



## The Reclaim Experts: Terms of Engagement and Complaints Procedure

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in these Conditions.
- Assessment Fee:** the optional fee payable in respect of the Claim Assessment, as described in paragraph 5.1 option 1.
- Award:** any offer of compensation made at any time by the Creditor to You in connection with the Claim.
- Claim:** a claim made against a Creditor for losses suffered by You resulting from breach of contract, misrepresentation (or otherwise) by the Supplier.
- Claim Assessment:** the assessment of a potential Claim carried out by Us, based on the information provided and any documents or other information supplied by You, in order to determine the likely prospects of a Claim being successful.
- Claim Assessment Questionnaire:** the questionnaire relating to a potential Claim conducted in order to enable Us to carry out an Initial Assessment.
- Commencement Date:** has the meaning given in clause 2.
- Company/We/Our/Us:** The Reclaim Experts is a trading style for Perry Investments Limited (No. 008744) whose registered office is at 2nd Floor, Allied Building Annex, Francis Rachel Street, Victoria, Mahe, Seychelles.
- Conditions:** these terms and conditions as amended from time to time in accordance with clause 13.
- Contract:** the contract between Us and You for the supply of the Services on an exclusive basis in accordance with these Conditions.
- Cooling Off Period:** means the period in which You can cancel the Contract as defined in clause 9.1.
- Creditor:** means the issuer of the credit facility that was used by You to purchase the goods and/or services to which the Claim relates.
- Early Termination Fee:** the fee payable by You, pursuant to clause 5.8, in the event that the Contract is terminated before an Award is offered or paid to You.
- Express Request:** the Client agrees that the Company can supply its Services from the Commencement Date, despite the Cooling Off Period being in effect.
- Services:** the initial assessment of a potential Claim and the subsequent handling of the Claim on behalf of and as agent for You up to and including being authorised by You to accept the offer of an Award which We, acting reasonably, consider to be fair and reasonable in respect of a Claim. For the avoidance of doubt, We will not commence any legal action on Your behalf.
- Sochalls:** Our Chartered Accountants who handle all our accounts and payments in and out.
- Success Fee:** the fee payable in respect of an Award, as described in clause 5.1.
- Supplier:** the supplier of the goods and/or services to which the Claim relates.
- You/Your:** the person or persons who have engaged Us to provide the Services.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of the Contract.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 Words in the singular shall include the plural and vice versa.
- 1.5 A reference to writing or written includes faxes and e-mail.
- 1.6 Where the words include(s), including or in particular are used in these Conditions, they are deemed to have the words without limitation following them. Where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.
- 1.7 Any obligation on a person in these Conditions not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.8 References to clauses and schedules are to the clauses and schedules of these Conditions.

### 2. COMMENCEMENT, DURATION AND EXCLUSIVITY PERIOD

- 2.1 The Contract shall come into existence on the date upon which we received a signed copy of our Terms of Engagement and Complaints Procedure, ("Commencement Date") and shall continue until terminated in accordance with the provisions of clause 10.

### 3. COMPANY'S OBLIGATIONS

- 3.1 Subject to clause 3.2, We shall:

- (a) provide the Services with reasonable skill and care;
  - (b) use Our reasonable endeavours to complete the Claim Assessment in a timely fashion;
  - (c) pursue the Claim only where, following completion of the Claim Assessment, We, in Our absolute discretion, determine that:
    - (i) there is a realistic prospect of the Claim being successful; and
    - (ii) the Claim is financially viable for Us to pursue,
  - (d) notify You promptly in the event that any additional information or documentation is required from You in connection with the Claim;
  - (e) in a timely fashion keep You informed as to the progress of the Claim and respond to any reasonable enquiries from You in respect of the Claim; and
  - (f) deal with any complaints made by You in a timely manner in accordance with the provisions of Our Complaints Handling Procedure.
  - (g) Upon receipt of an Award and cleared funds by Sochalls, Sochalls will forward payment to You for Your percentage of the Award.
- 3.2 Any dates agreed in respect of the performance of Our obligations under the Contract shall be estimates only.

