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DATED

20[●]

[LITIGANT]

[SOLICITOR]

LIONFISH LITIGATION FINANCE LIMITED

LITIGATION FUNDING AGREEMENT

Ref: [●]

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THIS AGREEMENT is dated 20[●] and is made between

PARTIES

- (1) [LITIGANT], a company incorporated and registered in England and Wales with company number [●] whose registered office is at [●] (“**Litigant**”);
- (2) [SOLICITOR], a [limited liability] partnership incorporated and registered in England and Wales [with LLP number] [●] whose registered office is at [●] (“**Solicitor**”); and
- (3) **LIONFISH LITIGATION FINANCE LIMITED**, a company incorporated and registered in England and Wales with company number 12165991 whose registered office is at c/o Foresight Group LLP, The Shard, 32 London Bridge Street, London, SE1 9SG, United Kingdom (“**Funder**”),

(together the “**Parties**”, and each a “**Party**”).

RECITALS

- (A) The Litigant has a Legal Action against the Opponent.
- (B) The Parties have agreed that the Legal Action shall be funded by the Funder in accordance with the terms of this Agreement.

WHEREBY IS IT AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this Agreement (including the Recitals):

“Accession Deed” means a document substantially in the form set out in Schedule 4 (*Form of Accession Deed*).

“Additional Litigant” means any person or entity that becomes a litigant in relation to the Legal Action after the date of this Agreement and accedes to this Agreement and the Priorities Deed on terms acceptable to the Funder.

“Affiliate” means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

“Alternative Dispute Resolution” means any method of resolving the Legal Action outside of any court process or arbitration, whether or not with the assistance of a third party, and whether prior to, or after, the commencement of proceedings in respect of the Legal Action.

“Assignment Deed” means any assignment deed in respect of ATE Insurance

entered into between the Litigant, the Funder and any provider of ATE Insurance pursuant to which the rights and benefits of such ATE Insurance and any insurance claim thereunder are assigned in favour of the Funder, any such assignment deed to be in form and substance acceptable to the Funder.

“ATE Insurance”	means any contract of insurance obtained by the Litigant from an insurer which provides insurance cover to the Litigant in relation to the Legal Action.
“Available Investment Amount”	means, at any time, an amount equal to the Investment Amount minus the Drawn Investment Amount at such time.
“Bank of England Rate”	means the Bank of England’s bank rate as published by the Bank of England from time to time provided that, if, in any case, that rate is less than zero, it shall be deemed to be zero.
“Business Day”	means a day other than a Saturday, Sunday or bank holiday when banks are open for general business in London.
“Charge over Proceeds¹”	means the charge over proceeds arising from the Legal Action dated on or about the date hereof between the Funder (as chargee) and the Litigant (as chargor) pursuant to which the Litigant has charged all of its rights to the Proceeds in favour of the Funder.
“Client Account”	<p>means the segregated client account of the Solicitor which from time to time holds or will hold:</p> <ul style="list-style-type: none">(a) all amounts advanced by the Funder under this Agreement; and(b) any Proceeds.
“Counsel”	means [●] of [●], instructed to represent the Litigant in respect of the Legal Action and/or any such other barrister or barristers as may be instructed from time to time (in accordance with the terms of this Agreement) in respect of the Legal Action.
“Default Interest Rate”	means the Exit Interest Rate plus 1.00 (%) per cent per annum payable in accordance with clause 9 (<i>Interest</i>).
“Drawdown”	means a drawing of any of the Investment Amount made in accordance with the terms of this Agreement.
“Drawdown Date”	means the date of a Drawdown.

¹ Delete references to Charge over Proceeds if not required.

“Drawdown Request”	means a drawdown request substantially in the form set out in Schedule 3 (<i>Form of Drawdown Request</i>).
“Drawn Investment Amount”	means the aggregate amount of all Drawdowns made under this Agreement up to, in aggregate, the Investment Amount.
“ELI Principles”	means the principles (as amended, supplemented or re-enacted from time to time) set out in the Principles Governing the Third Party Funding of Litigation ² , originally published in August 2024 by the European Law Institute and which can be accessed at www.europeanlawinstitute.eu .
“Exit Interest Rate”	means the Bank of England Rate from time to time plus 8.00 (%) per cent per annum (<i>Interest</i>).
“Finance Documents”	means this Agreement, any Drawdown Request, the Priorities Deed, any Assignment Deed, the Charge over Proceeds, any Accession Deed, any Investment Top-Up Agreement and any other agreement or document designated as a Finance Document by the Funder and the Litigant.
“Funder Material Adverse Effect”	means a material adverse effect on: <ul style="list-style-type: none">(a) the solvency of the Funder such that it is unable (or admits that it is unable) to pay its debts as they fall due; or(b) the Funder’s ability to perform its funding obligations under this Agreement.
“Funder Returns”	means any and all monies due and payable by the Litigant to the Funder from the Proceeds as set out in clause 6 (<i>Funder Returns</i>).
“Funder’s Account”	means the bank account of the Funder (or, if applicable, the client account of the Funder’s solicitor) as notified by the Funder to the other Parties (or any of them) from time to time.
“Holding Company”	means, in relation to a person, any other person in respect of which it is a Subsidiary.
“Investment Amount”	means the aggregate amount made, or to be made, available by the Funder to the Litigant under this Agreement from time to time, being the Original Investment Amount, together with any Investment Top-Up Amount, to the extent not cancelled, reduced or transferred under this Agreement.

² https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Principles_Governing_the_Third_Party_Funding_of_Litigation.pdf

“Investment Percentage”	means the Investment Amount expressed as a percentage of the Original Investment Amount.
“Investment Top-Up Agreement”	has the meaning given to it in clause 2.4.
“Investment Top-Up Amount”	has the meaning given to it in clause 2.4.
“Investment Top-Up Request”	has the meaning given to it in clause 2.3.
“Legal Action”	means the claim for damages, and all associated proceedings in relation to such claim, which the Litigant has against the Opponent, known as [●] in the [●] with case number [●].
“Legal Action Costs”	means all legal fees, costs, expenses and any premium payable by the Litigant for ATE Insurance, as set out in Schedule 1 (<i>Legal Action Costs</i>) (as updated from time to time in accordance with this Agreement) incurred, or to be incurred, in respect of the Legal Action up to the date that all Proceeds have been successfully recovered by or on behalf of the Litigant following a Successful Outcome (with, in the Funder’s opinion, no prospect of further recovery of any Proceeds) or an Unsuccessful Outcome (as applicable) but not thereafter.
“Legal Reservations”	<p>means:</p> <ul style="list-style-type: none">(a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;(b) the time barring of claims under the Limitation Acts; and(c) the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim.
“Limitation Acts”	means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.
“Material Adverse Effect”	<p>means, in the opinion of the Funder, a material adverse effect on:</p> <ul style="list-style-type: none">(a) the Legal Action, including, without limitation, the

prospects of success of the Legal Action;

- (b) the potential or actual level of recoveries in relation to the Legal Action;
- (c) the ability of the Litigant or the Solicitor to perform or comply with their respective payment or other material obligations in relation to the Legal Action (including under this Agreement or any other Finance Document to which it is a party);
- (d) any ATE Insurance where any provider of such ATE Insurance declines, or evidences that it intends to decline, cover in respect of the Legal Action or any part of the Legal Action; or
- (e) the validity or, subject to the Legal Reservations, enforceability of, or the effectiveness of, this Agreement or any other Finance Document or the rights or remedies of the Funder under this Agreement or any other Finance Document.

“Monthly Report”

has the meaning given to it in clause 15.5.

“Opponent”

means [●] and any other person or persons against whom the Legal Action arises or who is, or becomes, a party to the Legal Action as a defendant or respondent and, if applicable, any part 20 defendant, and, where there is more than one Opponent, references to the Opponent (or any Opponent) shall include all or any of them, as the context requires.

“Original Investment Amount”

has the meaning given to it in clause 2.1.

“Potential Termination Event”

means any event or circumstance specified in clause 20 (*Termination Events*) which would (with the expiry of any grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be a Termination Event.

“Priorities Deed”

means the priorities deed between, amongst others, the Litigant, the Funder, any provider of ATE Insurance and the Solicitor dated on or about the date of this Agreement.

“Proceeds”

means any and all amounts (including the monetary value, as determined by an independent expert appointed by the Funder, of any non-cash settlement as agreed by the Litigant and the Opponent, any judgment award or any order) payable to the Litigant (or, if applicable, the Solicitor on behalf of the Litigant) in connection with the Legal Action:

- (a) following a Successful Outcome;
- (b) pursuant to a partial settlement of the Legal Action;
- (c) pursuant to any costs or judgment award or order (including any interim award or costs order);
- (d) as a result of any action taken by the Litigant to enforce a Settlement, judgment award or order in the Legal Action;
- (e) by any provider of ATE Insurance following an insurance claim made under any ATE Insurance that is not payable to the Opponent; and/or
- (f) by the Financial Services Compensation Scheme.

“Replacement Counsel” has the meaning given to it in clause 22.2(b) of this Agreement.

“Replacement Solicitor” has the meaning given to it in clause 22.2(a) of this Agreement.

“Security” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“Security Documents” means the Charge over Proceeds, together with any other document entered into by the Litigant creating or expressed to create any Security over all or any part of the Litigant’s assets in respect of the obligations of the Litigant under the Finance Documents.

“Settlement” means an agreement between the Litigant and the Opponent whether in full and final settlement, or by way of any partial settlement, of the Legal Action, including, if applicable:

- (a) any agreement involving any interim payment or payments of the Legal Action in relation to the Opponent; and/or
- (b) any agreement by the Litigant with the Opponent and/or any other third party to abandon or withdraw or discontinue or stay the Legal Action.

“Settlement Offer” means an offer of Settlement (howsoever communicated) made either:

- (a) to the Litigant (or to the Solicitor on behalf of the Litigant) by, or on behalf of, the Opponent; or

- (b) to the Opponent (or to the Opponent's solicitor on behalf of the Opponent) by, or on behalf of, the Litigant.

"Solicitor Fee Agreement"

means the agreement between the Litigant and the Solicitor and/or Counsel (if applicable) in respect of the Solicitor's and/or Counsel's (if applicable) respective instructions, fees, costs and expenses in relation to the Legal Action, including any conditional fee arrangement, contingency agreement, damages-based agreement or other similar fee agreement.

