In the Competition Appeal Tribunal **Case No: 1673/7/7/24**

B E T W E E N:

Professor Barry Rodger

<u>**Joint Applicant / Class Representative**</u>

- and -

(1) Alphabet Inc
(2) Google LLC
(3) Google Ireland Limited
(4) Google Asia Pacific Pte Limited
(5) Google Commerce Limited
(6) Google Payment Limited
(7) Google UK Limited

<u>**Joint Applicants / Defendants**</u>

Joint Application for a Collective Settlement Approval Order
Proposed Settlement between the Class Representative and the Defendants

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FOR THE CLASS REPRESENTATIVE:

Signature: [redacted]

Name: David Gallagher

Position: Partner, Geradin Partners

Dated: 25 August 2026

FOR THE DEFENDANTS:

Signature: [redacted]

Name: David Cran

Position: Partner, RPC

Dated: 25 August 2026

A. <u>INTRODUCTION</u>

1. This is a joint application for a collective settlement approval order ("**CSAO**"), pursuant to rule 94 of the Competition Appeal Tribunal Rules 2015 No. 1648 (the "**CAT Rules**") (the "**Rodger CSAO Application**"), which is made by the Class

Representative ("**CR**") and the Defendants ("**Google**", and, together with the CR, the "**Settling Parties**"), regarding the proposed settlement between them.

2. On 24 March 2025, the Tribunal ordered that these proceedings be jointly case managed alongside opt-out proceedings brought by Ms Coll who seeks damages from Google on behalf of UK-domiciled consumer Android device users (the "**Coll Proceedings**"), and Epic Games Inc ("**Epic**") who sought injunctive relief against Google (the "**Epic Proceedings**). On 9 March 2026, the Epic Proceedings were withdrawn following Epic and Google agreeing terms of settlement. The joint trial of these proceedings and the Coll Proceedings is listed to start on 28 September 2026, with the CR's skeleton argument due to be filed and served on 11 September 2026.

3. For the reasons set out more fully below and in the evidence in support of this CSAO Application, both the CR and Google believe that the terms of the proposed settlement are just and reasonable, within the meaning of section 49A of the Competition Act 1998 (the "**Act**") and Rule 94 of the CAT Rules, and they therefore respectfully invite the Tribunal to make a CSAO in the terms set out in the draft CSAO annexed to this application at Annex 1.

4. The CSAO Application has been duly signed by the firms of solicitors acting, respectively, for the CR and for Google.

5. The CSAO Application is supported by the following documents:

   5.1 a copy of the settlement agreement entered into between the CR and Google on 22 August 2026 (the "**Settlement Agreement**");

   5.2 the third witness statement of Professor Barry Rodger ("**Rodger 3**"), the CR;

   5.3 the second witness statement of Mr David Gallagher ("**Gallagher 2**"), a partner at Geradin Partners Limited ("**Geradin**") with conduct of these proceedings for the CR;

   5.4 the privileged opinion of Robert O'Donoghue KC on behalf of the CR ("**O'Donoghue 1**"). Mr. O'Donoghue is the CR's leading counsel for trial;

5.5 the privileged opinion of Josh Holmes KC and Kassie Smith KC on behalf of Google ("**Holmes / Smith 1**"). Mr Holmes and Ms Smith are Google's leading counsel for trial;

5.6 a copy of the CR's distribution plan produced by Angeion, the company appointed by the CR to administer the claims and payments process (the "**Proposed Distribution Plan**");

5.7 a note from Fideres, the economic consultancy appointed by the CR to assist Angeion in the distribution process with the calculation of individual represented persons' entitlements (the "**Fideres Note**");

5.8 the draft CSAO; and

5.9 the draft notice to publicise to the represented persons the making of the CSAO, if granted by the Tribunal to this CSAO Application.

6. The remainder of this application addresses the terms of the proposed collective settlement by reference to the requirements of rule 94 of the CAT Rules and related provisions of the Competition Appeal Tribunal Guide to Proceedings 2015 (the "**Guide**"), as interpreted and applied in recent case law.

B. DETAILS OF CLAIMS TO BE SETTLED BY THE PROPOSED COLLECTIVE SETTLEMENT: RULE 94(4)(A)

7. The collective proceedings, in relation to which the CSAO is sought, have been brought under section 47B of the Act for loss and damage alleged to have been caused by Google's breach of statutory duty, in particular by its alleged infringements of article 102 of the Treaty on the Functioning of the European Union ("**TFEU**") (up to 31 December 2020) and section 18 of the Act.

8. In its Re-Re-Amended Claim Form (the "**RRACF**"), the CR alleges that Google is dominant on the Android app and content distribution market and on the licensable OS market, and abused its dominance by: (i) engaging in various forms of exclusionary conduct which prevents others from competing (effectively or at all) in the provision of distribution services to Android app developers; and (ii) charging prices that are excessive and unfair. The class definition, set out in §17 of the RRACF, is *"All UK*

domiciled Third-Party App Developers who, during the Relevant Period, made one or more Relevant Sales." Further details of the claims in these collective proceedings are set out in O'Donoghue 1, §§3-38 and Holmes / Smith 1, §§4-5.

9. For its part, Google maintains that it does not occupy a dominant position on any properly defined market. Mr. Noble identifies a market for the facilitation of digital content transactions, in which Google Play faces multiple competitive constraints from other distribution channels. Further, Google denies that it has engaged in any alleged exclusionary or exploitative abuse.

10. The Settling Parties' economic experts' estimates of the aggregate damages in these proceedings if liability were established are summarised in Gallagher 2, §§31-39. In short, Professor Fletcher, the CR's economic expert, estimates the aggregate damages up to 31 July 2026 as falling within the range [redacted] depending on the counterfactual commission used, with an estimate of [redacted] based on her preferred counterfactual commission of [redacted]. Google's expert, Robin Noble, has estimated a range of aggregate damages as [redacted] (including simple interest and on the basis that there was no pass-on) if liability were established.