### 4. CLIENT'S OBLIGATIONS

- 4.1 The Client shall:
- (a) co-operate with the Company in all matters relating to the Services;
  - (b) promptly complete the Redress Application and provide copies of all documents and information relating to each Claim (for the avoidance of doubt, it shall be the Client's responsibility to ensure that they retain copies of any such documents or information);
  - (c) provide, in a timely manner, such information and documentation as the Company may reasonably require in connection with each Claim, and ensure that it is accurate in all material respects;
  - (d) promptly inform the Company about any matters or information relating to each Claim;
  - (e) give the Company, in its absolute discretion, the authority to accept an Award on their behalf; and
  - (f) immediately notify the Company if the Client is:
    - (i) deemed either unable to pay its debts or as having no reasonable prospect of so doing (within the meaning of section 268 of the Insolvency Act 1986); or
    - (ii) the subject of a bankruptcy petition or order.
- 4.2 You hereby authorise Us to accept the offer of an Award which We, acting reasonably, consider to be fair and reasonable in respect of a Claim. For the avoidance of doubt, We will not be required to obtain Your consent before accepting an Award on Your behalf which We consider to be fair and reasonable.
- 4.3 If Our performance of Our obligations under the Contract is prevented or delayed by any act or omission by You, We shall not be liable for any costs, charges or losses sustained or incurred by You that arise directly or indirectly from such prevention or delay.
- 4.4 You shall be liable to pay to Us, on demand, all reasonable costs, charges or losses sustained or incurred by Us (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from Your fraud, negligence, failure to perform or delay in the performance of any of Your obligations under the Contract, subject to Us confirming such costs, charges and losses to You in writing.

### 5. SUCCESS FEE

- 5.1 For each separate Claim made by You, You shall choose either of the following fee options:

Option	Assessment Fee	Success Fee
1	£595 + VAT (£714.00 in total)	25% (capped) of Award
2	£0.00	35% of Award

- 5.2 If You choose option 1:

- 5.2.1 the Assessment Fee must be paid by You within 7 days of the Commencement Date (or, in respect of any additional Claims, within 7 days of the submission of the relevant Redress Application to Us); and
- 5.2.2 if a Success Fee is payable, this will be reduced by the amount of

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the Assessment Fee already paid by You (but no rebate will be due if the Success Fee is less than the Assessment Fee – the minimum amount payable will be the Assessment Fee):

*Example:*

*Award of £5,000.00 is received by You following a successful Claim.*

*Assessment Fee £595.00*

*Success Fee 25% £1,250.00*

*An Assessment Fee has already been paid of £595.00*

*Therefore the balance owed to Us which will be deducted from Your Award cheque is:*

*£1,250.00 - £595.00 = £655.00 + VAT*

5.3 If You choose option 2:

5.3.1 no Assessment Fee will be due; and

5.3.2 if a Success Fee is payable, this will be calculated as follows:

*Example:*

*Award of £5,000.00 is received by You following a successful Claim.*

*Assessment Fee = nil*

*Success Fee 35% = £1,750.00*

*Therefore the balance owed to Us which will be deducted from Your Award cheque is:*

*£1,750.00 + VAT*

5.4 The Success Fee shall become due upon acceptance of an Award on behalf of You.

5.5 The Success Fee shall be payable to Us within 7 days of the payment and cleared funds of an Award to You.

5.6 If following a Claim Assessment, We, in our absolute discretion, determine that there is no realistic prospect of the Claim being successful or that the Claim is not financially viable for Us to pursue:

5.6.1 the Assessment Fee (if any) (or relevant proportion thereof) relating to that particular Claim may be refunded; and

5.6.2 no Success Fee shall be payable.

For the avoidance of doubt, no refund will be due where a Claim is pursued by Us but does not result in an Award being made to You.

5.7 Without prejudice to any other right or remedy that it may have, if You fail to pay Us on the due date for any payment, We may:

5.7.1 charge interest on such sum from the due date for payment at an annual rate equal to 3% over the base rate of Barclays Bank Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and You shall pay the interest immediately on demand;

5.7.2 suspend all Services until payment has been made in full. For the avoidance of doubt, interest will not be charged where payment of an Award is made directly to Reclaim Experts; and

5.7.3 pursue the debt through legal proceedings.