"Solicitor Overrun Charges"

means any legal fees, costs, expenses incurred or to be incurred by the Solicitor in excess of the total amount budgeted for in the Legal Action Costs that is not funded by way of an Investment Top-Up.

"Subsidiary"

means a subsidiary within the meaning of section 1159 of the Companies Act 2006.

"Successful Outcome"

means, in respect of the Legal Action:

- (a) a Settlement which is in full and final settlement of the Legal Action;
- (b) a final and binding judgment award or order in respect of the Legal Action in favour of (or partially in favour of) the Litigant which is not subject to appeal or further appeal; or
- (c) a final and binding judgment award or order in favour of (or partially in favour of) the Litigant in respect of any action taken by the Litigant to enforce a Settlement or to enforce a final and binding judgment award or order in the Legal Action and which is not subject to appeal or further appeal,

in each case, pursuant to which the Opponent and/or any other third party agrees, or is required, to pay any sum of money and/or make any non-cash settlement as agreed by the Litigant and the Opponent, any judgment award or any order) to the Litigant.

"Tax"

means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"Termination Event"

means any event or circumstance specified as such in clause 20 (*Termination Events*).

"Unsuccessful"

means a final and conclusive outcome of the Legal Action

Outcome” which is not a Successful Outcome.

1.2 Interpretation

The following rules of interpretation apply in this Agreement.

- (a) Clause and schedule headings in this Agreement are for ease of reference only and shall not affect its interpretation.
- (b) Any references in this Agreement to a “court” shall apply in respect of any proceedings relating to the Legal Action taken in any other forum as if the word referred to that forum and the terms were adjusted to refer to the rules and procedures of that forum.
- (c) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) this Agreement, any other Finance Document, the Solicitor Fee Agreement or any other agreement, instrument or document is a reference to that agreement, instrument or document as amended (however fundamentally), novated, supplemented, replaced, extended or restated from time to time;
 - (ii) a “**Party**” shall be construed to include its successors in title, any permitted assignee or permitted transferee of that Party in accordance with this Agreement, any personal representative (if relevant), and, in the case of any reference to “Counsel” or “Solicitor” shall include any such other barrister or solicitor (including any Replacement Solicitor or any Replacement Counsel, as applicable) as may be instructed by the Litigant (or by the Solicitor in the case of Counsel) in respect of the Legal Action from time to time;
 - (iii) a “**person**” includes any individual, person, firm, company, corporation, government, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (iv) a provision of law is a reference to that provision as amended or re-enacted from time to time;
 - (v) a time of day is a reference to London time;
 - (vi) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency or department or of any regulatory, self-regulatory or other authority or organisation;
 - (vii) statutes and/or statutory provisions include the same as may have been and may from time to time be amended, supplemented, consolidated, re-enacted or replaced;
 - (viii) any Schedules shall be treated as an integral part of this Agreement and references to this Agreement shall include the Schedules; and

- (ix) the Financial Services Compensation Scheme is a reference to that scheme as amended, supplemented or replaced from time to time.
 - (d) Words denoting the singular include the plural and vice versa.
 - (e) Words denoting gender include all genders.
 - (f) A Recital, clause or Schedule is a reference to a recital or clause of, or a schedule to, this Agreement and any reference to a sub-clause or paragraph is to the relevant sub-clause or paragraph of the clause or schedule in which it appears.
 - (g) “£”, “GBP” and “sterling” denote the lawful currency for the time being of the United Kingdom.
 - (h) Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the words following those terms.
 - (i) Any payment or other obligation to be performed under this Agreement which is due to be made or performed on a day that is not a Business Day shall be made or performed on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
 - (j) Any representation, warranty, covenant or undertaking of any Party under this Agreement remains in force until all Proceeds have been applied in accordance with this Agreement and the Priorities Deed following a Successful Outcome or until there has been an Unsuccessful Outcome.
 - (k) A Termination Event, Potential Termination Event or breach of this Agreement is continuing if it has not been waived in writing by the Funder.
- 1.3 Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement. Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- 1.4 When any Additional Litigant has acceded to this Agreement and the Priorities Deed, any reference in this Agreement and the Priorities Deed to the Litigant, shall, as the contract requires, include the Additional Litigant.
- 1.5 Where the Litigant comprises two or more persons, the obligations of all persons named as Litigant under the Finance Documents are joint and several so that each Litigant (including any Additional Litigant) will be responsible for satisfying all of the Litigant’s obligations under the Finance Documents and will be liable under the Finance Documents both individually and collectively, and any reference to the Litigant in this Agreement and any other Finance Document shall be a reference to each Litigant or all persons comprising the Litigant, as the context may require. This means in practice that, where one Litigant owes the Funder any amount under this Agreement or any other Finance Document, the Funder is entitled to recover such amount in full from the Litigant or from all persons described or referred to herein as the

Litigant, on a joint and several basis, and the Funder is not required to take action against more than one Litigant where it is able to recover what is owed to it from one Litigant alone.

2. INVESTMENT

- 2.1 Subject to the terms of this Agreement, the Funder agrees to provide funding to the Litigant in an aggregate amount up to £[●] (the “**Original Investment Amount**”), such funding to be applied by the Litigant solely for the purpose of achieving a Successful Outcome and recovering all Proceeds.
- 2.2 The Solicitor agrees to carry all Solicitor Overrun Charges on risk, meaning that no Solicitor Overrun Charges will be funded from any amount made available by the Funder under this Agreement, and the Solicitor further agrees and acknowledges that any Solicitor Overrun Charges will only be payable from Proceeds following a Successful Outcome and in accordance with the Priorities Deed.
- 2.3 If, at any time, the Litigant or the Solicitor becomes aware that the existing Investment Amount is, or is reasonably likely to be, insufficient to fund the Legal Action in full to achieve a Successful Outcome and to recover all Proceeds, the Litigant and/or the Solicitor shall promptly send a written notice to the Funder, which shall include:
- (a) details of the shortfall amount and the aggregate amount the Solicitor in good faith considers is required to fund the Legal Action in full to a Successful Outcome and to recover all Proceeds, and
 - (b) a request to the Funder to increase the existing Investment Amount by an amount equal to such shortfall (any such request, an “**Investment Top-Up Request**”).
- 2.4 Following receipt of any Investment Top-Up Request, the Funder may, at its sole discretion, elect to increase the existing Investment Amount by agreeing to fund any such shortfall by amending this Agreement on terms satisfactory to the Funder (and agreed to by the Litigant and Solicitor) (any such amendment agreement being an “**Investment Top-Up Agreement**”), the amount of any such increase of the existing Investment Amount (including any additional funding provided under clause 5.6) being an “**Investment Top-Up Amount**”.
- 2.5 If the Funder elects to increase the existing Investment Amount:
- (a) the Legal Action Costs shall be updated and agreed by the Litigant and the Funder in order to account for the Investment Top-Up Amount before any further Drawdowns are advanced; and
 - (b) any amount advanced by way of an Investment Top-Up Amount shall be advanced (subject to clauses 3.1(b) and 3.1(c) below) to the Litigant as a Drawdown under, and subject to in accordance with, the terms of this Agreement; and
 - (c) the existing Investment Amount shall be increased by the applicable Investment Top-Up Amount,

in each case, in accordance with the terms of the Investment Top Up Agreement.

2.6 Notwithstanding any term of this Agreement or any other Finance Document:

- (a) the Funder's election to make an Investment Top-Up Amount available to the Litigant following any Investment Top-Up Request shall be at the Funder's sole discretion and shall be without prejudice to the Funder's rights under this Agreement and any other Finance Document, including its rights to take any action following a Termination Event in accordance with clause 20 (*Termination Events*);
- (b) any Investment Top-Up Amount made available to the Litigant shall only be used to pay updated Legal Action Costs to achieve a Successful Outcome and to recover all Proceeds and not, for the avoidance of doubt, to pay any Solicitor's Overrun Charges, unless otherwise approved by the Funder (at its sole discretion); and
- (c) the Funder is not obliged to provide any Investment Top-Up Amount to the Litigant, unless it has entered into an Investment Top-Up Agreement in relation to such Investment Top-Up Request.

2.7 Each Investment Amount advanced to the Litigant under this Agreement:

- (a) shall be paid to the Client Account whereupon such amount shall be held on trust for the Litigant and applied by the Litigant (or by the Solicitor on behalf of the Litigant) solely to pay relevant invoices in respect of Legal Action Costs, in each case, as referred to, and agreed by the Funder in the relevant Drawdown Request; and
- (b) shall not be used to fund any costs, fees or expenses (including any tax) in respect of any other legal matter or proceedings or any working capital requirements of the Solicitor or the Litigant which is not a Legal Action Cost.

2.8 Without prejudice to the Litigant's and the Solicitor's obligations under this Agreement, the Funder is not bound to monitor or verify the application of any amount advanced pursuant to this Agreement.

2.9 The Litigant acknowledges that, prior to the date of this Agreement, it has:

- (a) received adequate information concerning the terms of this Agreement (including a copy of the ELI Principles);
- (b) independently and without reliance upon the Funder, and based on such information as the Litigant has deemed appropriate, made its own independent analysis and decision to enter into this Agreement and each other Finance Document to which it is a party;
- (c) concluded that the terms of this Agreement and each other Finance Document to which it is a party are reasonable, acceptable and necessary for the Litigant's pursuit of the Legal Action;
- (d) determined that it is in its best interests to enter into this Agreement for the purpose of funding the Legal Action and, where the Litigant is a corporate entity or a partnership, provided the Funder with a copy of a resolution of its board of directors or members (as applicable) approving the terms of, and the transactions contemplated

by, this Agreement and resolving that its entering into this Agreement, and the transactions contemplated by this Agreement, have been duly considered (including with the Solicitor) and resolving that it is in its best interests for it to pursue the Legal Action and accordingly resolving that it duly executes this Agreement and each other Finance Document to which it is party, and authorising a specified person or persons to execute such documents on its behalf;

(e) agreed and accepted with full awareness and knowledge:

- (i) the obligations and risks assumed, or to be assumed, by it;
- (ii) the pricing and costs assumed, or to be assumed, by it; and
- (iii) all amounts potentially payable by it from all Proceeds,

as a consequence of its entering into this Agreement and each other Finance Document to which it is a party;

(f) agreed that the Funder Returns (including the Funder Returns payable as a result of the Funder agreeing to fund any Investment Top-Up Amount) are fair, reasonable and commensurate with the risks being assumed by the Funder; and

(g) agreed that the Funder shall be entitled to receive the Funder Returns (including the Funder Returns payable as a result of the Funder agreeing to fund any Investment Top-Up Amount) as set out in this Agreement from all Proceeds.

