)	120,400 (280 hours)	
Paralegals/Interns (£135 p/h)***			10,800 (80 hours)	2,160,000 (16,000 hours)	13,500 (100 hours)	6,750 (70 hours)	16,200 (120 hours)	16,200 (120 hours)	27,000 (200 hours)	10,800 (80 hours)	12,150 (90 hours)	
TOTAL SOLICITORS' COSTS**	13,150,000	300,000	300,000	4,750,000	400,000	650,000	450,000	700,000	1,200,000	275,000	375,000	3,750,000
COUNSEL***												
Paul Harris QC (£750 p/h)												
Marie Demetriou QC (£515 p/h)												
Nicolas Bacon QC - costs/funding counsel (£650 p/h)												
Victoria Wakefield (£310 p/h)												
TOTAL COUNSEL COSTS	4,225,000	195,000	250,000	400,000	350,000	200,000	130,000	650,000	1,100,000	100,000	100,000	750,000
OTHER DISBURSEMENTS	5,000	5,000										
EXPERTS	2,700,000			425,000	50,000	1,500,000	50,000	100,000	250,000	25,000	100,000	200,000
OTHER THRID PARTY												
Claims noticing and administration - Epiq/Hilsoft****	4,000,000										4,000,000	
E-disclosure provider - AlixPartners	1,000,000			1,000,000								
PR Consultant - Jim Baxter Media	250,000											
Costs for W Merricks (VAT does not apply)	150,000											
Consultants' fees	100,000											
Third Party Disclosure Costs*****	1,500,000			1,500,000								
GRAND TOTAL (excluding VAT)	27,080,000	500,000	550,000	8,075,000	800,000	2,350,000	630,000	1,450,000	2,550,000	400,000	4,575,000	4,700,000
GRAND TOTAL (including VAT)	32,466,000											

* Additional lawyers from QE's US and Australian offices will be involved where necessary to address foreign law issues raised by MasterCard.

** Variations due to rounding

*** Solicitors and counsel rates are indicative only and will be subject to change as the case progresses. For the purposes of this estimate, blended rates have been used for each QE earner level to factor in rate increases for associates as the matter progresses.

**** Claims administration budget rises to a maximum of £10 million

***** Reflects costs of obtaining and analysing economic data from third party merchants and retailers

0. Remittal Phase - costs from the date of the Supreme Court's judgment dismissing Mastercard's appeal, until the date the CPO is granted.

1. Preliminary Issue / Applications - includes work on interlocutory applications and determination of preliminary issues including e.g. on limitation issues.

2. Disclosure - includes negotiating and agreeing disclosure parameters, reviewing MasterCard's disclosure, and all applications in respect of disclosure. It also accounts for significant involvement on the part of the experts in relation to disclosure to facilitate and promote any early discussions between the experts that may be ordered to take place (should such an order be made by the Tribunal). Assumes disclosure runs for 4-6 months with a full time team of 10-12 paralegals doing first level review (5 days a week, 8 hours / day) and use is made of predictive coding. Budget also includes costs of any necessary undertakings as to costs for third party disclosure.

3. Witness Statements - includes preparation of witness evidence (including one witness statement in response to potential limitation challenge and at least two to three witnesses of fact for the hearing), reviewing and assessing MasterCard witnesses (assumes six to seven witnesses of fact identifying and preparing reply witness statements, considering third party (merchants) witness statements and preparing reply evidence in respect of pass-on).

4. Experts - includes preparing expert reports, reviewing and considering MasterCard's expert reports, preparing reply expert reports, dealing with any applications and disputes regarding expert evidence and documents.

5. Mediation and settlement - includes preparing for and attending any mediation/settlement discussions, preparing submissions to the Tribunal for approval of any settlement and expert opinion in support of settlement (assumes costs of submissions to the Tribunal and expert opinion are equally shared by the parties in the event of a settlement), advice to Mr. Merricks throughout.

6. Pre-trial - includes applications, preparing for and attending PTR hearing (assumed to be 1-2 days), witness and experts preparation, expert meetings and preparation of expert statement on issues agreed and not agreed, inter parties correspondence, drafting skeleton arguments, considering MasterCard's skeleton argument, preparing hearing bundles, notifications to the class, advice to Mr Merricks throughout.