### 5.8 PAYMENT OF REASONABLE COSTS FOR EARLY TERMINATION

(a) If the Contract is terminated after the end of the Cooling Off Period but before an Award is offered to You, or accepted by Us on Your behalf, You shall be liable to pay a reasonable fee to Us in respect of work undertaken by Us prior to such termination ("Early Termination Fee"). You will also have to pay any reasonable disbursements that We have paid in respect of the Claim.

(b) Following such early termination, We shall submit an invoice to You, setting out the amount of the Early Termination Fee and any disbursements, which shall be payable by You within 14 days.

(c) If the Contract is terminated during the Cooling Off Period, no Early Termination Fee will be payable.

### 6. CONFIDENTIALITY

6.1 You shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to You by Us, Our employees, agents, consultants or subcontractors and any other confidential information concerning Our business or Our products which You may obtain.

6.2 We and You may each disclose such information as may be required by law, court order or any governmental or regulatory authority.

6.3 You shall not use any such information for any purpose other than to perform Your obligations under the Contract.

### 7. LIMITATION OF LIABILITY – YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

7.1 Nothing in these Conditions shall limit or exclude Our liability for:

(a) death or personal injury caused by Our negligence, or the negligence of Our employees, agents or subcontractors; or

(b) fraud or fraudulent misrepresentation.

7.2 Subject to clause 7.1, if We fail to comply with these Conditions, We shall be liable for loss or damage suffered by You that is a reasonably foreseeable result of Our breach of the Conditions or of Our negligence, but We are not responsible for any loss or damage that is not foreseeable. Loss or damage

is foreseeable if it were an obvious consequence of Our breach or if it were contemplated by You and Us on the Commencement Date.

7.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract. Where, following a Claim Assessment, We agree to pursue a Claim, We make no representation or warranty, and provides no guarantee, that such Claim will be successful.

7.4 This clause (Clause 7) shall survive termination of the Contract.

### 8. DATA PROTECTION

We use the information you provide primarily for the provision of the Services to you and for related purposes including:

- updating and enhancing client records
- analysis to help us manage our practice
- statutory returns
- legal and regulatory compliance

Our use of that information is subject to your instructions, the Data Protection Act 1998 and our duty of confidentiality. Please note that our work for you may require us to give information to third parties such as expert witnesses and other professional advisers. Under data protection legislation you have a right of access to the personal data that we hold about you.

We may from time to time send you information that we think might be of interest to you. If you do not wish to receive that information please notify our office, preferably in writing.

### 9. CLIENT'S RIGHT TO CANCEL

9.1 You have the right to cancel the Contract at any time during the period of 14 days starting on the day after the Commencement Date (the "Cooling Off Period").

9.2 Notice of cancellation can be sent by mail, or by e-mail, to the person named in the accompanying letter. However, to establish proof of cancellation it is preferable to send this by registered post. You can use the NOTICE OF RIGHT OF CANCELLATION FORM provided separately, but you do not have to do so. Cancellation is subject to payment of our costs to date where you have previously instructed us to commence instructions in writing. For the avoidance of doubt, signature and return of these Terms of Engagement will constitute such instruction and will also constitute you providing an Express Request for us to provide our Services during the Cooling Off Period. For the avoidance of doubt, no fees will be due if you cancel within the Cooling Off Period, even if you have provided an Express Request for the Company to commence work before the expiration of the Cooling Off Period.

9.3 If You cancel the Contract during the Cooling Off Period, any sums already paid by You to Us shall be refunded.

### 10. TERMINATION

10.1 We may terminate the Contract if:

- (a) following the Claim Assessment, We, in Our absolute discretion, determine that:
- (i) there is no realistic prospect of the Claim being successful; or
  - (ii) the Claim is not financially viable for Us to pursue; or
- (b) You commit a material breach of the Contract and (if such a breach is remediable) You fail to remedy that breach within 14 days of being notified in writing of the breach; or
- (c) You are deemed either unable to pay Your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or if You are the subject of a bankruptcy petition or order.

10.2 Without prejudice to clause 9, You may terminate the Contract:

- (a) if We commit a material breach of the Contract and (if such a breach is remediable) We fail to remedy that breach within 14 days of being notified in writing of the breach; or
- (b) at any time by giving written notice to Us.

