

DATED 16<sup>th</sup> November

2018

**i) THE TRUSTEES OF THE INDEPENDENT PRESS  
REGULATION TRUST**

- And -

**ii) IMPRESS**

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**NEW DEED OF GRANT**

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Hunters

9 New Square

Lincoln's Inn Fields

London WC2A 3QN

THIS DEED is made on 16<sup>th</sup> November 2018

**BETWEEN:-**

(1) **CHRISTIAN FLACKETT, RICHARD REES-PULLEY and WILFRID VERNOR-MILES** (together the "Trustees") as trustees of the **INDEPENDENT PRESS REGULATION TRUST** care of Hunters Solicitors of 9 New Square, Lincoln's Inn, London WC2A 3QN (registered charity number 1162737), (the "IPRT") of the first part; and

(2) **IMPRESS**: The Independent Monitor for the Press, a Community Interest Company, (Company No. 09655520) whose registered offices are situated at 16-18 New Bridge Street, London EC4V 6AG ("IMPRESS") of the second part.

**WHEREAS:-**

(A) The IPRT is an unincorporated charitable trust, whose governing document is a declaration of trust dated 8th November 2013 (the 2013 Trust). The IPRT was registered with the Charity Commission of England and Wales on 20th July 2015.

(B) The charitable objects of the IPRT (**the Objects**) are set out in sub-clause 3.1 of the 2013 Trust, namely:-

*"...to promote, for the benefit of the public, high standards of ethical conduct and best practice in journalism and the editing and publication of news in the print and other media, having regard to the need to act within the law and to protect both the privacy of individuals and freedom of expression".*

(C) The IPRT has previously, under the terms of an agreement dated 30 October 2015, as modified by a Deed of Variation dated 5th September 2016 (together the "2015 Agreement") donated sums exceeding £3,800,000 during the Funding Period defined in the 2015 Agreement which has provided financial support for the work of IMPRESS in the furtherance of its Objects and in particular the establishment and support of an independent press regulator in accordance with the recommendations set out in Lord Justice Leveson's

'Report into the Culture, Practices and Ethics of the Press' of 29 November 2012 and the Royal Charter on Self-Regulation of the Press (the "**Purpose**").

- (D) Accordingly, IMPRESS has, with the support of the IPRT, established itself as an independent press regulator approved by the Press Recognition Panel created by the Royal Charter on Self- Regulation of the Press ("the **Charter**").
- (E) The IPRT wishes to make further donations to IMPRESS in furtherance of its Objects and the Purpose, on the terms set out below.
- (F) This deed is intended to replace the 2015 Agreement.

**NOW THIS DEED WITNESSES as follows:-**

**1 Definitions**

- 1.1 "**Business Day**" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
- 1.2 "**Confidential Information**" means all confidential information (however recorded or preserved) disclosed by a party, its trustees, directors, employees, officers, agents and professional advisers to the other party and that party's trustees, directors, employees, officers, agents or professional advisers whether before or after the date of this deed in connection with the funding of IMPRESS by the IPRT, including but not limited to any correspondence between the parties, their trustees, employees, officers agents and/or professional advisers.
- 1.3 "**the Directors**" means, where the context so admits, the directors for the time being of IMPRESS.
- 1.4 "**the Funding Period**" means the period of four calendar years from 1st April 2019, subject to any extension of up to three years in total pursuant to Clause 3.2 this deed.
- 1.5 "**the Grant**" means the 2015 Grant Amount and the New Grant Amount payable by the IPRT to IMPRESS under the terms of this deed for the Purpose.

- 1.6 **"the New Grant Amount"** means the sum of £2,850,000.00 (TWO MILLION, EIGHT HUNDRED AND FIFTY THOUSAND POUNDS).
- 1.7 **"Notice Event"** means an event listed in clause 4.2.
- 1.8 The "2015 Grant Amount" means the remaining instalment of £475,000 (**FOUR HUNDRED AND SEVENTY FIVE THOUSAND POUNDS**) due for payment by the IPRT to IMPRESS on or before 1st April 2019, pursuant to the 2015 Agreement.
- 1.9 **"the Trustees"** includes the trustees of the IPRT for the time being.
- 1.10 The expression **"written"** or **"in writing"** refers to a legible document on paper including a fax or e-mail message.
- 1.11 References to any Act of Parliament are references to the Act as amended or re-enacted from time to time together with any subordinate legislation made under it and/or any statutory modification of it for the time being in force.
- 1.10 A reference to a clause is a reference to a clause in this deed.
- 1.11 Words importing the singular shall include the plural and vice versa; and
- 1.12 References to persons and to trustees shall where appropriate include bodies corporate.