7. Trial - attending eight week trial (10 hours a day), including drafting closing submissions, transcript review, all out of court hours, hearing review and preparation, dealing with the media, advising Mr. Merricks throughout.

8. Post-trial - includes inter-partes correspondence regarding costs, compliance with Rules 92 and 93 regarding assessment and distribution of damages, costs assessment (if not agreed), application to the Tribunal regarding payment to third party litigation funder, advising Mr. Merricks throughout.

9. Administration of proceeds - includes class notification and communications, dealing with the media, processing claims and making payments, updating the Tribunal. Assumes a 9 month window for claims to be made.

There is no separate budget for interlocutory applications or any preliminary issues. The estimated fees for these are covered in the other categories. For example, the witness evidence in respect of any limitation defence are covered in the estimated costs for witness evidence, or any interlocutory applications regarding expert evidence and related issues are budgeted for in the experts' costs. Likewise, preparation for any preliminary issue hearings are reflected in the pre-trial estimated costs.

This budget has been prepared with the objective of ensuring that there are sufficient funds available for the proposed class representative to see the proceedings through to judgment if necessary, in circumstances where at the outset the proposed class representative has little in the way of information about matters such as how many documents there may be, the availability of witnesses to respond to the evidence of MasterCard and other such issues. This necessitated an overly cautious approach to how much work and time will need to be spent. There is a much greater degree of information asymmetry in the proposed collective action than is normally the case in

**SCHEDULE 3
STANDARD TERMS (LAWYERS)**

THIS AGREEMENT is made the day of May 2019.

BETWEEN:

Quinn Emanuel Urquhart & Sullivan UK LLP, 90 High Holborn, London, WC1 V6U ("the **Lawyers**");
and

Innsworth Capital Limited of 44 Esplanade, St Helier, Jersey, JE4 9WG with company number
125002 (the "**Funder**")

RECITAL

- (A) The Applicant has entered into or proposes to enter into the Funding Agreement.
- (B) The Lawyers have been appointed to provide the Legal Services to and for the benefit of the Applicant and the Lawyers propose to accept such appointment subject to the terms and conditions set out in the Standard Terms.
- (C) The Lawyers are aware of the contents of the Funding Agreement and, subject to the instructions of the Applicant, have agreed to act consistently with, and in accordance with, the terms of the Funding Agreement.

1. DEFINITIONS

1.1. Unless the contrary intention appears:

"**Funding Agreement**" means the Litigation Funding Agreement between the Applicant and the Funder;

"**Standard Terms**" means the terms and conditions set out in this Agreement; and

and the definitions of words used in the Funding Agreement will bear the same meaning when used in these Standard Terms.

2. APPOINTMENT OF THE LAWYERS

2.1 The Lawyers will inform the Manager in writing of:

- 2.1.1 the names of the Lawyers who it is proposed will provide the legal services, for the purposes of clause 4.2;
- 2.1.2 the hourly rates of those Lawyers, for the purposes of clause 4.1, which will remain fixed for the duration of Project, save for any changes resulting from increases in seniority;
- 2.1.3 the hourly and daily rates of barristers retained or proposed to be retained; and
- 2.1.4 the Lawyers' estimate of costs and disbursements to prosecute the Claims (separately identifying the estimated fees of the Lawyers, the barristers and the experts, if any), all by reference to and consistent with the Approved Budget.

2.2 The Lawyers will, subject to the instructions of the Applicant:

- 2.2.1 act consistently with the terms of the Funding Agreement; and
- 2.2.2 do all things which the Funding Agreement contemplates the Lawyers will do.