2.10 If the Litigant reasonably believes the Funder has breached any of its funding obligations under this Agreement, it may give notice to the Funder in accordance with clause 23 (*Notices*) of its intention to terminate this Agreement and the other Finance Documents, and the Parties agree that any service of such notice will constitute a Dispute, as defined in clause 25.2, and the Parties will, save as otherwise agreed by the Funder and the Litigant, follow the procedures and provisions set out in clause 25 (*Governing Law and Dispute Resolution*) to determine whether the Funder has breached any of its funding obligations under this Agreement and, if any such breach has occurred, whether the Litigant is entitled to terminate this Agreement, provided that, until such time as such determinations are finally concluded, this Agreement and all the other Finance Documents shall continue in full force and effect.

2.11 If, after becoming entitled to do so following the procedure set out in clause 2.10 above, the Litigant elects to terminate this Agreement pursuant to clause 2.10 above, the Litigant shall promptly give notice of such election to the Funder in accordance with clause 23 (*Notices*) and the Drawn Investment Amount together with all accrued interest thereon shall become immediately due and payable on the date falling five (5) Business Days after the date of such notice.

3. **CONDITIONS OF DRAWDOWN**

3.1 The Funder will only be obliged to comply with clause 4 (*Drawdown*) if:

- (a) in relation to the first Drawdown, prior to the first Drawdown Date, the Funder has received:

- (i) a fully executed copy of the Priorities Deed;
- (ii) (if applicable) a fully executed copy of the Charge over Proceeds;
- (iii) (if applicable) a fully executed copy of the Assignment Deed;
- (iv) a fully executed copy of the Solicitor Fee Agreement;
- (v) a copy of a resolution of its board of directors or members (as applicable) approving the terms of, and the transactions contemplated by, this Agreement as set out in clause 2.9(d);
- (vi) details of the Legal Action Costs relating to such Drawdown supported by way of valid, copy invoices, narratives in the form of timesheets and/or proof of payments and which are, in aggregate, equal to the amount of the proposed Drawdown;
- (vii) a completed and executed Drawdown Request in respect of the first Drawdown;
- (viii) evidence that ATE Insurance is in place and is in full force and effect with an insurance company or underwriters in the agreed amount;
- (ix) evidence that the Litigant has satisfied all required “know your customer” documentation for the Funder;
- (x) if applicable, evidence that each service of process agent required to be appointed under this Agreement has acknowledged its appointment;
- (xi) a specimen of the signature of each person authorised by the resolution referred to in paragraph (x) above in relation to the Finance Documents to which it is a party;
- (xii) confirmation from the Solicitor by way of a reliance letter that the Litigant has fully satisfied all applicable anti-money laundering requirements of the Solicitor, such reliance letter to include such supporting documentary evidence of such compliance and satisfaction as the Funder may require; and
- (xiii) a copy of any other authorisation or other document, opinion or assurance which the Funder considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by this Agreement,

in each case, in form and substance satisfactory to the Funder;

- (b) in relation to any other Drawdown, the Funder has received, on or prior to the applicable Drawdown Date:

- (i) details of the estimated Legal Action Costs relating to such Drawdown supported by way of valid, copy invoices, narratives in the form of timesheets and/or proof of payments and which, in aggregate, equal to the amount of the proposed Drawdown;
- (ii) a copy of the most recent Monthly Report and, if applicable, confirmation that the contents of the Monthly Report have also been shared with the providers of any ATE Insurance;
- (iii) a completed and executed Drawdown Request for that Drawdown; and
- (iv) a copy of any other authorisation or other document, opinion or assurance which the Funder considers to be necessary or desirable in connection with such Drawdown or the performance of the transactions contemplated by this Agreement,

in each case, in form and substance satisfactory to the Funder;

- (c) on the date of each Drawdown Request and on each Drawdown Date and subject always to clause 20.4:
 - (i) nothing has occurred which is or has a Material Adverse Effect;
 - (ii) no Termination Event or Potential Termination Event is continuing or would result from the proposed Drawdown;
 - (iii) the representations made by the Litigant in clause 11 (*Representations, Warranties and Covenants of the Litigant*) are and continue to be true in all respects; and
 - (iv) the representations made by the Solicitor in clause 12 (*Representations, Warranties and Covenants of the Solicitor*) are and continue to be true in all respects.

3.2 Notwithstanding any provision of this Agreement, until any cooling-off period in respect of any ATE Insurance has irrevocably expired, no Drawdown shall be permitted under this Agreement for any purpose other than to pay any premium due and payable by the Litigant under such ATE Insurance, unless otherwise agreed by the Funder at its sole discretion.

4. **DRAWDOWN**

4.1 Unless otherwise agreed by the Funder, there will be one Drawdown only in each calendar month and each Drawdown Date will be on the last Business Day of each calendar month other than the first Drawdown which, subject to clause 3.1(a) and clause 3.1(c), shall take place on, or within five (5) Business Days of, the date of this Agreement.

4.2 A Drawdown Request must be delivered to the Funder by the Solicitor not later than 5pm at least ten (10) Business Days (or such later date as the Funder may agree) before the proposed Drawdown Date. If a Drawdown Request is delivered after 5pm on any day, it shall be deemed to be delivered on the next Business Day. If a Drawdown Request (other than the first

Drawdown Request) is duly completed and delivered in accordance with clause 4.3 less than ten (10) Business Days before the last Business Day of any calendar month, the Drawdown in relation to such Drawdown Request will be made on the last Business Day of the following calendar month, unless otherwise agreed by the Funder at its sole discretion.

4.3 Each Drawdown Request is irrevocable and will not be regarded as having been duly completed and delivered unless the Funder is satisfied that the Litigant has satisfied the relevant conditions of Drawdown in clause 3 (*Conditions of Drawdown*) and:

- (a) the proposed Drawdown is for agreed Legal Action Costs only;
- (b) the proposed Drawdown will not result in the Drawn Investment Amount exceeding the Investment Amount;
- (c) the proposed Drawdown is supported by valid, copy invoices, narratives in the form of timesheets, formal policy quotations in respect of ATE Insurance and/or proof of payments which verify the amount of the Drawdown to the satisfaction of the Funder and which are, in aggregate, equal to the amount of the proposed Drawdown;
- (d) the currency of the Drawdown is sterling;
- (e) the Drawdown Request is in form and substance satisfactory to the Funder and, in particular:
 - (i) specifies the precise details of the Client Account to which the amount requested in the relevant Drawdown Request is to be credited;
 - (ii) is accompanied by details of the up to date estimated Legal Action Costs remaining in the Legal Action; and
 - (iii) includes any other information in respect of the Legal Action and/or the Legal Action Costs which the Funder may reasonably request; and
- (f) the Funder has received the most recent Monthly Report and any other requested information to be delivered to it by the Solicitor under and in accordance with clause 15.5.

4.4 If the conditions set out in this Agreement have been met, the Funder shall pay the amount requested in the relevant Drawdown Request to the Client Account on the relevant Drawdown Date.

5. ATE INSURANCE

5.1 If applicable, the Litigant shall enter into an Assignment Deed in relation to ATE Insurance in form and substance acceptable to the Funder as a condition precedent to this Agreement.

5.2 The Solicitor confirms that it has advised the Litigant of the risks of failing to have sufficient ATE Insurance in place, including, but not limited to, the Litigant's potential liability to pay adverse costs which are not covered by the ATE Insurance.

- 5.3 Subject to the terms of this clause 5 (*ATE Insurance*), the Solicitor confirms that the Litigant has ATE Insurance in place in an amount equal to 100% of the Opponent's properly and reasonably estimated costs and disbursements, and the Solicitor shall inform the Funder promptly if it is, or becomes aware, that the level of cover under the ATE Insurance is, or may be, for any reason insufficient to cover 100% of the Opponent's properly and reasonably estimated costs and disbursements.
- 5.4 Subject to the terms of this clause 5 (*ATE Insurance*), the Litigant shall (and hereby irrevocably instructs the Solicitor to) use its best endeavours to obtain and maintain sufficient ATE Insurance cover at all times for 100% of the Opponent's court approved budget or, in the case that there is no court approved budget, 100% of the Opponent's properly and reasonably estimated costs and disbursements.
- 5.5 If the Litigant or the Solicitor (acting on behalf of the Litigant) becomes aware that there is a shortfall in the level of cover under the ATE Insurance due to the ATE Insurance being less than:
- (a) any adverse costs that the Solicitor reasonably believes are, or may become, payable by the Litigant to the Opponent, whether or not as a result of a Settlement or judicial or arbitral order; and/or
 - (b) any costs or expenses that the Solicitor reasonably believes are, or may become, payable to the Opponent in relation to the Legal Action,
- the Litigant or the Solicitor shall promptly inform the Funder of any such shortfall and the Litigant, or the Solicitor on behalf of the Litigant, shall ensure that additional ATE Insurance is put in place (i) to cover any such shortfall in full as soon as practicable (and in any event within twenty (20) Business Days of the Litigant becoming aware of any such shortfall) and (ii) to ensure that the Funder does not incur, and will not incur, any liability to pay any adverse costs in relation to the Legal Action.
- 5.6 If the Funder agrees, at its sole discretion, to fund the cost of any upfront premium in respect of any additional ATE Insurance, such funding shall be deemed to be an Investment Top-Up Amount by the Funder and the Litigant, or the Solicitor on behalf of the Litigant, shall procure that any insurer providing such additional cover shall, simultaneously with any such funding, enter into an assignment deed, if applicable, with the Funder in respect of such additional ATE Insurance.
- 5.7 If applicable, in the event that the provider of any ATE Insurance is unable to pay an insurance claim which may be recoverable in whole (or in part) from the Financial Services Compensation Scheme, the Litigant shall use its best endeavours to procure payment of the insurance claim by the Financial Services Compensation Scheme and the Litigant undertakes to procure that the payment of any such insurance claim shall be paid directly to the Opponent in case of adverse costs, or otherwise to the Client Account, such amount to be treated as Proceeds to be distributed in accordance with the Priorities Deed.
- 5.8 The Litigant undertakes to procure that any and all ATE Insurance contains a waiver of rights of subrogation by the provider of any ATE Insurance as against each of the Funder, the Litigant and the Solicitor.

