

**Amended Particulars of Claim by Order of the Court of Appeal dated 13/02/2023.**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. BL-2021-000313**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**BUSINESS LIST (ChD)**

**B E T W E E N:**

**(1) TULIP TRADING LIMITED (a Seychelles company)**

**Claimant**

**- and -**

**(1) BITCOIN ASSOCIATION FOR BSV (a Swiss verein)**

(2) [REDACTED]  
(3) [REDACTED]  
(4) [REDACTED]  
(5) [REDACTED]  
(6) [REDACTED]  
(7) [REDACTED]  
(8) [REDACTED]  
(9) [REDACTED]  
(10) [REDACTED]  
(11) [REDACTED]  
(12) [REDACTED]  
(13) [REDACTED]  
(14) [REDACTED]  
(15) [REDACTED]  
(16) [REDACTED]

**Defendants**

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**AMENDED PARTICULARS OF CLAIM**

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**I. INTRODUCTION AND PARTIES**

1. All documents referred to in these **Amended** Particulars of Claim (“**PoC**”) will be referred to at trial by the Claimant (“**TTL**”) for their full terms and legal effect.
2. These PoC refer to assets denominated in one or more of the following distinct digital asset classes: Bitcoin Satoshi Vision (“**BSV**”); so-called Bitcoin Core

("BTC"); so-called Bitcoin Cash ("BCH"); and so-called Bitcoin Cash ABC ("ABC") (together, the "Networks").

3. TTL is a company incorporated in the Republic of Seychelles. It does not trade but is the legal owner of certain digital assets, including those particularised below. Its ultimate beneficial owners are Dr Craig Wright, an Australian national who has resided in England and Wales since December 2015, and immediate members of Dr Wright's family. Dr Wright is a renowned computer scientist with particular expertise in the design and development of digital assets. He created the Bitcoin system under the pseudonym Satoshi Nakamoto.
4. The First Defendant (the "**Bitcoin Association**") is a Swiss *verein*. It controls the development of BSV and operates the BSV network.. The Second to Thirteenth Defendants are the core software developers of BTC (the "**BTC Developers**"), who control and operate the BTC network. The Fourteenth Defendant controls the development of BCH and operates the BCH network (the "**BCH Developer**"). The Fifteenth and Sixteenth Defendants are the core software developers of ABC (the "**ABC Developers**") who control and operate the ABC network. The Bitcoin Association, the BTC Developers, the BCH Developer and the ABC Developers are referred to together as the "**Developers**". The roles undertaken by the Developers in relation to their respective Networks are pleaded to further below. TTL reserves the right to join other individuals or entities to the Claim in respect of any of the Networks.

## II. BITCOIN

### Bitcoin as a digital asset

5. Bitcoin is a digital asset. Each Bitcoin is, in effect, a digital "token" and is akin to cash, albeit it is used and distributed electronically. Bitcoin permits online payments to be sent directly from one party to another without going through an intermediary such as a bank or other financial institution. Such online payments are the equivalent of cash being passed directly from one person to another.

6. Bitcoin can also be held as an asset on third party digital cash exchanges, and it can be exchanged for fiat money or other digital assets. Each Bitcoin comprises 100 million indivisible digital sub-tokens known as Satoshis.

### **The blockchain**

7. Transactions involving Bitcoin are recorded on a public ledger or database that is known as the “blockchain”. The blockchain constitutes a public registry recording every Bitcoin transaction ever undertaken. Transactions are referenced on the blockchain by their transaction hash, a string of numbers and lower-case letters ranging from a to f. The transaction hash is unique to each transaction. For the reasons explained further below, each Network has its own blockchain, such that there is a separate ledger or database for each Network.
8. The blockchain therefore enables the movement of every single Bitcoin to be traced, on the blockchain itself. In this respect, the blockchain acts in much the same way as a physical, paper ledger for a physical asset, where that ledger shows all of the transactions undertaken in respect of that asset. The blockchain therefore guards against double spending.
9. While all transactions are disclosed publicly, and can be traced, the identity of those who transact is not disclosed publicly or recorded on the blockchain. It is therefore possible to ascertain from the blockchain that a transaction has taken place, but the blockchain does not record who transferred the Bitcoin in question to whom.