3. THE LAWYERS' OBLIGATIONS

- 3.1 The Lawyers will ensure that they fully comply at all times with each of the Applicant's instructions, subject to any overriding duty to the Court or professional conduct rules, including those set out in clause 4 of the Funding Agreement.
- 3.2 Without limiting the above, and pursuant to the Applicant's instructions in clause 4 of the Funding Agreement, the Lawyers will keep the Applicant and the Manager fully informed of all matters concerning the Claims and Proceedings, including and mediation and settlement discussions.
- 3.3 Without limiting the above, if, after the date of the Funding Agreement, the Lawyers become aware of any information which has or may have a material impact on the Claims or the Proceedings, or the potential for any judgment sum to be recovered, the Lawyers will immediately inform the Applicant and the Manager of that information.
- 3.4 Unless otherwise agreed in writing, the Lawyers will provide a monthly report, at the end of each month to which the report refers, to the Applicant copied to the Manager, which:
 - 3.4.1 identifies any change to the previous monthly report and any significant developments in relation to the Claims and Proceedings;(including in relation to any possible Settlement);
 - 3.4.2 reviews all issues relevant to liability and quantum; and costs (including any actual or potential Cost Orders) at the relevant point in time;
 - 3.4.3 provides advice in respect of any proposed changes to the prospects of success, and any changes to the Approved Budget; and
 - 3.4.4 provides an estimate of the likely invoice amount for services performed within that month.

4. COSTS AND DISBURSEMENTS

- 4.1 Except as separately agreed with regard to any fixed fee(s), capped fee(s), conditional fee(s) or otherwise, the Lawyers will charge for their services provided by reference to the time spent at the hourly rates as notified to the Manager pursuant to clause 2.1 and utilise the personnel of the seniority notified pursuant to clause 2.1(a). Detailed time records must be kept to facilitate time details being provided in accordance with clause 5 of these Standard Terms. The Lawyers will ensure, in so far as it is within their control, that there is continuity in the personnel assigned to the conduct of the Proceedings.
- 4.2 No fee(s) will be charged by the Lawyers for any fee-earners, other than those notified to the Manager pursuant to clause 2.1, without the prior written consent of the Manager. The Funder will not be liable to pay the fees of any barristers or experts other than those notified to the Manager pursuant to clause 2.1.
- 4.3 Notwithstanding the above, the Lawyers will not charge for work and/or disbursements and/or expenses that are not covered by the Approved Budget, and, in respect of their time costs, will not charge more than is estimated in the Approved Budget for work in the relevant line item category, without the Manager's express prior written agreement. However, the Approved Budget is not a cap or fixed fee.

INVOICES

- 5.1 The Lawyers will render monthly invoices made out to the Applicant with a copy to the Manager by the 14th day of each month, accompanied by:
 - (a) the details contemplated by clause 5.5 of these Standard Terms;
 - (b) a summary of the tasks performed in respect of which time was incurred and confirmation that those tasks are within the Approved Budget; and
 - (c) invoices from barristers and experts and for any other disbursements.