## 2. **The Grant**

- 2.1 The IPRT shall pay the 2015 Grant Amount and the New Grant Amount to IMPRESS at the times specified in Clause 3 below. IMPRESS agrees to receive the same and acknowledges that the Grant, together with any additional payments made under Clause 2.2 below, are made for the Purpose on the terms of this deed.
- 2.2 The IPRT may, at the absolute discretion of the Trustees, make further payments to IMPRESS during the Funding Period in addition to the Grant.

2.3 IMPRESS shall apply the Grant, together with any further payments as the IPRT may make pursuant to Clause 2.2 above and any income accruing therefrom exclusively in furtherance of the Purpose, including its work as an independent press regulator for the whole or any part of the United Kingdom and in doing so, promote, for the public benefit, high standards of ethical conduct and best practice in journalism together with the editing and publication of news in the print and other media, having regard to the need to act within the law and to protect both the privacy of individuals and freedom of expression.

2.4 The terms of this deed shall cease to bind the IPRT and IMPRESS upon the expiry of the Funding Period save for any obligations remaining unperformed on the date of expiry.

### 3. **Grant Instalments**

3.1 The IPRT shall pay the 2015 Grant Amount on or before 1st April 2019 in accordance with the terms of the 2015 Agreement.

3.2 The IPRT shall pay the New Grant Amount in the following instalments:-

(a) the first instalment of £475,000.00 (FOUR HUNDRED AND SEVENTY FIVE THOUSAND) on or before 6th October 2019; and thereafter

(b) the remaining five instalments of £475,000.00 (FOUR HUNDRED AND SEVENTY FIVE THOUSAND) each on or before 1st April and 6th October each year during the Funding Period, the last instalment being payable on or before 1st April 2022.

3.3 The IPRT may, by giving no less than ten Business Days' notice in writing served upon IMPRESS, suspend the payment of the New Grant instalments for a period not exceeding six months if and to the extent the IPRT shall reasonably consider, having consulted with IMPRESS, that the funds will not, during the specified period, be reasonably required for the fulfilment of the Purpose or otherwise. The Funding Period shall be extended by any such period of suspension up to a maximum of three years.

#### 4. Reduction/Termination of Payments

4.1 If a Notice Event occurs that is not remedied within 30 days of notice being served on IMPRESS specifying the Notice Event and requiring it to be remedied, the IPRT may, by giving no less than ten Business Days' notice in writing to IMPRESS, terminate its obligation to pay any part of the Grant then outstanding or decrease the amount of any unpaid instalment with immediate effect.

4.2 A Notice Event shall occur if:-

(a) IMPRESS shall, in the opinion of the Trustees and without reasonable excuse, have failed in a material way to comply any of its obligations under this deed;

(b) the application of the Grant or any part thereof by IMPRESS is found to be inconsistent with the Purpose of this deed or the objects of IMPRESS;

(c) the Grant or any instalment thereof then outstanding is not in the opinion of the IPRT, no longer reasonably required for the Purpose;

(d) IMPRESS fails to comply with the requirements of the Companies Act 2006 as to keeping records, the audit or independent examination of its accounts and/or fails to prepare and transmit to the Registrar of Companies and/or the Regulator of Community Interest Companies any information required by law;

(e) the status of IMPRESS as an approved regulator recognised by the Press Recognition Panel, is withdrawn or not renewed by the Panel for whatever reason;

(f) steps are taken leading to enforcement of a judgment obtained against IMPRESS in a Court of competent jurisdiction, such steps including the obtaining of a warrant of execution, a charging order, a garnishee order, the issue of a statutory demand or a winding up petition;

(g) a Director is disqualified from being a company director;

(h) any material amendment is made to the Articles of Association of IMPRESS which is deemed by the IPRT to be inconsistent with the Purpose or the objects of the IPRT, or the recommendations for press regulation within the Leveson Report or the Charter;

(i) IMPRESS is dissolved; or

(j) any other circumstances arise where the Trustees decide that it is no longer practicable for IPRT to continue funding IMPRESS.

4.3 For the avoidance of doubt, the power of the IPRT to terminate, reduce or withhold funding in accordance with the provisions of 4.2(j) above, shall only be exercised in the event that the IPRT does not itself have sufficient funds to meet its financial commitments to IMPRESS pursuant to the terms of this Agreement.

4.4 Subject to Clause 4.2(b), no exercise of the power conferred by Clause 4.1 above shall invalidate any prior payment or application of any part of the Grant.