### **The role of nodes / miners**

10. The operation of the network is underpinned by a network of nodes (or “miners”). Nodes are devices or data points on the network, and, typically, are computers. The nodes (and those operating them) undertake what is commonly referred to as “mining”. Mining of Bitcoin involves the validation of transactions by solving complex mathematical equations, which proves that the transactions that have occurred do not represent double spending of Bitcoin. The nodes announce the verification of blocks of transactions to the network, and the network accepts the blocks of transactions as valid. The digital assets are, therefore, mirrored across a

network of computers by the nodes. The validation, verification and announcement process is virtually instantaneous. Nodes do not control the network, but instead enforce the rules created by those who do exercise control.

11. Those who operate the nodes (i.e. the miners) are paid for their work in the form of: (1) Bitcoin tokens for each new block that they mine. A block on the blockchain is equivalent to a new page in the ledger, and new blocks are released frequently. The miner that processes the new block – which involves verifying the transactions on that block - receives tokens, which are automatically released by an algorithm on the system to the miner. (2) A transaction fee (as a proportion of the Bitcoin transferred).
12. There are only a small number of nodes on the network, and a very small number of nodes control the majority of what is known as the “hash power”, meaning the processing power on the network. For example, according to publicly-available data as at the date of the [original version of these](#) PoC, in the case of BSV, more than 50% of the hash power is controlled by just three nodes, and more than 90% by five nodes; and in the case of BTC, the top three nodes control more than 40% of the hash power and just five nodes control more than 60% of the hash power.

### **Addresses on the blockchain**

13. Bitcoin – that is, digital Bitcoin tokens - are recorded on the blockchain as being held at a certain address, analogous to a bank account number. The two relevant addresses in this Claim both hold digital assets that are recorded as unspent transaction outputs known as UTXOs (“**UTXOs**”). The assets are “unspent” in the sense that they constitute assets that are left over following a transaction, in much the same way that a person might hold assets in the form of cash in his hand that is remaining after he has purchased an item in a shop using a bundle of cash. Those unspent tokens are held in the addresses. The relevant addresses in this Claim, which are the same for all Networks (albeit with a capital “F” instead of a lower case “f” for the final letter of the 1Feex address (as defined below) in the case of the BTC and BSV Networks), are:

- a. 1FeexV6bAHb8ybZjqQMjJrcCrHGW9sb6uf (“**1Feex**”).

- b. 12ib7dApVFvg82TXKycWBNpN8kFyiAN1dr (“12ib7”)  
(together, the “Addresses”).

**The existence of multiple blockchains: airdrops (also known as “hard-forks”)**

14. As explained above, there are four Networks: BSV, BCH, BTC and ABC. Each Network is recorded on its own blockchain. In other words, each Network has its own ledger or database, acting as a public registry for all of the transactions in relation to that Network. However:

- a. For all blockchains except for the blockchain of the original Network (i.e. for what is now BSV), the blockchain for the Network was created by copying the blockchain of a pre-existing Network, but applying different protocols and software instructions thereafter (and, accordingly, save for BSV, references in these PoC to “Bitcoin” are to be read as a reference to “so-called Bitcoin” as the Networks had no permission to copy the original blockchain; and the term “Network” is used for convenience only, and is not to be taken as meaning that BTC, BCH or ABC is a legitimate network of Bitcoin).
- b. Therefore, all of the historic transactions of the new Network, up to the point of its creation, will be the same as for the pre-existing Network from which the blockchain was copied.
- c. The creation of a new Network is, therefore, accurately referred to by TTL as an “airdrop”, because the blockchain is effectively copied across (or “airdropped”) by the new Network from the pre-existing Network. The more commonly used-term to describe the process is that there is a “hard fork”, but such term is misleading (because it fails to acknowledge that the new Network started life as a copy of another Network) and is therefore not adopted by TTL.