- 5.2 The monetary details in the monthly invoices will include (where the applicable fee(s) are based on hourly rates in full or by reason of any conditional fee(s)) a charge for the time detailed at the hourly rates notified to the Manager pursuant to clause 2.1 including any VAT (if chargeable).
- 5.3 The Funder will pay, provided that those costs are liable to be funded pursuant to the Funding Agreement and are within the Approved Budget:
- 5.3.1 the reasonable legal costs of the Lawyers incurred during the duration of the Funding Agreement for the sole purpose of prosecuting the Proceedings; and carrying out their services (in each case so far as it relates to the Claims); and
- 5.3.2 the reasonable disbursements and expenses incurred during the term of the Funding Agreement for the sole purpose of prosecuting the Proceedings.
- 5.4 Provided invoices from the Lawyers comply with these Standard Terms, the Funder will pay them within 30 days from the month in which the Lawyers' invoice is received by the Managers.
- 5.5 Where an hourly rate is applicable, the time details for fees of the Lawyers must be on a separate document to each invoice and must include, for each time entry:
- 5.5.1 the date upon which the time was spent;
- 5.5.2 which solicitor or paralegal spent the time; and
- 5.5.3 the time spent in six minute units or such other unit of time as is agreed by the Manager.
- 5.6 The Lawyers acknowledge and accept that the Funder may at its discretion require the Applicant to require that the Lawyers submit any one or more of their invoices to taxation/detailed assessment, and the Lawyers shall provide promptly all such documentation and information pertaining to the invoiced costs subject to the taxation/detailed assessment as may be requested by the Managers.
- 5.6 Authorised representatives of the Lawyers and the Manager together with the Applicant shall attend a meeting at least once each quarter following the Commencement Date to review the invoiced costs to that date and the projected costs of the next 3 months, with a view to ensuring that all costs, subject always to the Approved Budget, are being managed efficiently and in a manner consistent with the Overarching Purpose. Any party attending may invite a costs assessor and/or costs counsel (the costs of which will be at the expense of the inviting party). Each meeting shall be minuted.
- 5.7 In the event that the Funder or the Manager on its behalf disputes all or any part of the Lawyers' invoice for any of the following reasons:
- (i) fees, disbursements or expenses outwith the Approved Budget;
- (ii) unreasonable fees, disbursements or expenses;
- (iii) fees, disbursements or expenses for tasks beyond the scope of the Approved Budget; or
- (iv) any other matter arising out of or connected with the Lawyer's invoice,
- then it will notify the Lawyers of such dispute within 30 days of the receipt of the invoice and the Lawyers shall issue a credit note for the disputed amount referencing the original invoice. The Funder will pay the amount not disputed within 30 days of notifying the Lawyers of the dispute. The parties shall co-operate to resolve the dispute to the parties' mutual satisfaction, as expeditiously as possible, and in any event, within 90 days of the Manager's notification of the dispute.
- 5.8 In the event that the Funder/the Manager and the Lawyers are unable to settle the dispute in line with clause 5.8 the matter shall be referred to and finally resolved by expert determination to be administered by CEDR. The expert shall be a QC and his/her determination shall be final and binding. The expert shall be granted the power to determine the apportionment of the parties' costs associated with the referral for expert determination.

6. PRIORITIES, LIEN AND INSURANCE

- 6.1 The Lawyers agree that they are not entitled to claim a lien in respect of documents in their possession relevant to the Proceedings if there are no fees payable pursuant to clause 5.3.
- 6.2 The Lawyers will maintain professional indemnity insurance in an amount of at least £10 million for the duration of these Standard Terms plus three years (or for such higher amount and/or longer duration as may be agreed).
- 6.3 The Lawyers will provide evidence of the insurance to the Manager on the Manager's request from time to time.

7. TERMINATION OF APPOINTMENT

- 7.1 The Lawyers may terminate their retainer by the Applicant on 14 days' written notice to the Applicant and copied to the Manager, in the following circumstances:
 - 7.1.1 if the Funder fails to pay any fees or disbursements in aggregate at any time in excess of £500,000 in accordance with the terms of the Funding Agreement or these Standard Terms after the Funder has been given 30 days' written notice following submission of an invoice and all supporting documentation to do so, other than any amount that is the subject of dispute under clause 5.7; or
 - 7.1.2 if the Funding Agreement is terminated.
- 7.2. The Funder may, for cause, request the Applicant to terminate the retainer of the Lawyers:
 - 7.2.1 upon 14 days' written notice to the Lawyers setting out the grounds for the requested termination, provided the Applicant agrees to such a course, such agreement not to be unreasonably withheld or delayed; or
 - 7.2.2 if the Funding Agreement is terminated.
- 7.3 If the Lawyers' retainer is terminated pursuant to either clause 7.1 or 7.2, the Lawyers remain liable for their obligations under these Standard Terms accrued to the date of termination of their appointment, but thereafter all obligations and entitlements of the Lawyers cease except:
 - 7.3.1 the obligations placed on them in clause 8 of the Funding Agreement, where the Lawyers are not replaced by other solicitors to provide the services; and
 - 7.3.2 those entitlements under clause 5 (in respect of services performed up to the date of termination) unless the termination of the Lawyers arises out of professional misconduct or negligence of the Lawyers.

8. ADDRESS FOR SERVICE

- 8.1 the Funder's address for service is as set out in the Funding Agreement.
- 8.2 The Lawyers address for service is the address identified above (in identifying the parties to these Standard Terms) or as otherwise notified to the Manager in writing if that address changes.

9. VARIATION

- 9.1 These Standard Terms may only be varied in writing signed by the parties.