- 5.9 The Litigant undertakes to ensure that the Funder promptly receives copies of all documents relating to the ATE Insurance, receipts for the payment of premiums for insurance and any other information in connection with any ATE Insurance (and any claims thereunder) which the Funder may require.
- 5.10 The Litigant shall promptly notify the Funder of:
- (a) the proposed terms of any future top-up of any ATE Insurance;
 - (b) any amendment, supplement, extension, termination, avoidance or cancellation of any ATE Insurance made or, to its knowledge, threatened or pending;
 - (c) any claim, and any actual or threatened refusal of any claim, under any ATE Insurance; and
 - (d) any event or circumstance which has led or may lead to a breach by the Litigant of any term of this clause 5 (*ATE Insurance*).
- 5.11 The Litigant shall ensure that any upfront premium due on the inception of the ATE Insurance, up to the amount set out as a Legal Action Cost, is paid promptly. Where any such upfront premium is paid directly by the Funder (and not through the Solicitor's client account), the Funder shall confirm payment of the upfront premium to the Solicitor and any such amount shall for all purposes be deemed to be a Drawdown under this Agreement.
- 5.12 The Litigant undertakes to:
- (a) comply in all respects with the terms of any ATE Insurance, including notifying the provider of ATE Insurance promptly of all updates as required under the terms of the ATE Insurance;
 - (b) not do or permit anything to be done which may make any ATE Insurance void or voidable;
 - (c) comply promptly and in all respects with all reasonable requirements of the providers of the ATE Insurance;
 - (d) ensure that each premium for ATE Insurance is paid promptly and, in any event, prior to the commencement of the period of insurance for which that premium is payable; and
 - (e) take all such other steps and actions as may be necessary or desirable so as to keep the ATE Insurance in full force and effect.
- 5.13 If the Litigant fails to comply with any term of this clause 5 (*ATE Insurance*), the Funder may, at its sole election, take any necessary action, at the expense of the Litigant (including by using any of the Available Investment Amount and updating the Legal Action Costs), to affect and/or maintain any insurance and generally do such things and take such other action as the Funder may consider necessary or desirable to prevent or remedy any breach of this clause 5 (*ATE Insurance*).

5.14 The Litigant shall, within three (3) Business Days of demand, indemnify the Funder against any cost, loss or liability incurred by the Funder as a result of a provider of any ATE Insurance:

- (a) failing to pay any amount under or in connection with such ATE Insurance;
- (b) refusing or ceasing to indemnify the Litigant as the insured; or
- (c) invalidating or vitiating such ATE insurance,

in each case, by reason of the operation of any one or more of the exclusions set out in any such ATE Insurance where such exclusion applies as a result of any wilful or deliberate act or omission by the Litigant or the Solicitor.

5.15 If the Litigant has the right to cancel any ATE Insurance in a cooling-off period and exercises such right, the Litigant shall:

- (a) promptly notify the Funder;
- (b) pay the Funder, within three (3) Business Days of the cancellation of any ATE Insurance, an amount equal to the Drawn Investment Amount;
- (c) instruct the provider of any relevant ATE Insurance that any premium paid in respect of the cancelled ATE Insurance is repaid to the Funder; and
- (d) immediately pay an administration fee of £1,000 to the Funder, and reimburse the Funder for any other costs and expenses incurred by the Funder in connection with such ATE Insurance,

following which this Agreement will be terminated.

6. FUNDER RETURNS

6.1 The Litigant undertakes to the Funder to procure that any and all Proceeds are paid directly into the Client Account whereupon such Proceeds shall be held on trust by the Solicitor in accordance with, and subject to the terms of, the Finance Documents.

6.2 As soon as practicable, and in any event within three (3) Business Days, after the date the Solicitor receives any Proceeds into the Client Account, the Litigant shall apply, and shall instruct the Solicitor to apply, all such Proceeds in accordance with this Agreement and the Priorities Deed and the Litigant confirms that the Solicitor is irrevocably authorised and instructed, and the Solicitor hereby irrevocably undertakes, in accordance with such instructions, to apply all such Proceeds in accordance with this Agreement and the Priorities Deed.

6.3 The Funder Returns shall be the sum of:

- (a) the Drawn Investment Amount; and
- (b) subject to clause 6.4 below:

- (i) £[●], if such amount is paid in full at any time before the first anniversary of the date of this Agreement;
- (ii) £[●], if such amount is paid in full at any time on or after the first anniversary of the date of this Agreement but before the second anniversary of the date of this Agreement; and
- (iii) thereafter, until such time as all amounts owing under the Finance Documents have been irrevocably paid in full, such amount referred to in clause 6.3(b)(ii) above shall increase incrementally on each subsequent anniversary of the date of this Agreement by an additional amount of £[●], each such incremental increase to apply for the next 12 month period until being increased by the same additional amount on the next anniversary of the date of this Agreement, with each such increase applying immediately and automatically without notice on each relevant anniversary of the date of this Agreement, and each such increase shall apply in full from the applicable anniversary date irrespective of when the Proceeds are applied in accordance with this Agreement and the Priorities Deed.

For the avoidance of doubt, the amounts due and payable under this clause 6.3(b) are:

PERIOD:	AMOUNT DUE:
DD MM YYYY to DD MM YYYY	£[●]
DD MM YYYY to DD MM YYYY	£[●]
DD MM YYYY to DD MM YYYY	£[●]
DD MM YYYY to DD MM YYYY	£[●]
DD MM YYYY onwards	£[●] + £[●] for each subsequent 12 month period after DD MM YYYY

6.4 The amounts payable to the Funder under clause 6.3(b) are calculated on the basis of the Funder having funded the Original Investment Amount only, so where the Investment Amount includes any Investment Top-Up Amount, the applicable amounts payable to the Funder under clause 6.3(b) above shall, unless otherwise agreed by the Funder, be increased to reflect any such Investment Top-Up Amount and such increased amounts shall be the product of the relevant amount payable under clause 6.3(b) above multiplied by the Investment Percentage.

6.5 If the Litigant rejects a Settlement Offer which would have resulted in the Litigant receiving either:

- (a) an amount, including any costs, equal to or greater than [●]; or
- (b) where costs are not included, an amount equal to or greater than [●] less [●]% of the Drawn Investment Amount,

and the Legal Action proceeds to trial and there is a Successful Outcome, the amount payable to the Funder under clause 6.3 above shall be the sum of the Drawn Investment Amount and

the greater of either (i) the relevant amount due and payable to the Funder under clause 6.3(b) (if applicable, as increased in accordance with clause 6.4) and (ii) £[●].

- 6.6 Notwithstanding any provision of any Finance Document or any other agreement between the Litigant and the Solicitor, the Funder Returns shall be calculated, and all Proceeds shall be applied, in accordance with this Agreement and the Priorities Deed, and the Parties hereby agree that:

- (a) any termination, or purported termination, of this Agreement or any other Finance Document by the Litigant or any other Party; and/or
- (b) any failure or delay (howsoever caused) by the Litigant to apply Proceeds at the times and in the manner contemplated by this Agreement and the Priorities Deed,

shall not in any way affect the obligations of the Litigant or the Solicitor to comply with their respective obligations under this Agreement and each other Finance Document to which they are a party.

- 6.7 Other than the Drawn Investment Amount and any accrued interest thereon that becomes due and payable to the Funder in accordance with clause 2.11, clause 7 (*Illegality*), clause 9 (*Interest*) or clause 20 (*Termination Events*), the Funder waives any right it may have of requiring the Litigant (or the Solicitor on behalf of the Litigant) to pay the Funder Returns to the Funder other than under its obligation to apply any Proceeds in accordance with this Agreement and the Priorities Deed.

7. ILLEGALITY

- 7.1 If a court of a competent jurisdiction holds that it has become unlawful for the Funder to fund all or any part of the Investment Amount and/or to permit to remain outstanding all or any part of the Drawn Investment Amount or if a conflict arises which would prevent the Funder from continuing to perform its obligations under this Agreement or any other Finance Document, notwithstanding the Parties taking all reasonable steps to mitigate any such circumstances which have so arisen:

- (a) the Funder shall notify the Litigant and the Solicitor in writing;
- (b) upon the Funder notifying the Litigant and the Solicitor, the Investment Amount may be cancelled at any time by the Funder, after which the Funder shall have no further obligations to fund the Litigant; and
- (c) the Litigant shall pay the Funder an amount equal to the Drawn Investment Amount together with all accrued interest thereon on the date (which shall be a Business Day) specified by the Funder in the notice delivered to the Litigant (being no earlier than the last day of any applicable grace period permitted by law) and any other amounts which may become owing in accordance with clause 20.3(b) following a Successful Outcome.

8. PAYMENTS

- 8.1 All payments to be made to the Funder by the Litigant (or on its behalf by the Solicitor) under

the Finance Documents shall be:

- (a) discharged in sterling and in immediately available cleared funds and shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim; and
- (b) made directly to the Funder's Account (unless otherwise instructed by the Funder).

8.2 Any payment or other obligation to be performed under this Agreement which is due to be made or performed on a day that is not a Business Day shall be made or performed on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

9. INTEREST

9.1 If the Drawn Investment Amount becomes due and payable to the Funder in accordance with clause 2.11, clause 7 (*Illegality*) or clause 20 (*Termination Events*), interest on the Drawn Investment Amount will become immediately due and payable to the Funder on the basis that such interest has accrued at the Exit Interest Rate and has become immediately payable by the Litigant.

9.2 All interest under this Agreement will accrue on an ACT/360 day count basis (as set out in clause 24.14) on the Drawn Investment Amount from the date of the relevant Drawdown up to the date the Drawn Investment Amount is paid and shall be payable when the Drawn Investment Amount is paid in full under clause 2.11, clause 7 (*Illegality*) or clause 20 (*Termination Events*).