15. Originally, there was only one Network, which was referred to as “XBT” or “BTC”. On 1 August 2017, an airdrop took place:

- a. The original version of Bitcoin continued to operate, but became known as Bitcoin Cash, with the “BCH” ticker. The software developers of BCH continued to apply the same operating protocols as before. Nodes on the BCH network gave effect to transactions pursuant to those developers’ protocols and instructions.
- b. Other developers wished to use different protocols, thus implementing a different version of the rules of the network. The developers of the new Network therefore created what was, in effect, an entirely new system. However, they did so by “airdropping” the blockchain, by taking a copy of the pre-existing blockchain and then applying the new protocols to the blockchain. In so doing, they continued to use the “BTC” ticker and adopted the name Bitcoin Core.
- c. The result of an airdrop is that a person who holds 100 Bitcoin prior to the airdrop, will then hold 100 of the original Network tokens and 100 of the new Network tokens after the airdrop. Accordingly, in this case, a person with 100 tokens of BTC before the airdrop would have held both 100 BCH and 100 BTC after the airdrop.

16. A further airdrop occurred in relation to BCH on 15 November 2018.

- a. The original version of Bitcoin continued to operate, but became known as Bitcoin Satoshi Vision, with the “BSV” ticker. The software developers of BSV continued to apply the same operating protocols as before. Nodes on the BSV network gave effect to transactions pursuant to the developers’ protocols and instructions.
- b. Other developers wished to use different protocols. Again, they effectively copied the blockchain and then applied the new protocols to the blockchain. They split off but maintained the ticker “BCH”.

17. A yet further airdrop occurred, in relation to BCH, on 15 November 2020, following a disagreement between the BCH Developer and the Fifteenth Defendant (Mr Sechet). This led to the creation of ABC.

**Lack of encryption and the use of “private keys”**

18. Bitcoin is not encrypted, and the blockchain can be freely accessed and viewed.

19. Transactions relating to Bitcoin typically are signed off using what are known as “**private keys**”, which are generated by a digital algorithm. Typically, nodes will process a transaction because the software rules provide that, where the private keys are used, the transaction is to be deemed legitimate and to not constitute double-counting of the asset.

20. However, the fact of holding a private key to an address on the blockchain does not affect the *ownership* of the digital assets held at that address. Instead, the private key is, typically, used to provide *access to and control of* the digital asset. A private key is therefore analogous to a physical key used to open the lock on a safe containing a physical asset (or akin to a code required to open a locked safe containing a physical asset).

21. There is, however, no reason as a matter of either principle or practicality why the private key is required in order to transfer Bitcoin. Developers can change their software so as to allow a person who does not know the private key to control and access the Bitcoin in question. By way of just one example, Developers can provide control of and access to the Bitcoin by transferring the tokens to a new address under the control of the legitimate owner. The legitimate owner will therefore have the private keys to the new address and can control and access the Bitcoin that he owns, from that new address.

22. The private keys themselves may be, and often are, encrypted and stored securely by the owner of the address, but there is no need or requirement for the same. For example, a key may be written down on a piece of paper or stored on a hard drive.

23. Given the matters set out above, it is averred that the way in which Bitcoin is reported in the media and explained to the public at large is often misleading. Contrary to the popular notion that Bitcoin can be “*thrown away*” or “*lost*”, this is not possible. It is correct that a person may lose the private keys to an address. For example, the private keys might be stored on a hard drive that is thrown away, or the password to that hard drive might be forgotten; alternatively, the private keys might be written down on a piece of paper that is lost. However, the person in question still owns the Bitcoin, which remains untouched and recorded on the blockchain. This is akin, in the case of a locked safe containing a physical asset, to a person losing the code (for example by throwing away the piece of paper on which it is written) or losing the key that is used to turn the lock of a physical safe. The asset itself is not lost, and the owner remains the owner of the asset.