11. On 22 August 2024, the CR filed its application for a collective proceedings order ("**CPO**"). Google did not oppose certification but made a number of observations in writing on the application for a CPO. By its order made on 23 May 2025, the Tribunal certified the claims as eligible for inclusion in opt out collective proceedings and made the CPO accordingly. The procedural history of this case is further summarised in Gallagher 2, §§12-25. Pursuant to §§7-8 of the CPO, the notice period for persons domiciled within the United Kingdom ("**UK**") wishing to opt out was set to expire after 4pm on 23 August 2025. Certain developers in the [redacted] opted out during this period. A further developer, DAZN Group Limited, was permitted to opt-out outside of this period by the Tribunal's order made and drawn on 19 June 2026. Those developers who satisfy the class definition and who have not opted out are referred to as "**Represented Persons**".

12. It is the claims of the Represented Persons collected together in these collective proceedings that the Settling Parties wish to settle in accordance with the terms of the Settlement Agreement.

C. <u>TERMS OF THE PROPOSED SETTLEMENT: RULE 94(4)(B)</u>

13. The terms of the proposed settlement are set out in the Settlement Agreement filed with this application, and the proposed pot structure is described in Rodger 3 (the "**Proposed Settlement**"). The terms of the Proposed Settlement are discussed in Rodger 3, §§9-35 and in Gallagher 2, §§9-11.

14. In summary, the key terms are:

14.1 The total amount of the proposed settlement is £260 million (the "**Settlement Sum**") in full and final settlement of the Claims (as defined in the Settlement Agreement): see clause 1.1 of the Settlement Agreement.

14.2 The Settlement Sum will be allocated by the CR as follows:

14.2.1 £160,000,000 in damages is to be made available for payment to class members (the "**Class Pot**") and will be distributed in accordance with the distribution methodology described in the Proposed Distribution Plan, subject to the approval of the Tribunal;

14.2.2 £100,000,000 is to be paid to meet the CR's costs, fees and disbursements (the "**Stakeholder Pot**"), including amounts claimed in respect of the contractual entitlements of the Funder, ATE insurers, solicitors and counsel (together, the "**Stakeholders**").

14.3 The Settlement Sum is payable within 50 days of the Tribunal making the CSAO: see clause 1.1 of the Settlement Agreement.

14.4 If any of five specified developers, who are the top five largest developers by claim value, opt out of these collective proceedings pursuant to Rule 82 or opt out of the proposed settlement pursuant to Rule 94, the Settlement Sum will be reduced by the sums which would otherwise be due to those developers under the CR's distribution methodology described in the Proposed Distribution Plan: see clause 1.3 of the Settlement Agreement ("**Top 5 Developers Carve Out**"). Clause 1.4 provides that neither Settling Party shall take any steps to encourage or procure any of the specified developers to opt out of the Proceedings and/or the settlement.

14.5 It is a condition of distribution to the Represented Persons listed in Annex A to the Settlement Agreement, who are the top 24 developers in terms of claim value, that they represent and warrant that they are entitled to pursue the Claims in the relevant transactions and that their related parties will not make any Claims in respect of the relevant transactions: see clause 4.3 of the Settlement Agreement ("**Annex A Developer Claim Verification**").

14.6 To the extent that there remain any undistributed sums in the Class Pot after distribution to Represented Persons, the Settling Parties shall seek directions from the Tribunal as to the treatment of those undistributed sums: see clause 4.2 of the Settlement Agreement. It is not expected that there will be any undistributed sums left in the Stakeholder Pot.

14.7 Google's obligations, pursuant to any order or ruling of the Tribunal, to meet the costs of Represented Persons in connection with Google's disclosure applications dated 12 June 2026 and/or 13 July 2026 are specifically preserved: see clause 6.2 of the Settlement Agreement ("**Represented Persons' Costs**").

14.8 The Proposed Settlement involves no admission of liability or wrongdoing on the part of either of the Settling Parties: see clause 10 of the Settlement Agreement.

14.9 The Settlement Agreement also includes a number of further practical terms such as: (i) terms concerning how the Settlement Sum is to be held and when, and on what basis, it is to be released (clause 1.2); (ii) terms relating to the CSAO approval application process (clauses 2.1 to 2.12); (iii) terms relating to the payment of the Settlement Sum and the limits of Google's obligations after that sum has been paid (clauses 3.1 to 3.4); (iv) terms relating to the status and effect of the Settlement Agreement (Clauses 5.1 to 5.3); (v) terms that the Settling Parties shall be responsible for their own costs, save for the costs of enforcing the Settlement Agreement, and previous costs orders are superseded (Clauses 6.1 and 6.3); (vi) terms ensuring the Settlement Agreement, and associated negotiations, are kept confidential although the Settlement Agreement as filed will cease to be confidential; (vii) terms relating to nondisparagement (clause 8.1-8.2); (viii) an agreement that the CR and/or Represented Persons shall not sue in respect of the Claims; and (ix) standard contractual 'boilerplate' provisions (clauses 11 to 21).

D. THE APPLICANTS' BELIEF THAT THE TERMS ARE JUST AND REASONABLE: RULE 94(4)(C) (AND RULE 94(9))

15. For the reasons set out in the evidence and documents in support of this application, and taking account of all relevant circumstances (including the matters set out in rule 94(9)(a)-(g), and discussed at Guide [6.125] to [6.128]), the Settling Parties believe that the terms of the proposed settlement are just and reasonable: see Rodger 3, §§9 to 35; Gallagher 2, §§24; O'Donoghue 1, §2; and Holmes / Smith 1, §20.