10.3 The Contract shall terminate automatically if:

- (a) the Claim is rejected; and
- (b) We, in Our absolute discretion, determine that there is no realistic prospect of the Claim being successfully pursued any further.

### 11. CONSEQUENCES OF TERMINATION

11.1 On termination of the Contract for any reason (other than cancellation during the Cooling Off Period in accordance with clause 9):

- (a) You shall be liable to pay the Early Termination Fee (if any);
- (b) the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim

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damages in respect of any breach of the Contract which existed at or before the date of termination; and

- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect, including the following clauses: clause 5.8 (Early Termination Fee), clause 6 (Confidentiality), clause 7 (Limitation of liability), clause 11, clause 20 (Notices) and clause 21 (Governing law and jurisdiction).

- 11.2 For the avoidance of doubt, if the Contract is terminated automatically in accordance with clause 10.3, You shall not be liable to pay a Success Fee or an Early Termination Fee.

## 12. FORCE MAJEURE

- 12.1 For the purposes of the Contract, “Force Majeure Event” means an event beyond Our reasonable control including, but not limited to, strikes, lock-outs or other industrial disputes (whether involving the workforce of Us or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 12.2 We shall not be liable to You as a result of any delay or failure to perform Our obligations under the Contract as a result of a Force Majeure Event.
- 12.3 If the Force Majeure Event prevents Us from providing any of the Services for more than 4 weeks, We shall, without limiting Our other rights or remedies, have the right to terminate the Contract immediately by giving written notice to You.

## 13. VARIATION

No variation of the Contract shall be valid unless it is in writing and signed by Us or on Our behalf.

## 14. WAIVER

- 14.1 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 14.2 No single or partial exercise of any right or remedy provided under the Contract or by law shall preclude or restrict the further exercise of any such right or remedy.

## 15. CUMULATIVE REMEDIES

Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

## 16. SEVERANCE

- 16.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 16.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## 17. ENTIRE AGREEMENT

- 17.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of the Contract.
- 17.2 Each party acknowledges that, in entering into the Contract, it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that its only liability in respect of those representations and warranties that are set out in the Contract (whether made innocently or negligently) shall be for breach of contract.
- 17.3 Nothing in this clause shall limit or exclude any liability for fraud.

## 18. ASSIGNMENT

- 18.1 We may transfer Our rights and obligations under the Contract to another organisation, and We will always notify you in writing if this happens, but this will not affect Your rights or Our obligations under the Contract. You may not transfer Your rights or Your obligations under the contract to any other person.
- 18.2 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

## 19. RIGHTS OF THIRD PARTIES

A person who is not a party to the Contract shall not have any rights under or in connection with it.

## 20. NOTICES

- 20.1 Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- 20.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next business day after transmission.
- 20.3 This clause (Clause 20) shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, “writing” shall not include e-mails and for the avoidance of doubt notice given under the Contract shall not be validly served if sent by e-mail.

## 21. GOVERNING LAW AND JURISDICTION

- 21.1 The Contract 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.
- 21.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

## SERVICE LEVELS

### Hours of Operation

We are normally open between 9am and 5pm from Monday to Friday.

### Service levels and frequency of communication

We will update you by telephone or in writing with progress on your Claim, when appropriate and we will update you on the likely timescales for each stage of this matter and any important changes in those estimates. Whenever there is a material change in circumstances associated with your Claim, we will update you what options are available and suggest an appropriate course of action

### Outsourcing

Sometimes we ask other companies or people to conduct work for us which may include: typing/photocopying/other work on our files to ensure this is done promptly/in the most cost effective manner. We will always seek a confidentiality agreement with these outsourced providers. If you do not want your file to be outsourced, please tell us as soon as possible.

### External auditing

External firms or organisations may conduct an audit or quality checks on our practice. These external firms or organisations are required to maintain confidentiality in relation to your files.

### Equality and diversity

We are committed to promoting equality and diversity in all our dealings with clients, third parties and employees. Please contact us if you would like a copy of our equality and diversity policy.

### Future instructions

Unless otherwise agreed, these Terms of Engagement will apply to all future instructions you give us on this or any other matter.