#### **The role of the Developers**

24. The Developers are, in relation to their respective Networks, the entity or individuals who (alone or together) control the Network. Many receive payment for performing the role in the form of so-called “sponsorship”, being regular payments (usually in Bitcoin) from individuals, digital asset infrastructure companies, and others with an interest in the proper running of the system for that Network. Others receive grants or donations, or are employed by, individuals, digital asset infrastructure companies, and others with an interest in the proper running of the system for that Network.

25. Each set of Developers in effect controls and runs the Network in question.

a. In the case of the Bitcoin Association and the BCH Developer, in relation to their Networks, each of them controls and directs the development and can approve the software used on the Network. They use other, individual developers to carry out the development that they direct and control.

b. In the case of the BTC and ABC Developers, the same position applies, except that various of the individuals in question also conduct the actual development of the software themselves.

26. Specifically, on this basis, the Developers:

- a. Make decisions about the software to be applied in relation to the Network in question. They make decisions about the policy choices to be embedded in the code and how best technically to manifest those choices. While others may propose changes to the software, it is the relevant Developers who decide what software changes in fact to make and implement.
- b. Security-test the system.
- c. Ensure the implementation of the code through contact with nodes.

27. More particularly, in the case of BTC, BCH and ABC the code is developed through a GitHub or GitLab platform (a platform that enables changes to be made to the software that controls and operates the network). Only a small number of individuals (who, it is averred, are the BTC, BCH and ABC Developers for BTC, BCH and ABC respectively) have control of the access codes to sign off changes on GitHub or GitLab. In the case of BSV, it is the Bitcoin Association that acts as the core developer, on the basis explained above.

28. The Developers therefore have very substantial power and exercise a substantial degree of discretion. They are able to make choices in relation to any aspect of the network in question. By way of example:

- a. In around July and August 2010, a bug in the Bitcoin software was manipulated by an individual to create, wrongly, many hundreds of millions of Bitcoin tokens. Dr Wright, who acted as a core developer of Bitcoin at the time, rectified the situation by, in effect, re-running all of the legitimate transactions that had taken place, but with the illegitimate transactions removed. He thus effected the necessary change to the software, that was implemented by the nodes so as to ensure that the ledger or database only recorded legitimate transactions.

- b. Similarly, in the case of a fraud, the Developers are able to ensure that the fraud is rendered ineffective. For example, if the Developers are aware that one person has stolen another's Bitcoin, then the Developers are able to utilise and/or revise their software so that the fraud is reversed and so that ownership of the Bitcoin reverts to the true owner.
- c. As set out at paragraph 21 above, the Developers are also able to allow a person to access and control his Bitcoin in circumstances where he no longer has access to his private keys (whether as a result of carelessness, fraud, or otherwise). Given that Bitcoin is not encrypted, this is not a particularly difficult exercise for the Developers to undertake.

### **III. TTL'S OWNERSHIP OF THE BITCOIN IN THE ADDRESSES**

29. As prefaced at paragraph 13 above, TTL owns the Bitcoin in the Addresses (amongst many others). Specifically:

- a. 1Feex contains 79,957.2 tokens on each Network comprising approximately £3.16 billion worth of BTC, approximately £53.8 million worth of BCH, approximately £17.3 million of BSV and approximately £1.9 million of ABC (all values at the date of the original version of these PoC).
- b. 12ib7 contains approximately 31,000.1 tokens on each Network comprising approximately £1.22 billion worth of BTC, approximately £20.9 million worth of BCH, approximately £6.7 million worth of BSV, and approximately £0.7 million of ABC (all values at the date of the original version of these PoC).

30. The Bitcoin in the 1Feex Address was purchased from WMIRK.com in late February 2011 and delivered to that address on 1 March 2011.