I The CR's belief that the terms are just and reasonable

16. The CR reached his own independent decision to enter into the Proposed Settlement on behalf of the Class and how the Settlement Sum should be allocated between the Class and the Stakeholders: Rodger 3, §§17-26. In reaching his conclusion that the Proposed Settlement is just and reasonable the CR took into account:

    16.1 Privileged legal advice that was provided by his solicitors, Geradin Partners, and counsel, including the opinion of Robert O'Donoghue KC set out in O'Donoghue 1: Rodger 3, §§36-44;

    16.2 Further privileged independent advice from his Consultative Panel and Mr Nicholas Bacon KC ("**Mr Bacon KC**"), as described further below, as he was aware that his solicitors and counsel team have a financial interest in the outcome of the Proposed Settlement by reason of their conditional fee arrangements: Rodger 3, §36-44. By contrast, the remuneration of the Consultative Panel and Mr Bacon KC is not contingent upon the outcome of the Proceedings or the proposed allocation of the Settlement Sum;

    16.3 Privileged advice and views from his independent Consultative Panel, comprising of Sue Prevezer KC (who has extensive litigation and ADR experience), Professor Richard Whish (who has significant competition law expertise) and Mark McLaren (who has acted as a class representative in other cases and obtained the Tribunal's approval of four collective settlements): Rodger 3, §38-39. The CR consulted with members of the Consultative Panel, without his legal team present, before accepting Google's £260 million offer in principle on 3 August 2026 and again before independently determining the split of the Settlement Sum between the Class Pot and the Stakeholder Pot: Rodger 3, §39-44.

16.4 Privileged advice from Mr Bacon KC. The CR received privileged advice on the allocation of the Settlement Sum between the Class Pot and the Stakeholder Pot, in the absence of Geradin Partners and the Funder, prior to making his independent decision as to how the Settlement Sum should be allocated: Rodger 3, §41.

II The amount and terms of the settlement, including any related provisions as to the payment of costs, fees and disbursements (Rule 94(a))

Settlement amount

17. The Settling Parties have reached the conclusion that the Settlement Sum of £260 million is just and reasonable given:

17.1 the merits of the collective proceedings and the level of aggregate damages that might be achieved following trial in light of, in particular, the disputed issues relevant to liability and quantum. The merits of the collective proceedings, and the risks associated with proceeding to trial, are addressed in detail in O'Donoghue 1 and Holmes / Smith 1. As those opinions are both privileged, it is not possible to summarise the conclusions reached therein in this application and the Tribunal is invited to read O'Donoghue 1 and Holmes / Smith 1 in full: Rodger 3, §§15.4;

17.2 the evidence indicates a wide range of possible quantum outcomes if liability were established and the amount of any aggregate damages award would accordingly depend materially upon the Tribunal's resolution of disputed issues if the matter were to proceed to trial: O'Donoghue 1, Section IV.B and Gallagher 2, §§31-39. the costs and delay associated with continuing the litigation, which is addressed further in Section D.V. below: Gallagher 2, §40-50; Rodger 3, §15.4-15.5;

17.3 the amount which the Proposed Settlement would secure for the Represented Persons, considering the payments of costs, fees and disbursements ("**CFDs**"), addressed further below: Rodger 3, §§15 and 17-26; and

17.4 the Settlement Sum was agreed following arm's length negotiations between the Settling Parties, at a time when the Settling Parties had the benefit of substantial disclosure, factual evidence and expert evidence, and the principal issues likely to determine the range of possible outcomes at trial had been identified and were substantially developed: Gallagher 2, §23.

Allocation of the Settlement Sum

18. The CR believes that the proposed allocation of the Settlement Sum outlined above is just and reasonable. Under this structure:

18.1 the Class Pot ensures that £160 million will be made available for distribution to Represented Persons. It guarantees that 68.9% of the Settlement Sum (net of costs incurred) is available to Represented Persons: Rodger 3, §12.1. The parties have agreed to seek the Tribunal's directions as to the treatment of any undistributed amounts. It is only if any amount remains after completion of the claims and review process, and actual take-up is known, that the CR currently intends to seek permission from the Tribunal to apply some or all of any residual sum in the Class Pot towards payment of outstanding CFDs not covered by the Stakeholder Pot: Rodger 3, §§13 and 21; Gallagher 2, §§61 and 92. However, in light of the high concentration of the class's claims, take-up is expected to be very high by value: in particular, the largest 24 developers account for [redacted] of the estimated claim value: Rodger 3, §20. On the likely level of take-up see further Section E below. It is expected, therefore, that Represented Persons will have substantially more available to them than stakeholders as a result of the Proposed Settlement;

18.2 the Stakeholder Pot in the sum of £100,000,000 is available for payment of the CR's CFDs. Details of the Stakeholders' contractual entitlements are set out in Gallagher 2, §§91-117. As at 31 July 2026, the aggregate amounts claimed in respect of the Stakeholders' contractual entitlements and distribution costs total approximately £115m. They therefore exceed the Stakeholder Pot by approximately £15m, or 15%. It is estimated that to the end of the distribution process those stakeholder entitlements and distribution costs will total approximately £134m, assuming that the full remaining litigation budget is drawn: Gallagher 2, §95. The Stakeholders' entitlements exceed the sum in the Stakeholder Pot so the allocation of sums to the Stakeholder Pot is conservative: Rodger 3, §§12.2 and 23. It is reasonable that this sum of money, which is substantially lower than the amount available to Represented Persons in the Class Pot, is to be paid to Stakeholders given their role in enabling the claim to be brought.

18.3 The CR's approach throughout has been to secure the best outcome reasonably available for Represented Persons and to ensure that a substantial and clearly identified part of the Settlement Sum should be made available for distribution to Represented Persons: Rodger 3, §§12, 18 and 21. In determining the allocation of the Settlement Sum, the CR took account, in particular, of: (i) the importance of securing a substantial actual recovery for the Represented Persons; (ii) the level of take-up which he expects by value; (iii) the financial risks assumed by the Stakeholders and their role in enabling the Proceedings to be pursued; (iv) his contractual obligations to the Stakeholders and the extent to which those entitlements would not be satisfied in full; and (v) the importance of preserving the Tribunal's control over any undistributed balance: Rodger 3, §17.