9.3 If the Litigant fails to pay, or fails to instruct the Solicitor to pay, any amount payable by it under clause 2.11, clause 7 (*Illegality*), clause 9 (*Interest*) or clause 20 (*Termination Events*), on the applicable due date, interest shall accrue on the overdue amount from the applicable due date up to the date of actual payment (both before and after judgment) at the Default Interest Rate.

9.4 Any overdue amount accruing at the Default Interest Rate will be compounded with the overdue amount at the end of each calendar month applicable to that overdue amount until paid and will remain immediately due and payable.

9.5 The amounts payable under this clause 9 (*Interest*) shall be calculated by the Funder and notified in writing by the Funder in advance to the Litigant and the Solicitor.

10. TAX

10.1 The Litigant and the Solicitor (as applicable) shall make all payments to be made by them to the Funder under this Agreement and any other Finance Document without any Tax deduction, unless a Tax deduction is required by law.

10.2 If a Tax deduction is required by law in respect of any payment to be made by the Litigant or the Solicitor (as applicable):

- (a) the Litigant or the Solicitor (as applicable) shall account to the relevant authorities for the amount so required to be deducted and shall provide evidence of the relevant

requirement and payment to the Funder; and

- (b) the amount of the payment due from the Litigant or the Solicitor (as applicable) shall be increased to an amount which (after making all such Tax deductions) leaves an amount equal to the payment which would have been due if no Tax deductions had been required.
- 10.3 The Litigant or the Solicitor (as applicable) shall within three (3) Business Days of demand by the Funder pay to the Funder an amount equal to the loss, liability or cost which the Funder determines will be, or has been (directly or indirectly) suffered for or on account of Tax by the Funder in respect of this Agreement and any other Finance Document other than in respect to any Tax assessed on the Funder under the law of the jurisdiction of incorporation of the Funder or, if different, the jurisdiction(s) in which the Funder is treated as resident for Tax purposes if that Tax is imposed on or calculated by reference to, the net income, profits or gains actually received (but not any sum deemed to be received) by the Funder, or to the extent a loss, liability or cost is compensated for by an increased payment under clause 10.2 above.
- 10.4 Where a Finance Document requires any Party to reimburse the Funder for any costs and expenses, that Party shall also at the same time pay and indemnify the Funder against all VAT incurred by the Funder in respect of such costs and expenses to the extent that the Funder reasonably determines that neither it nor any other member of any group of which it is a member for VAT purposes is entitled to credit or repayment from the relevant Tax authority in respect of the VAT.
- 10.5 The Litigant shall indemnify the Funder, within three (3) Business Days of demand by the Funder, against any loss, liability or cost that the Funder incurs in relation to any Tax payable in respect of this clause 10 (*Tax*).
- 10.6 No provision of this Agreement will:
 - (a) interfere with the right of the Funder to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
 - (b) oblige the Funder to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
 - (c) oblige the Funder Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

11. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE LITIGANT

- 11.1 The Litigant makes the representations, warranties and covenants as set out in this clause 11 (*Representations, Warranties and Covenants of the Litigant*) to the Funder on the date of this Agreement and at the times specified in clause 11.7.
- 11.2 In respect of the Solicitor, the Litigant represents, warrants and covenants that it:
 - (a) has not taken or omitted to take, and will not take or omit to take, any action in respect of the Solicitor's retainer that would, or might be likely to, adversely affect the prospects of a Successful Outcome and/or the recovery of Proceeds;

- (b) has at all times cooperated, and will cooperate, fully with the Solicitor, in particular, by promptly providing all information, evidence and documents requested by the Solicitor, and will deal promptly and diligently with all requests by the Solicitor (i) to provide statements of truth, witness statements and any other information as reasonably required by the Solicitor, and (ii) to search for disclosable documents;
- (c) has sought, and will seek, advice at all appropriate times from the Solicitor and, if applicable, Counsel and, in any event, will regularly seek advice from, and consult with, the Solicitor and, if applicable, Counsel as to whether it is, or would be, in the Litigant's best legal and commercial interests to make or, as applicable, accept or negotiate a Settlement Offer, or initiate discussions aimed at achieving a Settlement;
- (d) has followed, and will follow, the legal advice of the Solicitor and Counsel in a proper and timely fashion, save where to do so would expose it to serious commercial risks or actual or probable substantial losses and, in the case of conflicting advice from the Solicitor and Counsel, the Litigant will follow the advice of Counsel;
- (e) has not instructed, and will not instruct, the Solicitor to act in such a way that would, or might be likely to, cause a breach of the terms of this Agreement or any other Finance Document;
- (f) has the full power and authority to instruct, and, subject to the terms of this Agreement, has irrevocably instructed the Solicitor to act for it in respect of the Legal Action on its behalf;
- (g) has irrevocably agreed that the Solicitor is entitled, without further authority or instruction, to apply each Drawdown in discharge of the Legal Action Costs (but not, for the avoidance of doubt, in discharge of any Solicitor's Overrun Charges) as contemplated by each applicable Drawdown Request; and
- (h) has irrevocably agreed that it is liable for paying and shall pay all the Solicitor's fees, costs and expenses incurred, and to be incurred, in connection with the Legal Action, subject to the terms of the Solicitor Fee Agreement and the Priorities Deed.

11.3 In respect of the Solicitor's conduct in connection with the Legal Action, and subject to the terms of this Agreement, the Litigant represents, warrants and covenants that it has irrevocably instructed the Solicitor, and the Solicitor has irrevocably agreed, to:

- (a) conduct the Legal Action reasonably, with all due expedition and efficiency and without delay, and, if applicable, to take all reasonable steps to ensure the same of Counsel, in particular, with regard to the principles set out in the Overriding Objectives of (and as defined in) Part 1.1 of the Civil Procedures Rules, in the case of a Solicitor in England and Wales, and any equivalent rules or principles in the case of any lawyer regulated in any other applicable jurisdiction;
- (b) comply with all laws to which it is subject where failure to do so would or might have a Material Adverse Effect;
- (c) comply promptly and in all respects with all orders of a court or tribunal (as

applicable); and

- (d) take all reasonable steps throughout the proceedings relating to the Legal Action to avoid or minimise any adverse costs, which steps may, without limitation, include resisting and/or challenging any application by the Opponent for the summary assessment of the Opponent's costs in respect of the Legal Action (including the cost of any applicable interim applications).

11.4 In respect of the Legal Action, the Litigant represents, warrants and covenants that it:

- (a) has full power and authority to issue the Legal Action against the Opponent and to manage and conduct the Legal Action in all respects;
- (b) has received, without restriction, legal advice in respect of the Legal Action from the Solicitor at all times from the date of the Solicitor's instruction (and, if applicable, Counsel from the date of Counsel's instruction);
- (c) has not relied on the Funder (or any of its Affiliates or representatives) or the providers of ATE Insurance for legal or other professional advice in respect of the Legal Action;
- (d) believes (after due enquiry) that, as at the date of this Agreement, the Legal Action Costs as set out in Schedule 1 (*Legal Action Costs*) fully cover all the financial support it requires to fund the costs of the Legal Action in full to a Successful Outcome and to recover all Proceeds and acknowledges that any amounts required to fund the costs of the Legal Action in excess of the Legal Action Costs will require additional funding that the Funder has not committed to fund;
- (e) will, notwithstanding clause 11.4(d) above, keep the Legal Action Costs under regular review, take all necessary steps to ensure that the Legal Action Costs are necessary and desirable to achieve a Successful Outcome and to recover all Proceeds and ensure that the Legal Action Costs are at all times reasonable and proportionate in amount; and
- (f) will devote such resources to the Legal Action as are necessary and desirable to enable the Solicitor to manage and conduct the Legal Action and the related proceedings effectively and in a proper and timely manner.

11.5 In respect of the information provided by the Litigant to the Funder, the Solicitor and any provider of ATE Insurance, the Litigant represents, warrants and covenants that:

- (a) all factual information provided by or on behalf of the Litigant to the Funder, the Solicitor and the provider of ATE Insurance in relation to the Legal Action, and to the Funder in respect of this Agreement and any other Finance Document, was true and accurate in all material respects as at the date it was provided or as at the date it is stated to be given and is not misleading in any material respect as at such date;
- (b) any projection (financial or otherwise) or forecast provided by or on behalf of the Litigant to the Funder, the Solicitor and the provider of ATE Insurance in relation to the Legal Action was prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair and based on reasonable assumptions as

at the date of the relevant report or document containing the projection or forecast and arrived at after careful consideration;

- (c) any expressions of opinion or intention provided by or on behalf of the Litigant to the Funder, the Solicitor and the provider of ATE Insurance in relation to the Legal Action were made after careful consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on reasonable grounds;
- (d) no event or circumstance has occurred or arisen and no information has been given, omitted or withheld, in each case, that results in the information, opinions, intentions, forecasts or projections contained in the information provided to the Funder, the Solicitor and the provider of ATE Insurance in relation to the Legal Action being untrue or misleading in any material respect or which would have affected, or might reasonably be expected to, affect the decision of:
 - (i) the Funder or the Solicitor to enter into this Agreement;
 - (ii) the Solicitor to accept its instructions in relation to the Legal Action; or
 - (iii) the provider of ATE Insurance to provide ATE Insurance in relation to the Legal Action;
- (e) without prejudice to the generality of this clause 11.5, it is not aware of any fact that has not been disclosed to the Funder, the Solicitor or the provider of ATE Insurance which would or might have a Material Adverse Effect or which might materially and adversely affect:
 - (i) the conduct, progress or continuation of the Legal Action;
 - (ii) the Litigant's prospects of successfully enforcing any judgment award or order in respect of the Legal Action;
 - (iii) the prospects of a Successful Outcome; or
 - (iv) the Litigant's right to any claim or indemnity under any ATE Insurance;
- (f) it will make prompt and full disclosure in writing to the Funder and the provider of ATE Insurance in the event that it becomes aware of any facts or circumstances which would or might reasonably have affected the decision of the Funder to enter into this Agreement;
- (g) it will consult with the Funder (and if applicable, the provider of ATE Insurance), and request the Funder's approval (and if applicable the approval of the provider of ATE Insurance), in each case, in accordance with clause 23 (*Notices*), prior to:
 - (i) making, accepting, rejecting, or otherwise responding in any way to any Settlement Offer if as a result there would be, or there would be reasonably likely to be, any shortfall of any Funder Returns and/or any premium due to any provider of ATE Insurance, or the Funder or any provider of ATE

Insurance would be, or would reasonably be likely to be, adversely affected in any way;

(ii) changing the Solicitor and/or, if applicable, Counsel, in respect of the Legal Action; or

(iii) abandoning or discontinuing the Legal Action,

such approval not to be unreasonably withheld or delayed.