31. Various transactions were undertaken on the 12ib7 Address over the period 13 May 2010 to 25 July 2010, leaving a net amount of 31,000 Bitcoin.
32. In the case of each of the Addresses, the above transactions are confirmed on the blockchain. The remaining Bitcoin after allowing for the above transactions up to 25 July 2010 (in the case of 12ib7) and up to 1 March 2011 (in the case of 1Feex) is currently shown on the blockchain for each of the Networks. Specifically:
- a. The Bitcoin in the Addresses pre-dates the airdrop on 1 August 2017 (and each of the subsequent airdrops leading to the creation of BCH, BSV and ABC) and has not been spent since.
  - b. Accordingly, the digital tokens were airdropped onto the blockchains for all of the Networks, because whenever a new Network was created, that Network copied across the pre-existing blockchain at that point in time.
  - c. The Addresses therefore hold (subject to very small “dust” payments, as pleaded in paragraph 33 below) the same number of tokens on each of BSV, BTC, BCH and ABC. The digital assets can be spent individually on each and all of them.
  - d. However, the same private keys apply across all of the Network (the **“TTL Private Keys”**).
33. The only activity in relation to the Addresses since July 2010 is that there have been a number of payments of very small amounts of Bitcoin (i.e. a very small number of Satoshis), commonly referred to as “*dust*”, into each Address. Such activity is commonplace and is to be expected. Dust payments frequently are made to addresses, often because the paying party wants to track activity on the address and/or link that address to other Bitcoin addresses. Dust payments often are used as a preliminary step in seeking to perpetrate a phishing attack or even in order to ascertain whether the paying party can find information that will allow the paying party to blackmail the owner of the address in question.

34. As explained above, the remaining Bitcoin in the Addresses has not been transferred as at the date of these PoC, as confirmed by the blockchain records. Any such transfer (other than by TTL) would constitute a misappropriation of TTL's digital assets since it will not have been authorised by TTL.

**IV. THEFT OF THE TTL PRIVATE KEYS AND OF INFORMATION ALLOWING ACCESS TO THE TTL PRIVATE KEYS**

35. Prior to the misappropriation pleaded to below, Dr Wright held, on behalf of TTL:

- a. The TTL Private Keys, which were contained in encrypted wallet.dat files, stored on Dr Wright's computer, on his OneDrive and Google Cloud in a password protected zip file, together with additional security to protect access to the zip file itself.
- b. Confidential information and documents contained in applications accessible from Dr Wright's computer and network to be used to locate the information required to access the TTL Private Keys (the "**Keys Access Material**").

36. Between 5 and 8 February 2020, without the knowledge, consent or authorisation of TTL or Dr Wright, unknown persons (the "**Hackers**") unlawfully accessed Dr Wright's personal computer and network, which was held by Dr Wright at an address in Surrey, England. Having done so, the Hackers accessed and deleted the TTL Private Keys and the Keys Access Material (amongst other matters) (the "**Hack**"). It is inferred that they made copies of the TTL Private Keys and/or the Keys Access Material before deleting them.

37. The Hack was part of a broader hack of Dr Wright's system. Various other information and assets were stolen from Dr Wright and others. TTL does not currently, in these proceedings, pursue remedies in respect of such other information and assets. Nor does TTL, in these proceedings, bring claims against

the Hackers directly, but it, and the other victims of the Hack, reserve the right to bring further claims in due course in these or other proceedings.

38. The misappropriation of the TTL Private Keys and the Keys Access Material was discovered on 8 February 2020. Steps were immediately taken to secure Dr Wright's personal computer and the matter was reported to the Surrey Police by Dr Wright under crime reference number 45200015992.
39. As a result, TTL no longer has possession of or access to the TTL Private Keys, or the Keys Access Material and, even though it remains the owner of the Bitcoin in the Addresses, it is unable to deal with it.
40. While TTL has, by letters dated 12 June 2020, put various of the Developers on notice of the misappropriation of the TTL Private Keys and the Keys Access Material, and notwithstanding that TTL has sent pre-action letters to the Defendants dated 24 February 2021, none of the Defendants has accepted that it or he is subject to the fiduciary and/or tortious duties set out below, or agreed to take the steps required of them as requested, as particularised below.