19. Conscious of Stakeholder interests in the outcome of the allocation of the Settlement Sum between the Class Pot and the Stakeholder Pot, a number of safeguards were put in place to address any perceived conflict:

19.1 The CR determined the allocation of the Settlement Sum between the Class Pot and the Stakeholder Pot independently of the Stakeholders: Gallagher 2, §§24, 122-124; Rodger 3, §40-44.

19.2 As noted above, the CR independently consulted, and obtained privileged advice on, the proposed allocation from his Consultative Panel and Mr Bacon KC – none of whom have any interest contingent on the outcome of the case – before he made his decision on the allocation of the Settlement Sum: Gallagher 2, §§122-124; Rodger 3, §§37-41 and 44.

19.3 While the CR asks the Tribunal to allocate at least £100 million to the Stakeholders now, payments to Stakeholders will take place after the claim period has concluded and the sums due to Represented Persons are known. This ensures that the Tribunal will know how successful the uptake has been before payments to the Stakeholders are made: Gallagher 2, §§11, 61 and 92.

19.4 The litigation funding agreement recognises the CR is required to "*act fairly and adequately in the best interests*" of Class Members at all times and to seek recovery of proceeds in their best interests: Gallagher 2, §125.

20. The CR considers that the level of the Stakeholder Pot is appropriate for the payment of CFDs as, *inter alia*:

20.1 the proceedings could not have been pursued on their present scale without substantial funding and professional work being provided at risk. Bench Walk committed substantial capital to the proceedings and agreed to meet the CR's adverse-costs liability to the extent that it was not met by the ATE insurance arrangements;

20.2 the CR's solicitors, Geradin Partners, and members of CR's counsel team have also worked with substantial proportions of their fees on conditional fee arrangements, with recovery of those amounts dependent upon a successful outcome;

20.3 the ATE insurers have provided the insured adverse-costs cover: Rodger 3, §19; and

20.4 Bench Walk's pricing is very much at the lower end and compares favourably to funder returns in litigation funding arrangements in other collective proceedings – indeed, it appears to be the lowest multiple from a comparison of what is public in other opt-out collective proceedings before the Tribunal to date: Gallagher 2, §111-112.

21. Although the Stakeholder's contractual entitlements collectively exceed the sums in the Stakeholder Pot, this is ameliorated by the fact that Bench Walk has agreed (subject to this being done in a way that is consistent with the waterfall in the Priorities Deed) *"not to insist on its contractual rights where doing so was likely to jeopardise the Tribunal's approval of the settlement or put [the CR] in a position where [he] could no longer act in the best interests of the Class"*: Rodger 3, §24.

22. The distribution costs of Angeion, the company appointed by the CR to administer the claims and payments process, are estimated to be in the range of £928,841 to £1,532,559 excluding VAT: Gallagher 2, §63. There will also be some further distribution costs incurred by Fideres and Geradin Partners. These costs will be covered by the CR's overall litigation budget available under the existing funding arrangements: Gallagher 2, §62: Rodger 3, §25.

<u>Top 5 Developers Carve Out</u>

23. As noted above, clause 1.3 of the Settlement Agreement provides that if any of the five developers specified therein (the "**5 Named Developers**") opt out of these collective proceedings pursuant to Rule 82 or opt out of the proposed settlement pursuant to Rule 94, the Settlement Sum will be reduced by the sums which would otherwise be due to those developers under the CR's distribution methodology described in the Proposed Distribution Plan. This:

    23.1 ensures that the Settlement Sum is reduced only by the amount which that developer would otherwise have received under the Proposed Distribution Plan and preserves the entitlements of all remaining Represented Persons: Rodger 3, §14; and

    23.2 is reasonable in circumstances where: (i) the 5 Named Developers constitute the top 5 largest developers by claim value; (ii) the total value of their claims is *circa* [redacted] of the total claim value sought by the CR; (iii) the settlement sum was approached on the basis that the largest developers would seek distribution under the CR's claim and settlement and that amount would likely have been different were one or more of the top five developers to opt out of the proceedings or settlement; and (iv) some mechanism was reasonable to prevent Google being exposed to this risk.

24. Clause 1.4 of the Settlement Agreement confirms that neither Settling Party shall take any steps to encourage or procure any of the named developers to opt out of the proceedings and/or the settlement which reduces the risk that such opt-outs will occur. At the time of filing this application the CR has received no indication from the 5 Named Developers that they wish to opt-out of the proceedings or the settlement, and it is certainly hoped that the prospect of substantial damages recovery would lead them to remain in the proceedings and settlement.

Annex A Developer Claim Verification

25. As noted above, clause 4.3 of the Settlement Agreement makes it a condition of distribution to the Represented Persons listed in Annex A to the Settlement Agreement that they represent and warrant that they are entitled to pursue the Claims in the relevant transactions and that related parties will not make any Claims in respect of the relevant transactions. This is reasonable as the Represented Persons listed in Annex A are the top 24 developers in terms of claim value who are likely entitled to claim sums in the region of [redacted] Enhanced confirmation and verification from these developers is appropriate in those circumstances.

Represented Persons' Costs

26. By way of background:

26.1 On 27 February 2026, Google applied to vary the CPO so that the claims of the 25 largest developers by claim value would proceed on an opt-in basis: Gallagher 2, §16;

26.2 On 4 June 2026, the Tribunal dismissed that application but nevertheless held that Google could, if it wished to do so, make an application for disclosure from individual Represented Persons pursuant to Rule 89(1)(c) of the CAT Rules 2015: Gallagher 2, §16;

26.3 On 12 June 2026, Google issued 17 applications seeking disclosure from a number of larger developers concerning agency and intra-group arrangements said to affect recoverable loss and class membership (the "**Disclosure Applications**").

26.4 Following a hearing on 9 July 2026, Mr Hodge Malek KC granted a narrowed disclosure application against one developer: Gallagher, §17. On 7 August 2026, Mr Malek KC granted the outstanding disclosure applications against 10 other developers: Gallagher 2, §20 (collectively, the "**Disclosure Orders**").