10. GOVERNING LAW

- 10.1 These Standard Terms are to be construed in accordance with and governed by the laws of England and Wales, including in relation to any non-contractual rights of the Parties.
- 10.2 Unless otherwise stated any dispute, controversy or claim in relation to or arising out of the Standard Terms, including any question about its existence, validity, meaning, performance or termination or the rights, duties and liabilities of any party to it shall be referred to and finally resolved by arbitration under the London Court of International Arbitration Rules, which Rules are

deemed to be incorporated by reference into this clause. The number of arbitrators shall be three. The seat, or legal place, of arbitration shall be London. The language to be used in the arbitral proceedings shall be English.

11. GENERAL PROVISIONS

- 11.1 If any provision of these Standard Terms, or its application to any person or circumstances, is or is held to be invalid, illegal, void or unenforceable, the remaining provisions are not affected and each remaining provision is valid and enforceable to the full extent permitted by law.
- 11.2 These Standard Terms may be executed in any number of counterparts, each of which when executed and delivered to the other party is an original and all of which together shall be deemed to constitute one and the same agreement.
- 11.3 Except as provided for in clause 11.4, a person who is not a party to these Standard Terms shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Standard Terms.
- 11.4 The Managers may enforce and rely on any of its rights or entitlements under these Standard Terms.
- 11.5 Notwithstanding clause 11.4, the rights of the parties to these Standard Terms to terminate, rescind or agree any variation, waiver or settlement under these Standard Terms are not subject to the consent of any other person.

SIGNED by Quinn Emanuel Urquhart & Sullivan UK LLP

.....
Name:
Partner
Date: May 2019

SIGNED by Innsworth Capital Limited:

.....
Director
Date: May 2019

Applicant / Proposed Class Representative
W H Merricks
Second
Exhibits WHM2-1 to WHM2-4
12 February 2021

Case Number: 1266/7/7/16

IN THE COMPETITION APPEAL TRIBUNAL

BETWEEN:-

WALTER HUGH MERRICKS CBE

Applicant / Proposed Class Representative

and

- (1) MASTERCARD INCORPORATED**
- (2) MASTERCARD INTERNATIONAL INCORPORATED**
- (3) MASTERCARD EUROPE S.P.R.L.**

Proposed Defendants

EXHIBIT WHM2-2

This is the exhibit marked "WHM2-2" referred to in the Second Witness Statement of Walter Hugh Merricks CBE dated 12 February 2021.



.....
Walter Hugh Merricks CBE

12 February 2021

Updated Cost Budget - February 2021

ESTIMATED BUDGETED COSTS	TOTAL COSTS	0. REMITTAL PHASE	1. PRELIMINARY ISSUE / APPLICATIONS		2. DISCLOSURE		3. WITNESS STATEMENTS		4. EXPERTS (Economic and accounting)		5. MEDIATION & SETTLEMENT DISCUSSIONS		6. PRE-TRIAL		7. TRIAL (8 weeks)		8. POST-TRIAL		9. NOTICING AND ADMINISTRATION OF PROCEEDS		10. CONTINGENCY
			HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	
SOLICITORS*																					
Boris Bronfentrinker, Partner			110	98,450	60	53,700	80	71,600	230	205,850	145	129,775	210	187,950	750	671,250	60	53,700	40	35,800	
Nicola Chesaites, Partner			95	75,050	300	237,000	90	71,100	230	181,700	145	114,550	200	158,000	350	276,500	60	47,400	165	130,350	
Leo Kitthen, Senior Associate			70	51,450	1,000	735,000	150	110,250	170	124,950	130	95,550	180	132,300	200	147,000	40	29,400	-	-	
Rebecca Coyle, Associate			110	56,650	1,200	618,000	170	87,550	200	103,000	135	69,525	220	113,300	250	128,750	130	66,950	175	90,125	
Junior Associate			80	38,000	1,750	831,250	170	80,750	175	83,125	150	71,250	280	133,000	220	104,500	160	76,000	280	133,000	
Paralegals/Interns ***			80	17,600	15,000	3,300,000	100	22,000	70	15,400	120	26,400	200	44,000	80	17,600	90	19,800			
TOTAL SOLICITORS' COSTS**	13,150,000	300,000		337,200		5,774,950		443,250		714,025		507,050		750,950		1,372,000		291,050		409,075	2,250,450
COUNSEL***																					
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OTHER DISBURSEMENTS	5,000	5,000																			
EXPERTS	2,700,000					425,000		50,000		1,500,000		50,000		100,000		250,000		25,000		100,000	200,000
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Third Party Disclosure Costs*****						1,500,000															
GRAND TOTAL (excluding VAT)	27,080,000	500,000		637,200		9,149,950		893,250		2,464,025		737,050		1,550,950		2,922,000		466,050		5,018,150	2,650,450
GRAND TOTAL (including VAT)	32,466,000																				