## **V. CLAIMS AGAINST THE DEVELOPERS: FIDUCIARY OBLIGATIONS**

### **Fiduciary duties owed by the Developers to TTL**

41. Viewed objectively, TTL is owed fiduciary obligations by each of the Developers. A substantial degree of confidence and trust exists between owners such as TTL and each of the Developers as to the manner in which the Developers perform their roles. In particular:
  - a. There is a very substantial imbalance of power between owners and the Developers. Paragraphs 24 to 28 above are repeated in full. Developers have, in effect, complete power over the system in which the digital assets are held. In contrast, the owners have no control at all other than having a right to use their Private Keys to access their Bitcoin and to transact with the same.

- b. The manner in which the Developers exercise their powers and discretions substantially affects the interests of the owners. Those interests can, and frequently will be, extremely significant. In the case of TTL, the assets in question are worth approximately £4.5 billion, including in excess of £4.3 billion in the case of BTC alone. The Developers have the ability to exercise their powers to the detriment of the owners, and have the ability to destroy the value of an owner's assets.
- c. The owners have entrusted the care of their property (the digital assets) to the Developers. The owners are, accordingly, vulnerable to abuse by the Developers.
- d. In purchasing Bitcoin, a reasonable person would have the understanding or expectation that the Developers would not act capriciously, unreasonably or disloyally, or for their own advantage, or so as to abuse their position.
- e. As set out at paragraph 24 above, the Developers receive (substantial) payment for their work.

42. Further, and in any event, the relationship is fiduciary at the very least in relation to:

- a. The Developers' powers and decisions in relation to whether or not to take steps so that owners may access or control the Bitcoin that they own.
- b. The Developers' powers and decisions in giving effect (or otherwise) to fraudulent transactions and reversing known frauds.

43. TTL relies on the following factors in particular:

- a. The matters set out at paragraph 41 above.

- b. As set out at paragraph 28 above, it is within the power of the Developers to allow a person who no longer has access to his private keys to control and access the Bitcoin that he owns.
- c. It is also within the power of the Developers to stop a transaction that is known to be fraudulent or to reverse a known fraudulent transaction.
- d. In contrast, an owner who has no access to his private keys likely has no meaningful means of finding them for himself or otherwise accessing or controlling his Bitcoin without the Developers taking the steps open to them.
- e. In addition, an owner who has been defrauded will usually have no meaningful means of redress, again, without the Developers taking the steps open to them.
- f. Developers can and do make changes to the software from time to time, including when it is in their interests to do so.

44. In addition, there is a strong public policy imperative in holding the relationship to be fiduciary.

- a. Bitcoin is now an asset traded globally. Members of the public, as well as institutional investors, including pension funds, hold and transact substantial amounts of Bitcoin (at a substantial cost) and will continue to do so. Bitcoin assets will represent, for many individuals, the substantial or predominant part of their savings. It is likely that the use of Bitcoin as an asset class will become ever more widespread.
- b. It would be contrary to public policy for a person to be denied access to assets that are known to be owned by him. There is no good rationale, and in fact it would be capricious and irrational, for a person effectively to lose the benefit of assets that he has purchased and that he wishes to use and enjoy, solely on the basis that he has forgotten or lost the access key. It

would lead to: (1) the assets effectively being “lost” forever, because no person could ever deal with them, save that the Developers could in due course take them for themselves; and/or (2) the assets only being accessible to persons who have no ownership interest in them (and, in most cases, would be fraudsters).