26.5 Google was ordered to meet the reasonable costs of the Represented Persons of and occasioned by the Disclosure Applications (including any pre-application correspondence with Google) and searching for and providing any disclosure and any explanatory statement pursuant to the Order (if so advised), including the Represented Persons' reasonable legal costs incurred (§23, Order dated 7 August 2026).

27. Clause 6.2 of the Settlement Agreement has been included to ensure that Represented Persons subject to the Disclosure Applications retain their right to recover their costs of complying with these disclosure orders, in accordance with the relevant orders or rulings of the Tribunal, and to ensure they are not put at an individual disadvantage as a result of the Proposed Settlement in circumstances where the Disclosure Applications were addressed to them and not the CR.

III The number or estimated number of persons likely to be entitled to a share of the settlement (Rule 94(9)(b))

28. Based on Fideres' distribution methodology, the present estimate of the number of Represented Persons likely to be entitled to a share of the Class Pot is [[redacted].

29. The transaction data disclosed by Google to Prof Rodger pursuant to paragraph 4.5 of the Tribunal Order made on 4 August 2025 (the "**Rodger Transaction Data**") indicates that there are [redacted] distinct UK developers who recorded at least one Relevant Sale during the period 22 August 2018 to 31 March 2025: Rodger 3, §15.2.

30. That data provides a reasonable basis for estimating the Represented Persons who are likely to be entitled to a share of the Class Pot because it comprises actual data from Google's own records, covers the substantial majority of the Relevant Period, and concerns developers with whom Google has direct contractual relationships. Furthermore, no other data has been disclosed in the proceedings by Google in this connection. However, it is accepted that that figure is not necessarily the number of Represented Persons, since the Rodger Transaction Data disclosed by Google only extends to the first quarter of 2025. Fideres has therefore extrapolated the number of likely additional UK developers from the Rodger Transaction Data for the period 1 April 2025 to 31 July 2026, and has estimated that there may be [redacted] additional developers: Gallagher, §89; Rodger 3, §15.2. Applying these adjustments (i.e. the [redacted] developers from the transaction data + the [redacted] estimated additional developers), the present estimate of the number of UK developers is [redacted] Gallagher 2, §89; Rodger 3, §15.2.

IV The likelihood of judgment being obtained in collective proceedings for an amount significantly in excess of the amount of the settlement (Rule 94(9)(c))

31. Rule 94(9)(c) requires the Tribunal to consider the likelihood of judgment being obtained for an amount significantly in excess of the settlement amount. The Guide, §6.125 explains that: "*When considering the likelihood of judgment being obtained in collective proceedings for more than the amount of the settlement, the Tribunal need not conduct a detailed analysis of the claims to determine what it would have awarded in damages (if anything) following a trial. Rather, the Tribunal will adopt a broad brush assessment of the position, having regard to the prospect of success and estimated quantum of damages.*"

32. The evidence indicates a wide range of possible outcomes at trial. Whether any judgment would significantly exceed the Settlement Sum would depend on the Tribunal's determination of a number of disputed issues bearing materially on liability and quantum. In light of those uncertainties, the Settling Parties consider that the prospect of a judgment significantly exceeding the Settlement Sum does not detract from their conclusion that the Proposed Settlement is just and reasonable. The relevant

issues are addressed in detail in O'Donoghue 1 (particularly Section IV) and Holmes / Smith 1: see also Rodger 3, §15.3.

V The likely duration and costs of the collective proceeding*s* if they proceed to trial (Rule 94(9)(d))

33. In terms of the likely duration of the collective proceedings if they proceed to trial:

33.1 the trial has been listed for ten weeks, beginning on 28 September 2026: Gallagher 2, §41.

33.2 a judgment at first instance would be unlikely before summer 2027: Gallagher 2, §41;

33.3 any appeal could add a further 12-24 months before the proceedings are finally resolved Gallagher 2, §41;

33.4 there is also a possibility that the Rodger proceedings would not conclude with the principal trial and judgment since, at the PTR, the Tribunal directed that if the issue of principle it had identified on agency and intra-group arrangements were determined in Google's favour, any residual issues would be determined at a further hearing after the main trial and judgment, potentially involving further factual and expert evidence (the "**Second Hearing**"): Gallagher 2, §43. Any Second Hearing would delay the final determination of aggregate damages award and distribution to the affected Represented Persons. It also raises the prospect of a further avenue of appeal: Gallagher 2, §46. Finally, a Second Hearing could itself be delayed if there is an appeal in the main trial.

34. By way of comparison, in *Kent v Apple* trial began on 13 January 2025 and ultimately resulted in a successful judgment for the class in late October 2025. Yet, more than 10 months from judgment and 19 months after the trial began, the class has still received no compensation, with any payment remaining contingent on the resolution of Apple's appeal to the Court of Appeal. That appeal is being heard over five days in May 2027 so there is a realistic prospect of no judgment before the fourth quarter of 2027 or possibly later. A further appeal is also a possibility as is the prospect that certain issues

would need to be remitted to the Tribunal following a Court of Appeal ruling: Gallagher 2, §42.

35. In terms of the costs of the collective proceedings if they proceed to trial:

35.1 the CR is presently budgeted to incur approximately £3.35 million in additional costs through trial: Gallagher 2, §41. The LFA provides for an increased return to Bench Walk after the commencement of the liability trial: Gallagher 2, §108;

35.2 the CR presently estimates that the costs of any appeal are likely to exceed £750,000, depending on the issues appealed: Gallagher 2, §41.