### Banking arrangements

Client bank account – Our client account is held with HSBC. If we are holding money on your behalf in our client account, it will count towards the per person limit applicable under the deposit guarantee scheme (currently £85,000.00) and may therefore affect your potential compensation under that scheme if you hold deposits with that bank separately. We operate a client account (the account is held off balance sheet) it's important to note that the client account operates in line with the Ministry of Justice requirements under the Client Account Rules 2006. A copy of the Client Account Rules 2006 is available on request

### Unpresented cheques

Where we pay money by cheque to a recipient who delays in paying the cheque into their bank, we will pay additional interest only where it is reasonable in all the circumstances to do so. We reserve the right to charge for the additional work involved.

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Client's signature: \_\_\_\_\_

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## IMPORTANT NOTICE

We are a claims handling business only and We do not provide any financial advice of any kind. Any such information discussed with You is for general guidance purposes only and does not constitute financial or professional advice and We accept no liability for loss or damage of any kind arising from the use of, or inability to use any such information. You should seek your own independent financial advice.

### • Accepting Full and Final Settlement

By accepting a full and final settlement in respect of this claim you will prejudice any future claims you may have been able to make against the Funding Institution. However this may not prejudice any future claim(s) you may have against the Seller or any other third parties, which may include but are not limited to; consequential loss and or damages and class actions, for which you should seek independent legal advice.

Acceptance of the full and final settlement does not rescind the contract between you and the Seller. You are still bound by the terms of that contract. For the avoidance of doubt you will still own the timeshare and therefore remain liable for any liabilities and obligations which arise as a result of your contract with the Seller.

### • Statute of Limitations Act 1980

Any claim in respect of a misrepresentation or breach of contract is subject to the 6 year Statute of Limitation period. A claim through us does not constitute issuing a claim in respect of your losses, the limitation period therefore continues to run. For the avoidance of doubt if the statute of limitations were to expire during our process of seeking redress for your claim, the Funding Institution may then decide the claim was outside the statute of limitations and statute-bar your claim.

This will ultimately result in your claim being closed permanently. This in all likelihood would end any option moving forward for financial redress.

It is the domain of lawyers to issue proceedings which stops the statute of limitation period from expiring. If you are in doubt regarding this matter, please seek independent legal advice to instigate such proceedings.

## COMPLAINTS PROCEDURE

1. Complaints may be made in writing, by e-mail, by telephone or in any other form in respect of a claims management service that we have provided and that is regulated under the Compensation Act 2006. Confirmation of complaint details will be requested for clarification in writing and logged by the company.
2. We reserve the right to decline to consider a complaint that is made more than six months after you became aware of the cause of the complaint. There may be instances where we will waive this requirement at our discretion. We will confirm to you in writing if a complaint has been made outside the time limit that we are prepared to consider.
3. We will send you an electronic or written acknowledgement of your complaint within five business days of receipt. We will identify the person who will handle the complaint. Wherever practically possible, that person will not have been directly involved in the subject of the complaint, and will have the relevant authority to investigate and bring the complaint to a satisfactory outcome.
4. Within four working weeks of receiving a complaint, we will send you either:
  - 4.1. a response which addresses the complaint to a satisfactory outcome, or
  - 4.2. a holding response, which explains why we cannot yet resolve the complaint and also indicates when we will contact with you.
5. Within eight working weeks of receiving a complaint we will send you either:
  - 5.1. a response which addresses the complaint to a satisfactory outcome, or
  - 5.2. a response which: explains why we are still not able to make a final response, giving reasons for the delay and indicating the timescale of when we will be able to provide a final response.
6. Where we decide that compensation is appropriate, we will settle it for any acts or omissions for which we are responsible. We will comply with any offer of compensation which you accept. Compensation may not always be financial.

I confirm that I have read and understood the above 'Terms of Engagement', agree to be bound by them and hereby provide an Express Request for the Company to provide its Services.

**Option 1.** I would like to proceed and follow your fee structure according to 5.2 in the above Terms Of Engagement. *Please tick to confirm*

**Option 2.** I would like to proceed I would like to proceed on a 'No Win No Fee' basis and follow your fee structure according to 5.3 in the above Terms Of Engagement. *Please tick to confirm*

Name: (Please print) \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Tel No.: \_\_\_\_\_

Email address: \_\_\_\_\_

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

Dated: \_\_\_\_\_