- c. Such a position would be every bit as capricious as denying a person the right to his or her life savings held in physical cash in a safe, solely on the basis that the person has lost the entry code or the physical key to that safe. That is particularly so in circumstances where it is in the Developer’s power to allow access.
- d. Moreover, public policy requires that a widespread asset class such as Bitcoin should not be made easily amenable to manipulation by fraudsters. In circumstances where there is a known fraud, public policy requires that individuals and entities should be required not to give effect to that fraud, and to reverse it, where (as here) that is possible.
- e. In the absence of such duties, Bitcoin will be easily manipulated by fraudsters and other wrongdoers and used as a vehicle for subverting or otherwise operating outside the control of the law. In particular, the recognition and imposition of such duties will assist in restricting the effectively lawless use of Bitcoin, and its use on the dark web and in transactions relating to illegal and immoral activities.
- f. Public policy militates in favour of an accountability standard consistent with the seriousness of the services provided by the Developers.

45. Therefore, in accordance with their fiduciary duties, the Developers are required to:

- a. Provide access and control to TTL of the Bitcoin in the Addresses, including through (1) effecting a transfer of the Bitcoin to an address in respect of which TTL is able to access the private keys; and/or (2)

effecting amendments to the software so as to allow TTL access to and control of the Bitcoin.

- b. Take all reasonable steps to ensure that TTL has access to and control of the Bitcoin in the Addresses.
- c. Take all reasonable steps to ensure that effect is not given to the fraud, by ensuring that the Bitcoin in the Addresses cannot be dealt with by anyone other than TTL (including the Hackers who have appropriated the TTL Private Keys and/or the Keys Access Material).

**Breach of fiduciary duty**

46. In breach of duty, and notwithstanding the requests referred to at paragraph 40 above:

- a. Each set of Developers has failed to take any of the steps set out at paragraph 4645 above. On the contrary, notwithstanding the power to give access to and control of the Bitcoin in the Addresses to TTL (in relation to their respective Networks), the Developers have failed to do so (or even to take any steps in this regard).
- b. Further, the Developers have not taken any steps at all to ensure that effect is not given to the fraud and have shown no willingness to reverse any fraudulent transfer of the Bitcoin in the Addresses if such a transfer were to take place.

47. In so acting, for the reasons set out above, the Developers have acted in breach of duty. They have acted unreasonably, irrationally and capriciously, and without giving any proper consideration to their obligations as fiduciaries to TTL. Further or alternatively, the Defendants will be in breach of duty at such time as TTL obtains a declaration that it is the owner of the Bitcoin in the Addresses that relate to the Defendant in question. At such time, the Defendant in question will have

acted unreasonably, irrationally and capriciously, and without giving any proper consideration to his or its obligations as fiduciary to TTL.

48. Accordingly, TTL is entitled to orders requiring the Developers to take the steps set out at paragraph 45 above (further or alternatively, is entitled to the orders once it obtains its requested declaration as to ownership).

49. Further or alternatively, TTL claims equitable compensation for the breaches (further or alternatively, threatened breaches) of fiduciary duty and/or an account at its election.

50. In addition, the Developers have failed to recognise that TTL owns the Bitcoin in the Addresses, and a number of the Developers, including the BCH Developer, and the Twelfth Defendant, have wrongly asserted that TTL does not own the Bitcoin in the Addresses. Accordingly, TTL is entitled to and claims a declaration that it owns the Bitcoin in the Addresses.

## **VI. CLAIMS AGAINST THE DEVELOPERS: DUTY OF CARE**

51. Further or alternatively, the Developers have voluntarily assumed responsibility to TTL and/or are in a proximate relationship with it, and/or it would be fair, just and reasonable that a duty of care in tort arises for the Developers to take reasonable care in acting as Developers of the Network in question, including:

- a. In putting in place appropriate arrangements for access to and control of digital assets on the system in question, and in allowing an owner access to his assets.
- b. Protecting against fraud in relation to such digital assets and taking steps so as to reverse fraudulent transactions.

52. TTL relies on the matters set out in paragraphs 41 to 45 above in support of the duty of care. In addition to those matters, TTL avers that:

- a. This duty of care is an incremental extension of the scenarios in which a duty of care has been found to arise, in response to a new situation (namely, the new and widespread use of digital assets).
- b. It is reasonably foreseeable that the actions of the Developers in falling below the reasonable standard would cause harm to the owners of Bitcoin. In fact, the reasonably foreseeable harm is very substantial indeed (particularly here in the case of TTL, given the very substantial value of the assets in question).
- c. It is fair, just and reasonable to impose a duty of care, particularly taking into account the public policy matters identified above; the substantial power given to Developers; and the extent to which TTL is reliant on the Developers and the potential downsides for TTL.