35.3 the costs of the Second Hearing have not yet been quantified and are not included in the £3.35 million trial budget referred to above, not least since the final shape of such hearing would be materially affected by the conclusions in the main judgment following trial and the Tribunal's directions for a Second Hearing. But as a very rough estimate this additional hearing, assuming leading counsel and a 3-5 day hearing, could cost the CR over £1 million. The current funding arrangements do not extend to such a further hearing: Gallagher 2, §43;

35.4 the need for Represented Persons to comply with the Disclosure Orders (deadlines for compliance having been extended by the Tribunal to 2 October 2026) would require the CR and his advisers to liaise with the developers concerned, review the disclosure produced and assess its implications, and potentially produce further factual and expert evidence. That work was not included in the current budget. Such additional costs could exceed £1 million for the CR: Gallagher 2, §44;

35.5 the requirement to comply with the Disclosure Orders also raises the risk that one or more of the developers on whom these disclosure obligations are imposed may seek to opt-out of the proceedings to avoid those obligations and the CR will incur yet more costs responding to those applications which are currently not budgeted for: Gallagher 2, §45;

35.6 the CR will also have to incur further costs responding to the outstanding applications to opt out of the proceedings brought by four developers which were made subsequently after Google's developer Disclosure Applications. The costs associated with this work are also not presently accounted for in the budget: Gallagher 2, §45.

36. To the extent that costs are not already budgeted for, additional funding would need to be agreed with Bench Walk. When additional funding has previously been required in these proceedings, Bench Walk has sought improved pricing as part of its terms. There is therefore a risk that any further funding would increase the funding costs ultimately sought from any recovery.

37. It is therefore apparent that the Represented Persons risk being exposed to significant, and in a number of instances unbudgeted, further costs if the proceedings continue to proceed to trial which may result in a lower sum ultimately being available for distribution. There is also a substantial risk of delay in any aggregate damages award being distributed to Represented Persons if the proceedings proceed to trial. In light of this, the CR expects the Proposed Settlement to result in Represented Persons being paid materially sooner and with materially greater certainty: Rodger 3, §15.5.

VI The views of any represented person (or other appropriate category of person) (Rule 94(9)(f))

38. The Settling Parties will make submissions, if so advised, in advance of and at the hearing of the CSAO Application in respect of any views expressed by represented persons following the publication of the CSAO Application.

VII Opinion by an independent expert and any legal representative of the applicants (Rule 94(9)(e))

39. Privileged opinions have been provided by Mr O'Donoghue KC, on behalf of the CR, and Ms Smith KC and Mr Holmes KC, on behalf of Google, in support of this CSAO Application. Both of those opinions assess the merits of the claim and conclude that the Proposed Settlement is just and reasonable: O'Donoghue 1, §2 and Holmes / Smith 1, §20.

40. Professor Rodger did not consider it necessary to commission a separate written legal opinion by an independent expert for the purpose of the CSAO Application in light of: (i) the additional cost of obtaining such an opinion, which would fall on class members; (ii) the support he had already received from his Advisory Committee and Mr Bacon KC, none of whom have a financial interest contingent on any particular settlement proposal; and (iii) the difficulty faced by an outside legal advisor assessing the conduct and tenor of the proceedings at this stage: see Rodger 3, §36. That approach is consistent with *Merricks v Mastercard* [2025] CAT 28 at [106], where the Tribunal confirmed that "*there is no requirement for there to be an independent opinion*".

VIII The provisions relating to the distribution of any unclaimed balance of the settlement (Rule 94(9)(g))

41. Clause 4.2 provides that should any part of the Settlement Sum remain following distribution to class members and any application made by the CR for some or all of the undistributed damages to be paid towards his stakeholders' CFDs, the parties shall seek the Tribunal's directions as to the treatment of any further undistributed sums.

42. Rodger 3, at §11, and section II(C) explain why this is just and reasonable. In summary:

 42.1 the Tribunal retains ultimate control of the treatment of any undistributed sums, and the parties have agreed to seek the Tribunal's directions in this regard.

 42.2 the Stakeholder Pot is presently insufficient to satisfy the stakeholders' contractual entitlements in full. The estimated shortfall is approximately £15 million as at 31 July 2026, and estimated to be approximately £34 million if the entirety of the remaining funding is used for the distribution process. If further amounts remain the Tribunal may also determine how those amounts should be distributed at a further hearing. Google will make its own submissions as to the treatment of any undistributed sums at the relevant time.

 42.3 the CR will not, however, apply for that shortfall to be paid from the undistributed sums until the claims and review process has been completed and the actual level of take-up is known. The Tribunal will therefore determine any application in light of the amounts actually claimed and distributed. If take-up is materially lower than anticipated, the Tribunal will be able to take that into account.

42.4 take-up is nevertheless expected to be very high by value. That expectation has informed the CR's current view that, subject to the Tribunal's approval, it would be appropriate to apply any undistributed balance first towards the stakeholders' outstanding CFDs.

42.5 The CR presently proposes that any balance remaining should be distributed to Stakeholders to cover their remaining contractual entitlements, and then pro rata as a top-up to Represented Persons which submitted valid claims. That present proposal remains subject to the CR's application in due course, Google's own submissions and the Tribunal's directions.

IX Sufficient information to conclude the Proposed Settlement is just and reasonable

43. Paragraph 6.127 of the Guide provides that: *"The Tribunal will wish to be satisfied that the class (or settlement) representative and its lawyers had sufficient information in order to assess the reasonableness of the settlement to the class members. Accordingly, it may be relevant to ascertain whether and to what extent the class (or settlement) representative has received disclosure from the settling defendant(s), either voluntarily as part of the negotiations or in the course of the collective proceedings."*

44. In the present case, the Proposed Settlement has been reached at a very advanced stage of the proceedings, after substantial disclosure, service of several rounds of factual evidence and expert evidence, and shortly before trial: Gallagher 2, §13; Rodger 3, §61. The Settling Parties now have the benefit of <u>all</u> the trial evidence, including their disclosure, witness statements, expert reports, trial expert reports, and joint expert statements, with which to assess the reasonableness of the settlement and are in a position to make an informed assessment as to whether the Proposed Settlement is just and reasonable. The CR also had the further benefit of privileged legal advice and is satisfied that he had sufficient information to make an informed assessment as to whether the Proposed Settlement is just and reasonable: Rodger 3, §61.