(h) it will promptly do all such acts and execute all such documents (including assignments, transfers, charges, notices and instructions) as the Funder may reasonably specify (and in such form as the Funder may reasonably require):

(i) for the exercise of any rights, powers and remedies of the Funder provided by or pursuant to this Agreement, any other Finance Document or by law;

(ii) to assign to the Funder any cause of action the Litigant may have against any adviser employed or instructed by the Litigant in respect of the Legal Action and whose costs have been funded by this Agreement, to enable the Funder to bring proceedings against any such advisers in its own name; and/or

(iii) to facilitate the realisation or enforcement of the Proceeds.

11.6 In respect of its status, this Agreement and each other Finance Document, the Litigant represents, warrants and covenants that:

(a) it is a limited liability corporation, duly incorporated and validly existing under the law of its applicable jurisdiction;

(b) it has the power to own its assets and carry on its business as it is being conducted;

(c) the obligations expressed to be assumed by it in each Finance Document to which it is a party are legal, valid, binding and, subject to the Legal Reservations, enforceable obligations;

(d) each Security Document to which it is a party creates (or will create upon its execution and delivery) the security interests which that Security Document purports to create and those security interests are (or will be upon execution and delivery) valid and effective;

(e) it has the power to enter into, and to perform and deliver, and has taken all necessary action to authorise its entry into, and to perform and deliver, this Agreement and each other Finance Document to which it is a party and the transactions contemplated thereby;

(f) no limit on its powers will be exceeded as a result of its entering into and performing its obligations under this Agreement and each other Finance Document to which it is a party;

- (g) the entry into and performance by it of, and the transactions contemplated by, this Agreement and each other Finance Document to which it is a party do not and will not conflict with:
 - (i) any law or regulation applicable to it;
 - (ii) where the Litigant is a company, its constitutional documents; or
 - (iii) any agreement or instrument binding upon it or its assets or constitute a default or termination event (however described) under any such agreement or instrument;
- (h) it has not relied on the Funder (or any of its Affiliates or representatives) for legal or other professional advice in respect of this Agreement or any other Finance Document to which it is a party (including the circumstances in which this Agreement may be terminated in accordance with clause 20 (*Termination Events*)) and it acknowledges that, prior to the Litigant entering into this Agreement, it would be in its best interests to seek independent legal advice in accordance with the ELI Principles, the cost of which the Funder agrees may be included as a Legal Action Cost, provided always that the Litigant is not, at its sole discretion, obliged to seek independent legal advice and, whether or not the Litigant chooses to seek independent legal advice, it acknowledges that it enters into this Agreement and the terms related hereto at its own sole risk;
- (i) where an insurance and/or litigation funding broker is instructed by the Litigant (or the Solicitor on behalf of the Litigant) to procure ATE Insurance or third party funding for the Legal Action, that the relevant broker has confirmed to the Litigant that it considers that the Funder Returns are in line with funder returns payable to funders in similar transactions of this type and size (based on similar levels of funding requirements) and in the prevailing market conditions and expectations in relation to litigation funding as at the date of this Agreement;
- (j) it acknowledges that it has had the opportunity to request the Funder to explain the factors that determine the quantum of the Funder Returns and that it has duly considered, understands and accepts that the relevant factors that determine the quantum of the Funder Returns, as listed (without limitation) below, are fair and reasonable:
 - (i) the extent to which the cause of the Legal Action is based in whole or in part on binding precedent or novel interpretation of applicable laws;
 - (ii) the risks and uncertainty of interlocutory hearings and appeals;
 - (iii) the sensitivity of the outcome of the Legal Action to significant findings of relevant facts which at the time of funding is or may be uncertain;
 - (iv) the general uncertainty as to how the Legal Action may proceed, including the unpredictable nature of the availability, discovery and/or interpretation of relevant facts and the parties involved, including but, not limited to, the litigation conduct of the Opponent or the Opponent's legal representatives;

- (v) the general uncertainty of how the courts may interpret the Legal Action;
 - (vi) that there may be unintended or unforeseen risks for the Funder beyond just the loss of the Investment Amount (in whole or in part);
 - (vii) the uncertainty of how long the Legal Action will take to reach a final conclusion, including, but not limited, to procedural reasons, court determinations and/or the conduct of the Legal Action by the Opponent and/or their legal representatives, and the need for greater returns to account for duration risk based on the principles of the time value of money;
 - (viii) the risks of changes in the law, or general case precedents, that are relevant to either the Legal Action or any of the Finance Documents;
 - (ix) the risks arising from the applicable level of experience and expertise of both the Litigant and the Solicitor whether generally or specifically;
 - (x) the risks of enforcing a judgment, including, but not limited to, the solvency of the Opponent, the jurisdiction relevant to enforceability which may change throughout the life of the Legal Action, the Opponent's conduct and/or the risk that the Opponent may not honour or abide by any court judgment;
 - (xi) the cost of capital for the Funder, including, but not limited to, due diligence costs, transactional costs, general operating expenditure, marketing costs, any insurance as applicable; and/or
 - (xii) the market price of litigation funding as offered by other third party funders who are or may be willing to offer funding terms in respect of the Legal Action.
- (k) no Termination Event and no Potential Termination Event is continuing or is reasonably likely to result from the making of any Drawdown or the entry into, or the performance of, or any transaction contemplated by, any Finance Document;
- (l) no other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or a termination event (however described) under any other agreement or instrument which is binding on it or to which any of its assets are subject which has or is reasonably likely to have a Material Adverse Effect;
- (m) there are no rights of set off or counterclaim which apply, or which may apply, against any Proceeds, the Legal Action or the Client Account, other than in favour of the Funder under the Finance Documents;
- (n) there is no creditor or other person holding a security interest, mortgage, charge, pledge, lien or other encumbrance over the Proceeds, the Legal Action or the Client Account which takes priority over or restricts the Funder's rights, protections or ability to receive all Proceeds due and payable to it in accordance with this Agreement

and the Priorities Deed;

- (o) subject to the terms of the Priorities Deed, it will not take any action that would or might subordinate, nor will it agree to any subordination of, the Funder Returns or any other amounts that are, or may become, due and payable to the Funder under this Agreement or any other Finance Document, nor will it create or permit to subsist any Security over the Proceeds, in each case, for so long as any obligations remain due, owing or incurred by any of the Litigant, the Solicitor (or any other party) to the Funder under any Finance Document;
- (p) it irrevocably instructs the Solicitor to hold all Proceeds received into the Client Account on trust by the Solicitor in accordance with, and subject to the terms of, the Finance Documents and to hold and apply such Proceeds strictly in accordance with this Agreement and the Priorities Deed, and it will ensure, and will give instructions to the Solicitor to ensure, that the Solicitor shall apply all Proceeds strictly in accordance with the terms of this Agreement and the Priorities Deed;
- (q) it will not enter into any other funding arrangement or enter into any arrangement or agreement that entitles any person to receive any return from, or interest in, the Proceeds, except with the prior written consent of the Funder, and any such consent shall be subject to such person acceding to the Priorities Deed or entering into a priority agreement, in each case, on terms acceptable to the Funder at its sole discretion;
- (r) its payment obligations under this Agreement and each other Finance Document to which it is a party rank at least *pari passu* with the claims of all its other present and future unsecured and unsubordinated creditors, except, if applicable, for obligations mandatorily preferred by law applying to companies generally;
- (s) it has complied with all laws to which it is subject where failure to so comply would or might have a Material Adverse Effect;
- (t) it has been informed by the Funder of the availability of the ELI Principles and is in receipt of a copy of the ELI Principles for consideration by it; and
- (u) it acknowledges and agrees that the disclosure of the existence of any Finance Document and/or the transactions contemplated by the Finance Documents to a court, the Opponent or any third party associated or affiliated with, instructed by or otherwise connected to, the Opponent may result in the Opponent altering its strategy in the Legal Action which may have a material adverse effect on the prospects of the Legal Action or the sufficiency of the Legal Action Costs and accordingly, notwithstanding the principles of transparency set out in the ELI Principles, it undertakes not to disclose the existence of the Finance Documents or any details of the transactions set out in the Finance Documents to the Opponent or any other party unless required to do so by law and, in any such circumstances, it shall notify, and consult with, the Funder prior to any required disclosure.

11.7 Unless stated as being given on a specific date or dates only, the representations, warranties and covenants set out in this clause 11 (*Representations, Warranties and Covenants of the Litigant*) are deemed to be repeated by the Litigant by reference to the facts and circumstances

then existing on each day following the date of this Agreement for so long as any amount is, or is capable of becoming, due and payable, to the Funder under the Finance Documents.

12. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE SOLICITOR

12.1 The Solicitor makes the representations, warranties and covenants set out in this clause 12 (*Representations, Warranties and Covenants of the Solicitor*) to the Funder on the date of this Agreement and at the times specified in clause 12.6.

12.2 In respect of its status, the Solicitor represents, warrants and covenants that:

- (a) it is a company or partnership registered in England and Wales, or other jurisdiction acceptable to the Funder, and is authorised and regulated by the Solicitors Regulation Authority or by equivalent authority in its applicable jurisdiction and has the power to carry on its business as it is being conducted;
- (b) to the best of its knowledge, information and belief, having made due and careful enquiry, no corporate action, legal proceedings, appointment, proposal for a composition or arrangement with creditors or other procedure or step has been taken against the Solicitor which, if adversely determined, would have, or would be reasonably likely to have, a Material Adverse Effect;
- (c) no other event or circumstance is outstanding which constitutes a default or termination event under any other agreement or instrument which is binding on it or to which its assets are subject which, in any such case, has or is reasonably likely to have a Material Adverse Effect;
- (d) no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency have been started or threatened against the Solicitor which have, or are reasonably likely to have, a Material Adverse Effect;
- (e) there are no rights of set off or counterclaim which apply, or which may apply, against any Proceeds, the Legal Action or the Client Account, other than in favour of the Funder under the Finance Documents;
- (f) there is no creditor or other person holding a security interest, mortgage, charge, pledge, lien or other encumbrance over the Proceeds, the Legal Action or the Client Account which takes priority over or restricts the Funder's rights, protections or ability to receive any Proceeds due to it in accordance with this Agreement and the Priorities Deed;
- (g) it has not breached any law or regulation where such breach has or is reasonably likely to have a material adverse effect (financial or otherwise) on it; and
- (h) it has no direct or indirect economic interest in the Funder.