## 5. **Monitoring and Reporting**

5.1 IMPRESS shall on or before 15 December and 15 June each year of the Funding Period supply to the IPRT (or to such person who has been duly authorised and nominated by the IPRT), a bi-annual report on IMPRESS's application of the Grant together with any income accruing to them in the previous six month period.

5.2 In addition to the bi-annual reports specified above, IMPRESS shall during the Funding Period, provide such financial or other information (which shall include a copy of its published Annual Report and Accounts), as the IPRT may reasonably request from time to time during the Funding Period in respect of the application of the Grant.

- 5.3 IMPRESS shall also provide the IPRT with monthly follow up reports, detailing what efforts it has made to secure additional and alternative funding, which reports shall be provided to the IPRT on or before the last Business Day of each calendar month.
- 5.4 The IPRT may in addition, ask IMPRESS to clarify any information provided to it. If so, IMPRESS shall comply with all such reasonable requests without unreasonable delay.
- 5.5 IMPRESS shall notify the IPRT forthwith of any material changes to any of the following, namely its:-
- (a) Articles of Association;
  - (b) board of Directors;
  - (c) senior staff; or
  - (d) auditor(s)

6. **Confidential Information**

- 6.1 Each party undertakes that it shall not disclose to any person, any Confidential Information except where there is written agreement to the contrary or as permitted by Clauses 6.2 and 6.3 below.
- 6.2 Each party may disclose the other party's Confidential Information:-
- (a) to its trustees, employees, officers, representatives or professional advisers who need to be aware of such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this deed and each party shall ensure that its trustees, employees, officers, representatives or professional advisers to whom it may disclose the other party's Confidential Information comply with the provisions of this Clause; and



- (b) as may be required by a law, a Court or tribunal of competent jurisdiction or any governmental or regulatory authority in the United Kingdom.

6.3 The obligations of confidentiality contained in this Clause 6 shall not prevent either party from disclosing the existence and/or contents of this deed provided that they first consult with the other party prior to such disclosure and, in the case of IMPRESS, obtain the written consent of IPRT prior to any disclosure such consent not to be unreasonably withheld.

6.4 Neither party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this deed.

6.5 The provisions of this Clause 6 shall continue to apply after the termination of this deed.

## 7. **General**

7.1 IMPRESS shall not be required to do anything in compliance with this funding agreement which may, in the opinion of the Directors, conflict with or be inconsistent with its objects, independence, integrity or reputation. In the event of identifying any such conflict or inconsistency, IMPRESS shall promptly inform the IPRT.

7.2 Subject to Clause 7.1 above, the Trustees shall assist, advise, guide and support IMPRESS in dealing with any difficulties they may encounter in the proper administration of this funding agreement.

7.3 If any dispute arises in connection with this deed, the parties shall attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (ADR notice) to the other party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR notice. Neither party may commence any court proceedings in relation to any dispute arising out of this

funding agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

8. **Whole Agreement**

8.1 This deed sets out the entire agreement between the parties and replaces all previous negotiations, agreements, understandings and representations between the parties, whether oral or in writing in relation to the New Grant.

8.2 This deed supersedes the 2015 Agreement which is hereby terminated save in relation to the payment of the 2015 Grant Amount at the time specified in this deed.

8.2 Any amendments to this deed (including an extension to the term specified in Clause 1.3 above), shall be not be valid unless such amendments are in writing and signed by an authorised representative of both parties.

9. **Contract (Rights of Third Parties) Act 1999**

A person who is not a party to this deed and funding agreement shall not have the right to enforce any of its terms. The rights conferred by the Contract (Rights of Third Parties) Act 1999 are excluded.

10. **Governing Law**

10.1 The agreement set out in this deed 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.

10.2 Without prejudice to Clause 7.3, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim

arising out of or in connection with the funding agreement as set out in this deed or its subject matter or formation (including non-contractual disputes or claims).

11. **Notices**

11.1 All notices or other communication to a party under or in connection with this funding agreement shall be in writing and in plain English and shall be addressed to and served by a party on the other in accordance with the details of the parties' addresses and contacts as set out in the Schedule hereto.

11.2 Any notices or other communications given to a party under or in connection with this deed shall be:-

- (a) delivered by hand or by pre-paid first class post or other next working day delivery service at the address set out in the Schedule hereto; or
- (b) sent by e-mail to the e-mail address in the Schedule hereto.

11.3 Any notice or communication shall be deemed to have been received:-

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service or;
- (c) if sent by e-mail, at 9.00am on the next Business Day after transmission.

11.4 This Clause 11 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.