X Full and frank points

45. In *Mark McLaren Class Representative Limited v MOL (Europe) Africa Ltd and others* [2025] CAT 4, §65 the Tribunal noted: *"An overarching observation of the Tribunal on its third occasion scrutinising CSAOs is the need for the settling parties to provide full and frank disclosure to the Settlement Tribunal. This obligation tracks through to the supporting documentation put before the Tribunal by the parties and their experts, which must be rigorous in its assessment of both the points in favour and against the approval of a settlement."*

46. In order to assist the Tribunal, and comply with the spirit of this guidance, the CR specifically draws to the Tribunal's attention points which might be regarded as weighing against the approval of the Proposed Settlement: Rodger 3, §63. The CR has addressed each of these issues in turn and concluded that he nonetheless remains of the view that the Proposed Settlement is just and reasonable and in the best interests of the class: Rodger 3, §64.

E. HOW ANY SUMS RECEIVED ARE TO BE PAID AND DISTRIBUTED: RULE 94(4)(D)

47. Rather than distributing the Settlement Sum immediately, the CR proposes that it be held on trust in a secure, segregated interest-bearing account established for the purposes of the settlement until the claims and distribution process has been completed, and the level of take-up is known. The CR will then return to seek the Tribunal's approval of the final distribution, including how any residual sums from the Class Pot should be distributed.

48. The following levels of take-up are presently anticipated:[1]

    48.1 By value, approximately **50-80%**. The top five developers account for approximately [redacted] of the modelled £160 million distribution; the top 25 for approximately [redacted] and the top 100 for [redacted] Proposed Distribution Plan.

[1] Gallagher 2, section VI(D); Rodger 3, section (II)(C)(1).

48.2 By number, approximately 8-15%. That estimate is informed principally by the take-up in *Cameron v Apple*, which were US proceedings that concerned a class comprising only small developers. Although take up by number is less certain, the simplified claims process and direct contact with Class Members discussed further below is intended to reduce the burden on those developers and encourage participation: see Gallagher 2, section VI(D), and Rodger 3, section II(C)(1).

49. Against that anticipated level of take-up, the presently estimated recoveries, including the fixed-payment treatment of smaller developers and the distribution of recoveries for the remainder of the Class are set out in the Appendix to the Fideres Note.

50. The proposal to defer distribution until the level of take-up is known is informed by considerations materially the same as those set out in the evidence of Gallagher 2, section VI(A). In particular, it reflects:

50.1 the desirability of encouraging participation by smaller developers, who may elect to receive an amount exceeding their individual calculated entitlement;

50.2 the need to establish the level of participation by those smaller developers before determining the sums available for distribution to larger developers, whose recoveries will depend on that participation; and

50.3 the need to make provision for developers with valid claims who cannot presently be identified in the Rodger Transaction Data.

51. Subject to clause 1.2(b) of the Settlement Agreement which provides for return of the Settlement Sum to Google if a CSAO is not made, the CR proposes that all interest earned on the Settlement Sum while held in the Payment Account should be apportioned proportionately between the principal amounts approved for payment to Represented Persons and Stakeholders, including any Stakeholder payments approved from residual Class monies. Following the claims and reconciliation process, and at the same time as seeking a direction to pay the Class and Stakeholders, the CR will also seek approval for his proposal. That proposal remains subject to Google's submissions and the Tribunal's directions.

(a) *The Proposed Distribution Plan*

52. The Proposed Distribution Plan is annexed to this CSAO Application at **Annex 2**. Rodger 3, section IV and Gallagher 2, section VI describe the proposed claims and distribution process. In summary:

52.1 Professor Rodger has appointed Angeion to administer the claims and payment process. Angeion has extensive experience in settlement administration, including in *Cameron v Apple,* and the Google Play Developer Antitrust Litigation: Proposed Distribution Plan, section II.

52.2 Following approval of the Proposed Settlement, Angeion will undertake a targeted direct notice and outreach programme. The programme will commence approximately six to ten weeks after approval of the Proposed Settlement and will continue for four months (the "**Claim Period**"). The CR's legal advisors are already in direct contact with 16 developers representing approximately [redacted] of the estimated aggregate claim value, and hold contact details for a large number of further developers. Google has also offered to provide email addresses for the c.[redacted] developers in the Rodger transaction data from 22 August 2018 to 22 August 2024 where available to Google and Google is able to share in compliance with its legal / regulatory obligations. Angeion's programme will include paid search, social-media and programmatic advertising, supported by a broader media and public relations campaign and, where appropriate, direct contact by email, post and telephone. Enhanced outreach will be deployed for high-value developers with a claim value of £20,000 or more: Proposed Distribution Plan, Section F.

52.3 The verification process is intended to minimise the burden on class members.

52.3.1 Developers whose entitlement can be established objectively from the Rodger Transaction Data will receive an individual notice containing the information specified at paragraph 26 of the Proposed Distribution Plan. They will only be required to authenticate their identity and key information through a secure portal; they will not be required to provide transaction data or other evidence of loss.

52.3.2 Supporting information may be required only where a developer: (i) disputes the CR's estimate of loss; (ii) cannot be matched to transactions within the Rodger Transaction Data; or (iii) raises issues concerning ownership, succession or fraud.

52.4 Following the end of the Claim Period, Angeion and the CR's economic advisors, Fideres, will undertake a final reconciliation process.

52.5 The CR will then return to the Tribunal to seek approval of the final distribution to the Class and the stakeholder payments.

52.6 The parties will seek the Tribunal's directions as to the treatment of any sums remaining undistributed at the same time as that further application.

52.7 Following Tribunal approval, the approved Class and Stakeholder payments are intended to be made in a single coordinated payment round.

(b) Method for calculating class member entitlements

53. The method for calculating class member entitlements is explained in detail in the Fideres Note and addressed in Gallagher 2, section VI(C), and Rodger 3, section IV(1).