* Additional lawyers from QE's US and Australian offices will be involved where necessary to address foreign law issues raised by MasterCard.

** Variations due to rounding

*** Solicitors' and counsel rates are current as at the date of this budget, but are subject to change as the case progresses. For the purposes of this estimate, an indicative blended rate has been specified for the as yet unidentified junior associate. There is scope within the overall funding amount to accommodate any rate increases.

**** Claims administration budget rises to a maximum of £10 million

***** Reflects costs of obtaining and analysing economic data from third party merchants and retailers

Notes:

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5. Mediation and settlement - includes preparing for and attending any mediation/settlement discussions, preparing submissions to the Tribunal for approval of any settlement and expert opinion in support of settlement (assumes costs of submissions to the Tribunal and expert opinion are equally shared by the parties in the event of a settlement), advice to Mr. Merricks throughout.

6. Pre-trial - includes applications, preparing for and attending PTR hearing (assumed to be 1-2 days), witness and experts preparation, expert meetings and preparation of expert statement on issues agreed and not agreed, inter parties correspondence, drafting skeleton arguments, considering MasterCard's skeleton argument, preparing hearing bundles, notifications to the class, advice to Mr Merricks throughout.

7. Trial - attending eight week trial (10 hours a day), including drafting closing submissions, transcript review, all out of court hours, hearing review and preparation, dealing with the media, advising Mr. Merricks throughout.

8. Post-trial - includes inter-partes correspondence regarding costs, compliance with Rules 92 and 93 regarding assessment and distribution of damages, costs assessment (if not agreed), application to the Tribunal regarding payment to third party litigation funder, advising Mr. Merricks throughout.

9. Administration of proceeds - includes class notification and communications, dealing with the media, processing claims and making payments, updating the Tribunal. Assumes a 9 month window for claims to be made.

There is no separate budget for interlocutory applications or any preliminary issues. The estimated fees for these are covered in the other categories. For example, the witness evidence in respect of any limitation defence are covered in the estimated costs for witness evidence, or any interlocutory applications regarding expert evidence and related issues are budgeted for in the experts' costs. Likewise, preparation for any preliminary issue hearings are reflected in the pre-trial estimated costs.

This budget has been prepared with the objective of ensuring that there are sufficient funds available for the proposed class representative to see the proceedings through to judgment if necessary, in circumstances where at the outset the proposed class representative has little in the way of information about matters such as how many documents there may be, the availability of witnesses to respond to the evidence of MasterCard and other such issues. This necessitated an overly cautious approach to how much work and time will need to be spent. There is a much greater degree of information asymmetry in the proposed collective action than is normally the case in litigation.

Applicant / Proposed Class Representative
W H Merricks
Second
Exhibits WHM2-1 to WHM2-4
12 February 2021

Case Number: 1266/7/7/16

IN THE COMPETITION APPEAL TRIBUNAL

BETWEEN:-

WALTER HUGH MERRICKS CBE

Applicant / Proposed Class Representative

and

- (1) MASTERCARD INCORPORATED**
- (2) MASTERCARD INTERNATIONAL INCORPORATED**
- (3) MASTERCARD EUROPE S.P.R.L.**

Proposed Defendants

EXHIBIT WHM2-3

This is the exhibit marked "WHM2-3" referred to in the Second Witness Statement of Walter Hugh Merricks CBE dated 12 February 2021.