12.3 In respect of the Legal Action, the Solicitor represents, warrants and covenants that:

- (a) it has the full power and authority to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this

Agreement and each other Finance Document to which it is a party and the transactions contemplated thereby;

- (b) subject to the terms of this Agreement and any applicable requirements under the SRA Standards and Regulations (or any equivalent code of conduct in any other applicable jurisdiction) and to the terms of the Solicitor's Fee Agreement, the Solicitor has accepted, and shall continue to accept, the instructions given to it by the Litigant pursuant to the Legal Action and this Agreement;
- (c) it is authorised, and has agreed, to act for the Litigant in respect of the Legal Action and in accordance with its full professional and fiduciary duties and it has no conflict of interest in acting for the Litigant in respect of the Legal Action;
- (d) the entry into, and performance by it of, the transactions contemplated by the Solicitor Fee Agreement does not and will not conflict with any law or regulation applicable to it;
- (e) it shall hold all Proceeds received by it in the Client Account and shall apply all Proceeds in accordance with this Agreement and the Priorities Deed;
- (f) it has not received, and is not entitled to receive, from the Proceeds, any payment in respect of the Legal Action, other than in accordance with the Priorities Deed; and
- (g) subject to the terms of this Agreement and the Solicitor Fee Agreement, it is acting solely on behalf of the Litigant in connection with the Legal Action including where a conflict of interest may arise between the Funder and the Litigant.

12.4 In respect of the Litigant, the Solicitor represents, warrants and covenants that:

- (a) it has taken, and will take, all reasonable steps to support the Litigant in pursuing the Legal Action and in enforcing the Litigant's legal and equitable rights in connection with the Legal Action, with due expedition and efficiency and without unnecessary delay;
- (b) no Termination Event and no Potential Termination Event is continuing or might reasonably be expected to result from the making of any Drawdown or the entry into, or performance of, or any transaction contemplated by, any Finance Document;
- (c) subject to the terms of the Solicitor's Fee Agreement, it shall accept all instructions given to it by the Litigant as being valid, binding and acceptable, and undertakes to act promptly in accordance with such instructions;
- (d) it has not and will not act in any way that prevents or discourages the Litigant from meeting its obligations under this Agreement or any other Finance Document;
- (e) it has advised the Litigant of the importance of seeking independent legal advice in respect of this Agreement and each other Finance Document as set out in clause 11.6(h);

- (f) it has brought the existence of insurance and funding brokers to the attention of the Litigant for the purpose of clause 11.6(i); and
- (g) it has received acknowledgment from the Litigant that the Litigant has had the opportunity to request the Funder to explain the factors that determine the quantum of the Funder Returns and that the Litigant has duly considered, understands and accepts the relevant factors set out in clause 11.6(j).

12.5 In respect of this Agreement and each other Finance Document to which it is a party, the Solicitor represents, warrants and covenants that:

- (a) the obligations expressed to be assumed by it in this Agreement and each other Finance Document to which it is a party are legal, valid, binding and, subject to the Legal Reservations, enforceable obligations;
- (b) the entry into and performance by it of, and the transactions contemplated by, this Agreement and each other Finance Document to which it is a party do not and will not conflict with:
 - (i) any law, regulation or governing statutes applicable to it, including, if applicable, the SRA Standards and Regulations (or any equivalent procedural rules in the relevant court of any applicable jurisdiction);
 - (ii) its members' agreement, its governing documents or partnership deed (as applicable); or
 - (iii) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument;
- (c) no limit on its powers will be exceeded as a result of its entry into this Agreement and each other Finance Document to which it is a party;
- (d) to the best of its knowledge, information and belief, having made due and careful enquiry, all written information provided by or on behalf of the Solicitor to the Funder was true, complete and accurate in all respects as at the date it was provided and was not misleading in any respect, and any written information that it subsequently believes or discovers to be not true, incomplete or inaccurate in any respect has been notified immediately to the Funder and that there has been no material adverse change to the merits of the Legal Action (including as to quantum) since the date such information in respect of the Legal Action was provided to the Funder;
- (e) it has disclosed to the Litigant in writing any prior business or trading relationship (if any) that the Solicitor has had with the Funder;
- (f) it acknowledges that the Funder has made it aware of the ELI Principles and it is in receipt of a copy of the ELI Principles; and

- (g) it acknowledges and agrees that the disclosure of the existence of any Finance Document and/or the transactions contemplated by the Finance Documents to a court, the Opponent or any third party associated or affiliated with, instructed by or otherwise connected to, the Opponent may result in the Opponent altering its strategy in the Legal Action which may have a material adverse effect on the prospects of the Legal Action or the sufficiency of the Legal Action Costs and, accordingly, notwithstanding the principles of transparency set out in the ELI Principles, it undertakes not to disclose the existence of the Finance Documents or any details of the transactions set out in the Finance Documents to the Opponent or any other party unless required to do so by law and, in any such circumstances, it shall notify, and consult with, the Funder prior to any required disclosure.
- 12.6 Unless stated as being given on a specific date or dates only, the representations, warranties and covenants set out in this clause 12 (*Representations, Warranties and Covenants of the Solicitor*) are deemed to be repeated by the Solicitor by reference to the facts and circumstances then existing on each day following the date of this Agreement for so long as any amount is, or is capable of becoming, due and payable, to the Funder under the Finance Documents.
- 13. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE FUNDER**
- 13.1 The Funder makes the representations, warranties and covenants set out in this clause 13 (*Representations, Warranties and Covenants of the Funder*) to the Litigant and the Solicitor on the date of this Agreement and at the times specified in clause 13.6.
- 13.2 In respect of its status, the Funder represents, warrants and covenants that:
 - (a) it is a company registered in England and Wales and has the power to carry on its business as it is being conducted;
 - (b) it has the full power and authority to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement and each other Finance Document to which it is a party and the transactions contemplated by this Agreement;
 - (c) to the best of its knowledge, information and belief, having made due and careful enquiry, no corporate action, legal proceedings, appointment, proposal for a composition or arrangement with creditors or other procedure or step has been taken against it which, if adversely determined, would have, or would be reasonably likely to have, a Funder Material Adverse Effect;
 - (d) no other event or circumstance is outstanding which constitutes a default or termination event under any other material agreement or instrument which is binding on it or to which its assets are subject which, in any such case, would have, or would be reasonably likely to have, a Funder Material Adverse Effect;
 - (e) as at the date of this Agreement, no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency have been started or threatened against it which, if adversely determined, would have, or would be reasonably likely to have, a Funder Material Adverse Effect;

- (f) its promotional materials and/or key prominent statements provided to the Litigant and/or the Solicitor prior to the date of this Agreement in respect of its operations and its ability to meet its funding obligations as set out in this Agreement are in all material respects accurate and not misleading in any material respect at the date of this Agreement; and
 - (g) if it makes any material changes to its promotional materials and/or key prominent statements after the date of this Agreement which would have, or would be reasonably likely to have, a Funder Material Adverse Effect, the Funder will as soon as reasonably practicable inform the Litigant and/or the Solicitor (on behalf of the Litigant) of such material changes.
- 13.3 In respect of any actual or potential conflicts of interest, the Funder represents, warrants and covenants that:
 - (a) it is not in competition with the Opponent, nor is it dependent on, or have any direct business relationship with, the Opponent;
 - (b) it has no direct economic interest in the bringing or the outcome of the proceedings that would or would be reasonably likely to divert the proceedings away from the protection of the interest of the Litigant;
 - (c) so far as it is aware as at the date of this Agreement, it has no actual or potential conflict of interest in respect of the Legal Action or as a result of its entering into this Agreement and it will maintain regular internal checks to ensure no actual or potential conflicts of interest arise in respect of the Legal Action;
 - (d) if circumstances arise that would give any reasonable person cause for concern that a conflict of interest involving the Funder in respect of the Legal Action or this Agreement exists, or may exist, it will:
 - (i) promptly disclose that information to the Litigant and the Solicitor insofar as it is permitted to do so in line with all applicable confidentiality obligations; and
 - (ii) instruct an independent counsel to be agreed between the Parties to determine whether a conflict of interest exists and, if it is determined that a conflict of interest does exist, instruct the same independent counsel to provide recommendations to the Parties with the aim of managing the applicable conflict of interest so that it ceases to apply.
- 13.4 In respect of the Litigant and the Solicitor, the Funder represents, warrants and covenants that:
 - (a) it has, on or prior to the date of this Agreement, informed the Litigant and the Solicitor of the ELI Principles and provided them with a copy of the ELI Principles;
 - (b) it has not acted, and will not act, in any way that prevents or discourages the Litigant or the Solicitor from meeting its respective obligations under this Agreement or any other Finance Document to which it is a party; and

- (c) upon request and for the purposes of transparency, it will make available to the Litigant and/or Solicitor information under a non-disclosure agreement in respect of:
 - (i) its source of funds; and
 - (ii) its governing documents; and
- (d) it will not knowingly take any steps that cause or are likely to cause the Solicitor or witnesses in relation to the Legal Action to act in breach of their duties to the court or to endanger the proper administration of justice.

13.5 In respect of this Agreement and each other Finance Document to which it is a party, the Funder represents, warrants and covenants that:

- (a) the obligations expressed to be assumed by it in each Finance Document to which it is a party are legal, valid, binding and, subject to the Legal Reservations, enforceable obligations;
- (b) the entry into and performance by it of, and the transactions contemplated by, this Agreement and each other Finance Document to which it is a party do not and will not conflict with:
 - (i) any law, regulation or governing statutes applicable to it; or
 - (ii) its governing documents; or
 - (iii) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument, in each case, which has or is reasonably likely to have a material and adverse effect on the Funder's ability to comply with its funding obligations under this Agreement;
- (c) it will maintain the financial capacity and/or internal funding arrangements necessary to fund the agreed Legal Action Costs;
- (d) no limit on its powers will be exceeded as a result of its entry into this Agreement and each other Finance Document to which it is a party; and
- (e) where commercially reasonable and unless otherwise stated in this Agreement, it has endeavoured to align the provisions of this Agreement to the principles set out in the ELI Principles as commercially practicable as possible.

