

BETWEEN:

**A CLAIMANT**

Claimant

- v -

**A DEFENDANT**

Defendant

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**DRAFT AGREED PROTOCOL**

FOR THE FINAL HEARING ON 1<sup>ST</sup> JANUARY 3001

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*This is the Second Version of the Protocol, which supersedes all previous versions.*

*This Protocol has been [**agreed by the parties/ approved by the Court/ directed by the Court**] in respect of the Final Hearing listed on 1<sup>st</sup> January 3001. The parties acknowledge the trial will be conducted in accordance with this protocol unless further agreed or directed.*

**Arranging the Hearing**

1. The Court shall be responsible for organising the hearing, **recording the hearing** and ensuring that there is access to the public in viewing the same. In particular,
  - (1) The Court has stated it will use [**Skype for Business, Microsoft Teams/ Zoom**] (the **Platform**) which can be accessed by downloading the software (the **App**) or via a **compatible** browser.
  - (2) The Court shall send out invitations via email. This will contain a link to the video meeting room.
2. To ensure that each witness is able to effectively participate, the parties shall timetable the case by taking the following steps:
  - (1) By [**date**], the parties shall exchange the estimated times for cross-examination for each witness;
  - (2) By [**date**], the [**party**]'s representative shall produce a draft Timetable for the hearing which shall allow for supplemental questions, cross-examination, re-

examination and judicial questions. The Timetable shall provide allotted times for breaks.

- (3) By [date], the parties shall finalise and agree the draft Timetable;
  - (4) By [date], the parties shall notify each witness of the allotted time, to ensure they are able to participate in accordance with paragraph **Error! Reference source not found.**
3. The judge will ensure the hearing substantially follows the agreed Timetable, imposing a guillotine on the questioning where necessary.

### **Before the Hearing**

#### *Equipment*

4. The following are the requirements for participation in the hearing:
- (1) Access should be by a computer (desktop or laptop) [or/not] a mobile smart device.
  - (2) The minimum internet bandwidth (for each participant) should be 4 Mbps (preferably faster than 8 Mbps).
  - (3) Computer must enable audio and visual transmission. It is preferable (although not compulsory) for each participant to use a headset.

#### *Preparatory Steps*

5. In respect of each participant attending for each party, it is the responsibility of the legal representative for that party to ensure that each participant:
- (1) has tested the requirements in paragraph 4 and are able to comply;
  - (2) has provided an email address to receive the invitation from the Court;
  - (3) has received instructions for downloading the App;
  - (4) has downloaded the App or have a compatible browser to access the Platform;
  - (5) is willing to participate in this manner;

- (6) has confirmed each of the above in writing at least [3] days before the hearing:
6. Each party should (unless impracticable) conduct a test run with their respective participants. This is to ensure that all participants are familiar and comfortable with the Platform and to reduce the risk of ‘user error’ during the trial.

Compiling the Bundles

7. The legal representatives must ensure that instructions are taken from clients at soon as practicable to enable proper preparation of the Bundle. All documents will need to be exchanged in good time.
8. The trial bundle shall be an electronic bundle (the **eBundle**). It shall be prepared with care and by somebody with adequate knowledge of the case. It shall comply with the following requirements:
- (1) It shall be in a PDF format;
  - (2) All documents shall be contained within [1] PDF file;
  - (3) The eBundle must be searchable, paginated (both physically and electronically) and indexed (both with an index page and electronically);
  - (4) The physical pagination shall be in the bottom right hand corner and shall be computer generated, (not handwritten);
  - (5) The electronic pagination shall be sympathetically numbered, (meaning the physical and electronic pagination are identical);
  - (6) Original pagination must be by page number.
  - (7) Documents inserted after original compilation will adopt the following example format [1, 2.1, 3.1a];
  - (8) The eBundle should contain only documents and authorities that are essential to the remote hearing.
  - (9) The eBundle index shall contain a version number to ensure that all parties are working from the same file.

### Filing and Service the eBundle

9. The eBundle shall be filed by the [Respondent's representative] and must comply with the following requirements:
  - (1) The eBundle must be filed as a single document and not in constitute parts;
  - (2) The eBundle must be filed [on CE-file] or [sent via a cloud-based link (e.g. Mimecast, ShareFile, iCloud, OneDrive, Dropbox or Google Drive)]. The eBundle must not be filed emailed to the Court;
  - (3) Delivery by USB stick should be avoided unless absolutely necessary due to the risk of creating a pathway of infection;
  - (4) The eBundle should be provided to all participants no later than [X] days before the hearing;
  - (5) Nothing in this Protocol limits the parties from agreeing, with the consent of the court, to use an eBundle service from a commercial provider;
10. The [Respondent's representative] shall ensure that the eBundle is made available to all participants at least [3] days before the hearing.

### Preparing to Attend the Hearing

11. Prior to the hearing the participants should arrange as far as reasonably practicable that:
  - (1) The background for the room in which they sit is as quiet and as neutral as possible;
  - (2) That they are alone the entire time for which the hearing is ongoing;
12. Furthermore, and in order to facilitate the ease of the hearing:
  - (1) The parties are responsible for arranging a separate method of communication through which instructions may be taken during the hearing, (Backchanneling).
  - (2) Where a participant is unable to use an eBundle, they are to inform the [Respondent's representative] who is responsible for sending that person a hard copy of the bundle.

## **Conducting the Hearing**

### *Etiquette*

13. Legal representatives should wear business attire throughout.
14. Participants need not rise when the Court assembles.
15. The judge shall direct the proceedings. No Participant shall speak unless spoken to. If a point is to be raised then it should be raised through the Advocates. The Advocate should use the chat function to alert the Judge to their wish to make a point.

### *Running the hearing*

16. The Judge will join the hearing once all available participants have joined.
17. Recording will start once the Judge joins the hearing. The parties must then give the Judge time to call on the case and to explain the procedures to and expectations of those attending.
18. The Judge can control the point at which a participant enters the hearing by, for example, inviting a Witness in at the point at which he/she is required to give evidence.
19. The screen divides into 4 screens. It cannot divide into anymore. There will be a list of the other participants at the side of the screen. The Judge can keep track of who is in attendance within the virtual hearing.
20. Each participant is able to “pin” one of the four videos. It is advisable that each participant pins the judge and Advocates.
21. Unless a participant is an Advocate or giving evidence, it is advisable that they disable their video and use audio only.
22. Unless being spoken to or speaking, participants should mute their microphones.
23. Documents sharing shall be handled by [screen sharing within Teams]

Witness Evidence

24. After being sworn in, the judge shall inform the witness they are under oath and that before they give their evidence, they will be asked to confirm certain details to ensure they are giving evidence in accordance with a fair trial.
25. The Judge shall then inform the witness that if any of the above is untrue then they shall be liable to be charged with perjury or contempt of court and the Judge will refer the matter to the CPS accordingly.
26. The judge will then ask the witness to state:
  - (1) That they have a copy of trial bundle (either hard or electronic) and state the version number;
  - (2) They have no other materials before them other than that bundle;
  - (3) That the room in which they are giving evidence is empty of all other persons;
  - (4) That their mobile device is switched off, and that they have no method of communicating with any other party (including their representatives) whilst they are giving evidence;
  - (5) That their background is not 'blurred' and will remain unblurred whilst they are giving evidence.
27. The Judge shall then remind witness that if any of the above is untrue or if the witness is suspected of contravening any of the above during their evidence, then they shall be liable to be charged with perjury or contempt of court and the Judge will refer the matter to the CPS accordingly.