.....
Walter Hugh Merricks CBE

12 February 2021

ANNEX 3

TO COLLECTIVE PROCEEDINGS LITIGATION PLAN

PROPOSED TIMETABLE FOR LITIGATION

PROPOSED TIMETABLE

ESTIMATED DATE/RANGE	STEP IN PROCEEDINGS	COMMENTS
25-26 March 2021	CPO Application hearing	
April/May 2021	<p>CPO issued pursuant to Rule 77, authorisation of the class representative pursuant to Rule 78, certification of the claims as eligible for inclusion in collective proceedings pursuant to Rule 79 and Rule 81 Notice issued to the class</p> <p>CPO to include directions (under Rule 77(2)(a)) for the dates for the filing of the Defence and Reply</p>	It is presumed for the purposes of this document that a CPO is made
April / May 2021	Expected domicile date pursuant to Rule 80(1)(g)	
June / July 2021	Defence to S.47B Claim to be filed and any Reply to be filed	
July 2021	Deadline for opt-out/opt-in to be completed pursuant to Rule 82	It is noted that Rule 83 requires the Class Representative to maintain a register of opt-outs and opt-ins
September 2021	Case Management Conference pursuant to Rule 54 and 88(1) to give directions for timetable to trial and dealing with applications (any specific/third party disclosure applications to be filed and heard at this Case Management Conference, as well as any applications in respect of preliminary issues)	It is assumed for the purposes of this document that no preliminary issues are ordered, if there are, this will require a revision to the timetable
October 2021- February 2022	Disclosure by Defendants pursuant to Rule 60 and 89 and any disclosure by any third parties	

ESTIMATED DATE/RANGE	STEP IN PROCEEDINGS	COMMENTS
	pursuant to Rule 63.	
March – June 2022	Witness statements and reply witness statements to be exchanged by parties	Rule 55 allows the Tribunal to issue directions in relation to evidence. It is presumed for the purposes of this document that the parties are permitted to file witness statements and reply witness statements
July – November 2022	Expert Reports and Reply Expert Reports to be exchanged	Rule 55 allows the Tribunal to issue directions in relation to evidence. It is presumed for the purposes of this document that the parties are permitted to file expert evidence and reply expert evidence
December 2022	Experts meetings and list of agreed/ not agreed issues to be produced	It is anticipated that this case will involve the need for expert meetings to refine issues / agree a list of common issues
January 2022	Pre-Trial Review	
February 2022	Skeleton arguments to be filed	
March – May 2023	Trial	A trial of 8-10 weeks, including reading time and time for preparation of written closing submissions is currently envisaged.
November – December 2023	Judgment and aggregate award of damages together with directions for assessment of the amount that may be claimed pursuant to Rule 92	
First Quarter 2024	Distribution of damages to the class representative for distribution to class members pursuant to Rule 93	

ESTIMATED DATE/RANGE	STEP IN PROCEEDINGS	COMMENTS
<p align="center">By December 2024</p>	<p>Application under Rule 93(4) of the Rules and hearing on payment of the class representative's unrecovered costs and disbursements from any undistributed damages</p>	

Applicant / Proposed Class Representative
W H Merricks
Second
Exhibits WHM2-1 to WHM2-4
12 February 2021

Case Number: 1266/7/7/16

IN THE COMPETITION APPEAL TRIBUNAL

BETWEEN:-

WALTER HUGH MERRICKS CBE

Applicant / Proposed Class Representative

and

- (1) MASTERCARD INCORPORATED**
- (2) MASTERCARD INTERNATIONAL INCORPORATED**
- (3) MASTERCARD EUROPE S.P.R.L.**

Proposed Defendants

EXHIBIT WHM2-4

This is the exhibit marked "WHM2-4" referred to in the Second Witness Statement of Walter Hugh Merricks CBE dated 12 February 2021.