### **Breach of duty**

53. Paragraph 46 above is repeated. The Developers (and each of them) are in breach of the duty of care (further or alternatively, will be in breach at such time as TTL obtains a declaration that it is the owner of the Bitcoin in the Addresses that relate to the Defendant in question) in that they failed to act (further or alternatively, have threatened to fail to act) to the standard of a reasonable developer of a digital asset, in particular by:

- a. Failing to include (further or alternatively, threatening to fail to include) in the software for each Network sufficient means to enable those who have lost the relevant private keys and/or have had them stolen to access the Bitcoin.
- b. Failing to include (further or alternatively, threatening to fail to include) in the software for each Network sufficient safeguards to protect owners of Bitcoin from being denied access to and control of their Bitcoin as a result of the theft of their private keys and/or other wrongdoing by third parties that prevented owners accessing and using their Bitcoin.

- c. Failing to give (further or alternatively, threatening to fail to give) TTL access to and/or control of the Bitcoin in the Addresses.
- d. Failing to transfer (further or alternatively, threatening to fail to transfer) the Bitcoin to a new address under the control of TTL.
- e. Failing to take (further or alternatively, threatening to fail to take) any steps either to protect TTL against the fraud arising from the misappropriation of the TTL Private Keys and/or the Keys Access Material so as to ensure that the Hackers cannot access the Bitcoin, or to allow TTL to seek to put right any fraud that does occur in future in relation to the same.

54. In the light of the serious harm caused to TTL and the fact that damages would be likely to constitute an inadequate remedy, TTL is entitled to and seeks an injunction requiring the Developers to remedy (further or alternatively, to prevent) their breaches of duty set out above, in particular by taking the steps set out at paragraph 45 above.

55. Further or alternatively, TTL is entitled to and claims damages caused by the above breaches (further or alternatively, threatened breaches) of duty, to be particularised in due course.

#### **AND THE CLAIMANT CLAIMS**

- 1) Declarations that TTL is the owner of the Bitcoin held in the Addresses:
  - a. 1Feex; and/or
  - b. 12ib7;
- 2) An order that the Developers provide TTL with access to and control of the Bitcoin in the Addresses, by (1) effecting a transfer of the Bitcoin in the Addresses to an address in respect of which TTL is able to access the private keys; and/or

- (2) effecting amendments to the software so as to allow TTL access to and control of the Bitcoin in the Addresses.
- 3) An order that the Developers take all reasonable steps to ensure that TTL has access to and control of the Bitcoin in the Addresses.
  - 4) An order that the Developers take all reasonable steps to ensure that effect is not given to the fraud, by ensuring that the Bitcoin in the Addresses cannot be dealt with by anyone other than TTL (including, specifically, to the exclusion of the Hackers who have misappropriated the TTL Private Keys and/or the Keys Access Material or those who have received the same from the Hackers).
  - 5) Further or alternatively, equitable compensation and/or an account.
  - 6) Further or alternatively, damages as aforesaid.
  - 7) Further or other relief.
  - 8) Interest.
  - 9) Costs.

JOHN WARDELL QC  
BOBBY FRIEDMAN  
JOHN WARDELL QC  
BOBBY FRIEDMAN  
SRI CARMICHAEL

**Statement of truth**

I believe that the facts stated in these Amended Particulars of Claim are true. I understand that proceedings for contempt of court may be brought against anyone who

makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth. I am authorised to sign this statement of truth on behalf of the Claimant.

Signed  .....

Name: Dr Craig Steven Wright

For and on behalf of Equator Consultants AG, a director of Tulip Trading Ltd

Date 13 Feb 2023 .....