54. The methodology is based on Professor Fletcher's preferred pooled counterfactual commission rate in Fletcher 3.[2] For simplicity and proportionality, the methodology does not make separate adjustments for pass-on, simple interest or additional damages arising from off-app-store transactions. Consistent with Fletcher 3, each developer's allocation, and therefore its relative share of the settlement, will be calculated by reference to its revenue. The principal steps are as follows:

54.1 **Step 1 (Calculate aggregate damages):** Fideres will calculate aggregate damages by extrapolating the available Rodger Transaction Data from its current cut-off in March 2025 to 31 July 2026. Subject to the adjustments

[2] Any such counterfactual rate is adopted by Prof. Rodger for the purposes of the settlement distribution. Google is not asserting that it is appropriate

described at Step 4(c) below, the resulting aggregate damages figure will form the denominator used to determine the relative entitlements of developers receiving an individual calculation.

54.2 **Step 2 (Identify and verify each developer):** Each developer will authenticate its identity and confirm key information through the secure portal, or, where necessary, by providing supporting information, as outlined at paragraph 52.3 above.

54.3 **Step 3 (Extrapolate each developer's transactions):** For the period between the cut-off and 31 July 2026, each developer's transactions will be extrapolated by reference to its share of transactions during the period covered by the data. This ensures that the extrapolation remains anchored to the developer's actual observed transaction activity, without requiring it to submit additional transaction data for the extrapolation period. The subsequent process will then depend on the size of the developer's revenue:

54.3.1 <u>Developers with revenue of £7,500 or less</u>: A simplified procedure will apply to developers with revenue below £7,500 during the Relevant Period, as described at Step 4(a) below.

54.3.2 <u>Other developers</u>: Developers with more than £7,500 in revenue will receive an individual calculation, as described at Step 4(b) below.

54.4 **Step 4(a) (Simplified payments for smaller developers):** Developers with estimated revenue of £7,500 or less between 22 August 2018 and 31 July 2026 may elect to receive a fixed lump-sum payment of £200, irrespective of their individually calculated damages. This is intended to encourage participation by smaller developers and to provide a simplified and proportionate means of resolving claims where the amounts at stake are relatively small. Those developers may also elect to have their damages calculated individually under Step 4(b).

54.5 **Step 4(b) (Individual damages calculation):** Developers with revenues of over £7,500, and smaller developers who elect an individual calculation, will be subject to an individual damages' calculation using the transactions applicable to that developer in the Rodger Transaction Data, together with the extrapolation described in Step 3. Where the calculation for any transaction or relevant period would otherwise produce negative damages because the developer's effective commission rate was below Professor Fletcher's preferred counterfactual rate, the damages for that transaction or period will be treated as zero.

54.6 **Step 4(c) (Provisional assessment and developer review):** Once identified and verified, each developer will receive a provisional assessment of its entitlement based on the Rodger Transaction Data and the methodology described above:

54.6.1 for a developer falling within Step 4(a), the assessment will identify the applicable fixed payment; and

54.6.2 for a developer falling within Step 4(b), the assessment will identify the transactions attributed to it and the resulting individual damages calculation.

Each developer will have a specified period within which to accept or dispute the assessment. Fideres will review any such information and make any necessary adjustments. It will then determine the damages attributable to all verified claimants, including developers who could not initially be matched to the Rodger Transaction Data. Those damages, together with any adjustments made through the review process, will be incorporated into the aggregate damages figure calculated at Step 1. This will ensure that the denominator used to determine developers' relative shares reflects all verified claims.

54.7 **Step 5 (Calculate the settlement payment):** Following the expiry of the claims and review period, Fideres will undertake a final reconciliation and calculate the settlement payment due to each verified developer. If the aggregate payments would exceed the amount available for distribution to developers, all payments other than the fixed payments under Step 4(a) will be reduced proportionately so that the total to be distributed does not exceed the available funds in the Class Pot.

55. Having considered the Proposed Distribution Plan, the Fideres Note, the explanation provided in Gallagher 2, and the interests of class members carefully, the CR has concluded that the proposed approach would be appropriate and in the best interests of the class. In particular, the CR considers it an "*important safeguard*" that the claims and review process will be completed and reconciled before any final distribution is made. The Tribunal will therefore be able to consider the proposed final distribution, including the treatment of any residual sums in the Class Pot, in light of the actual results of the claims process: see Rodger 3, section IV(1) and (4).

F. <u>THE DRAFT CSAO: RULE 94(4)(E) AND RULE 94(10))</u>

56. The draft CSAO is annexed to this CSAO Application at Annex 1.

(a) The time and manner for opt-out / opt-in

57. For the reasons set out in Rodger 3, at §57, the draft CSAO requires a represented person to opt out (for UK-domiciled persons) by no later than three months after the date of publication of the CSAO Notice. The CR believes this deadline is fair and reasonable because: (i) the present settlement represents the entirety of the monies the CR expects to recover; (ii) if the proposed settlement is approved, the collective proceedings against Google will be discontinued; and (iii) the period gives Class Members, which are businesses, sufficient time to consider their position and take advice without unduly delaying reconciliation and payment. As such the represented persons can make a properly informed decision as to whether or not they should opt out which can properly be based on their likely overall recovery.

(b) Other matters

58. The collective settlement is enclosed with this application, and the CSAO includes the statements recommended at Guide [6.133].

G. <u>FORM AND MANNER BY WHICH THE CLASS REPRESENTATIVE PROPOSES TO GIVE NOTICE TO REPRESENTED PERSONS: RULE 94(4)(F)(I) (AND RULES 94(11) AND 94(13))</u>

59. Professor Rodger sets out details of the form and manner by which the CR proposes to give notice to represented persons: see Rodger 3, section V.

60. In particular, once the CSAO Application is filed, an update will be published on the claim website and an email update will be sent to developers for whom Prof. Rodger currently has contact details. A formal notice will also be published on the claim website in a form approved by the Tribunal.

61. The CR proposes to undertake further noticing of represented persons in due course once the CSAO is granted: see Rodger 3, Section V; Gallagher 2, Section VI(A); Proposed Distribution Plan, Section F.