.....
Walter Hugh Merricks CBE

12 February 2021

BETWEEN:

WALTER HUGH MERRICKS CBE

Applicant / Proposed Class Representative

and

- (1) MASTERCARD INCORPORATED**
- (2) MASTERCARD INTERNATIONAL INCORPORATED**
- (3) MASTERCARD EUROPE S.P.R.L.**

Proposed Defendants

**[DRAFT] COLLECTIVE PROCEEDINGS
ORDER**

UPON the Application of the proposed class representative for a Collective Proceedings Order pursuant to section 47B of the Competition Act 1998 (the “Act”)

UPON reading the evidence and material submitted by the parties

UPON hearing Counsel for the proposed class representative and Counsel for the proposed Defendants

AND HAVING REGARD TO the Tribunal’s powers under section 47B(5) of the Act and Rule 77 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “CAT Rules”)

IT IS ORDERED THAT:

Authorisation

- 1. The claims identified at paragraph 3.4 below (the “**Claims**”) are authorised to be continued as collective proceedings for the purposes of section 47B of the Act (the “**Collective Proceedings**”).
- 2. Walter Hugh Merricks CBE is authorised to act as the class representative in the Collective Proceedings in accordance with Section 47B(8) of the Act and Rule 78 of the CAT Rules.

Details of the Collective Proceedings

3. It be recorded, for the purposes of Rule 80 of the CAT Rules, that:
 - 3.1 the class representative's address for service is: Quinn Emanuel Urquhart and Sullivan UK LLP (Attention: Boris Bronfentrinker / Nicola Chesaites), 90 High Holborn, London, WC1V 6LJ;
 - 3.2 the Defendants are (1) MasterCard Incorporated; (2) MasterCard International Incorporated; and (3) MasterCard Europe S.P.R.L.;
 - 3.3 the class of persons whose claims are to be included in the Collective Proceedings shall be: "Individuals who between 22 May 1992 and 21 June 2008 purchased goods and/or services from businesses selling in the United Kingdom that accepted MasterCard cards, at a time at which those individuals were both (1) resident in the United Kingdom for a continuous period of at least three months, and (2) aged 16 years or over." (the "**Class**");
 - 3.4 the Claims certified for inclusion in these Collective Proceedings are so called "follow-on" claims under s 47A of the Act for breach of statutory duty in respect of the proposed Defendants' infringement of Article 101 TFEU (then Article 81 EC), as determined in the European Commission's Decision (COMP/34.579 MasterCard, COMP/36.518 EuroCommerce and COMP/38.580 Commercial Cards) of 19 December 2007, seeking compensation for loss and damage alleged to have been suffered by the Class members as result of (i) the interchange fees paid by acquiring banks to issuing banks, on both cross-border transactions and domestic transactions, being higher than they would have been absent the proposed Defendants' infringement of Article 101 TFEU; and (ii) these higher interchange fees being passed on to members of the Class by businesses, that accepted MasterCard cards, charging prices for goods and/or services that were higher than they would otherwise have been had the proposed Defendants not committed the infringement of Article 101 TFEU;
 - 3.5 the remedy sought is an aggregate award of damages, together with interest on a compound, alternatively simple basis, and/or costs and/or any such further relief or other relief as the Tribunal may order;
 - 3.6 the Collective Proceedings shall be opt-out collective proceedings within the

meaning of section 47B(11) of the Act.

Domicile date, opting-in and opting-out

4. The domicile date for the purposes of section 47(B)(11)(b)(i) of the Act and Rule 80(g) of the CAT Rules shall be [date], and:
 - 4.1 the date by which any member of Class who is domiciled in the United Kingdom as at the domicile date and who wishes to opt-out of the Collective Proceedings must do so is [date]; and
 - 4.2 the date by which any member of the Class who is not domiciled in the United Kingdom as at the domicile date and who wishes to opt-in to the Collective Proceedings must do so is [date];
5. The method by which any individual may opt-out of or opt-in to the Collective Proceedings, in accordance with paragraph 4 above, shall be as set out in the annexed Notice of this Order.

Publicity

6. The class representative shall publish a Notice to Class Members in accordance with Rule 81 of the CAT Rules and as approved by the Tribunal in the attached form.

Forum

7. These Collective Proceedings shall be treated as proceedings in [England and Wales] for the purposes of Rule 18 and 52 of the CAT Rules.

Statements of case

8. The proposed Defendants are to file and serve their Defence to the Claim Form by 4pm on [insert date].
9. The proposed class representative is to file and serve any Reply, if so advised, by 4pm on [insert date].

Case management

10. There be a case management conference listed for [insert date]
11. Costs in the case.
12. There be liberty to apply.