13.6 Unless stated as being given on a specific date or dates only, the representations, warranties and covenants set out in this clause 13 (*Representations, Warranties and Covenants of the Funder*) are deemed to be repeated by the Funder by reference to the facts and circumstances then existing on each day following the date of this Agreement for so long as any amount is, or is capable of becoming, due and payable, to the Funder under the Finance Documents.

14. SOLICITOR FEE AGREEMENT

14.1 Save to the extent expressly provided otherwise pursuant to any other term of this Agreement, each of the Litigant and the Solicitor shall:

- (a) promptly and diligently perform its respective obligations contained in the Solicitor Fee Agreement;
- (b) promptly inform the Funder upon becoming aware of any occurrence or circumstance which constitutes a material breach, or may result in, a material breach of the Solicitor Fee Agreement by any respective party thereto;
- (c) promptly provide the Funder with such information as it may reasonably request in respect of the Solicitor Fee Agreement;
- (d) do all such acts, deeds and things as may be necessary or desirable to ensure that any other party to the Solicitor Fee Agreement complies with its respective obligations thereunder; and
- (e) take all reasonable and practical steps to preserve and enforce its rights arising under the Solicitor Fee Agreement and keep the Funder regularly apprised of any such steps.

14.2 Neither the Litigant nor the Solicitor shall, without the prior written consent of the Funder, such consent not to be unreasonably withheld or delayed:

- (a) make or consent to any modification or variation of the terms of the Solicitor Fee Agreement which would or might be materially adverse to the Funder's interests;
- (b) consent or agree to any waiver or release of any obligation of any party to the Solicitor Fee Agreement; or
- (c) rescind, cancel or terminate the Solicitor Fee Agreement or accept any breach or default of the Solicitor Fee Agreement as repudiatory.

15. INFORMATION AND ACCESS

15.1 The undertakings in this clause 15 (*Information and Access*) remain in force from the date of this Agreement for so long as any amount is, or is capable of becoming, due and payable, under the Finance Documents.

15.2 Each of the Litigant and the Solicitor will:

- (a) promptly inform the Funder of all material developments in the Legal Action, including but not limited to:
 - (i) any development that may have an impact on the cost budgeting or outcome of the Legal Action;
 - (ii) the progress of any Settlement discussions or any Settlement Offer with any other party to the Legal Action, howsoever made or raised, including

developments before, during and after any Alternative Dispute Resolution;

- (iii) any pre-action or interlocutory (or equivalent) application it intends to process and/or make in respect of the Legal Action;
- (iv) any proposed or anticipated court or tribunal hearing in respect of the Legal Action;
- (v) any change in the Solicitor's or, if applicable, Counsel's appraisal of the Litigant's prospects of a Successful Outcome, whether as a whole or in respect of any part or stage of the Legal Action; and/or
- (vi) any other event which has or might reasonably result in a Material Adverse Effect; and

- (b) promptly comply in all respects with all requests by or on behalf of the Funder for information and/or documents in connection with the Legal Action, even if privileged, and on the basis that, if such information and/or documents are privileged, the Funder shall take all reasonable steps available to it to claim and protect such common interest (or similar) privilege contained in such information and/or documents.

15.3 The Litigant will immediately notify the Funder if it becomes aware, or believes, that the Solicitor is intending not to, or has failed to, act in accordance with its instructions in respect of the Legal Action.

15.4 The Solicitor will immediately notify the Funder if it becomes aware, or believes, that the Litigant is intending not to, or has failed to, follow its or Counsel's legal advice in respect of the Legal Action.

15.5 The Solicitor will, and the Litigant hereby irrevocably instructs the Solicitor to:

- (a) provide to the Funder not later than 5pm on the 10th day of each calendar month commencing from the first full calendar month after the date of this Agreement a monthly written report (each such report, a **"Monthly Report"**) on the status of the Legal Action at such time and each Monthly Report:
 - (i) shall be provided every month during the continuance of the Legal Action, substantially in the form set out in Schedule 2 (*Form of Monthly Report*); and
 - (ii) shall remain subject to legal professional privilege and common interest privilege;
- (b) at the same time as the Solicitor provides the Monthly Report, deliver to the Funder any update or anticipated update to the estimated Legal Action Costs (and the reasons therefor); and
- (c) comply and co-operate in all respects and on a timely basis with all requests relating to, and all requirements of, any ATE Insurance (and keep the Funder apprised of all such requests and requirements) in making any insurance claim under any ATE

Insurance to ensure the prompt payment of any such insurance claim by the provider of any ATE Insurance.

15.6 Each of the Litigant and the Solicitor:

- (a) grants the Funder (and its advisers) absolute authority to monitor and/or verify the application of any Drawdown; and
- (b) gives the Funder and its advisers (where appropriate and subject to maintaining confidentiality and privilege) the opportunity at reasonable times and on reasonable notice (and at the Litigant's cost) to attend (whether physically or via (video) conference call) in relation to the Legal Action:
 - (i) any material discussions with the Solicitor and/or Counsel;
 - (ii) any material conference or consultation with Counsel;
 - (iii) any material meetings with the Litigant's expert witnesses; and
 - (iv) any Alternative Dispute Resolution process or any without prejudice meeting.

16. **INDEMNITIES**

16.1 The Litigant shall, within three (3) Business Days of demand, indemnify the Funder against any cost, expense, loss or liability incurred by the Funder as a result of:

- (a) the occurrence of any Potential Termination Event or any Termination Event;
- (b) any failure by it or the Solicitor (acting on the Litigant's instructions), to apply the Proceeds in accordance with this Agreement and the Priorities Deed on its due date or any other breach by it, or the Solicitor (acting on the Litigant's instructions), in the performance of any of the obligations expressed to be assumed by it under the Finance Documents;
- (c) funding, or making arrangements to fund, a Drawdown requested by the Litigant in a Drawdown Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Funder alone) or otherwise acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
- (d) a failure by the Litigant to comply with any of its obligations under clause 5 (*ATE Insurance*) (which indemnity shall include any costs incurred by the Funder as a result of any failure by the Litigant to comply with the terms of the ATE insurance and/or any adverse costs that the Funder is, or may be, ordered to pay as a result of any shortfall arising as a result of the Litigant failing to make a claim on the ATE Insurance) or clause 17 (*Costs and Expenses*);
- (e) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Funder by the Finance Documents or by law;

- (f) the Funder investigating any event (including by instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as it considers necessary) which it reasonably believes is a Potential Termination Event or a Termination Event;
 - (g) any proceedings instituted by or against the Funder as a consequence of it entering into this Agreement or any other Finance Document; or
 - (h) any dispute by the Litigant or the Solicitor in respect of this Agreement or any other Finance Document.
- 16.2 Without prejudice to the generality of clause 16.1, the Litigant shall indemnify the Funder, within three (3) Business Days of demand, in the event that the Funder is held liable at any time in respect of any indemnity costs payable due to the conduct of the Solicitor and/or Counsel and/or the Litigant and/or any experts instructed in connection with the Legal Action.
- 16.3 If any sum payable to the Funder by the Litigant, or the Solicitor on behalf of the Litigant, under the Finance Documents (a “**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency in which that Sum is payable into sterling in order to apply the Proceeds in accordance with this Agreement and the Priorities Deed, the Litigant shall, within three (3) Business Days of demand, indemnify the Funder against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- 16.4 Each of the Litigant and the Solicitor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.
- 17. **COSTS AND EXPENSES**
- 17.1 The Litigant shall be liable to pay the Funder the amount of all costs and expenses (including legal fees) together with any applicable VAT incurred by it in connection with:
 - (a) any actual or proposed amendment of or waiver or consent under or in connection with this Agreement or any other Finance Document; and
 - (b) the preservation or exercise (or attempted preservation or exercise) of any rights under or in connection with, and the enforcement (or attempted enforcement) of, this Agreement and any other Finance Document.
- 17.2 Any amount of costs and expenses detailed in clause 17.1 may, upon request by the Litigant and with the consent of the Funder, be included in the Legal Action Costs.
- 18. **DUTY OF CONFIDENTIALITY**
- 18.1 Each Party agrees that it will treat as confidential and, save as expressly authorised by this Agreement, will not disclose to any third party without the express prior written approval of the other Party/ies, or unless required by applicable law or regulations of any governmental or regulatory authority or ordered to do so by a court of competent jurisdiction, any information or documentation in connection with this Agreement or any other Finance Document that is not

already in the public domain that is disclosed to it by the other Party/ies and that it will treat as confidential (and subject to common interest privilege (which it will take all reasonable steps to maintain)) all communications between itself and the Litigant and/or the Solicitor (including communications pre-dating the date of this Agreement).

18.2 Notwithstanding clause 18.1, any Party may disclose such information or documentation in connection with this Agreement or any other Finance Document to its or its Affiliate's directors, officers, employees, advisers and any other providers of funding and any insurers (in each case, including their respective (or their Affiliate's) directors, officers, employees, advisers). The Funder may also make such disclosure:

- (a) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under this Agreement, as set out in clause 21 (*Assignment and Transfer*);
- (b) with (or through) whom it enters into (or may potentially enter into) any sub-participation in relation to, or any other transfer under which payments are to be made by reference to, this Agreement or the Litigant, as set out in clause 21 (*Assignment and Transfer*); or
- (c) to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation.

18.3 The Parties agree and acknowledge that the provision of privileged information and documents to the Funder is not intended to waive or diminish, and shall not waive or diminish, in any way the confidentiality and privilege that subsists in them subject to the provisions of clause 18.2.

18.4 Each Party shall use all reasonable endeavours to procure that each Party to whom disclosure of information of the type referred to in clause 18.2 is made will put in place reasonable measures to maintain the confidentiality and privilege of the same.

18.5 Each Party shall inform the other Parties as soon as reasonably practicable of any application or request by a third party for the disclosure of any information or documentation in connection with this Agreement or any other Finance Document and, unless each other Party consents to such disclosure, agrees to resist such disclosure and assert to the maximum extent possible claims to confidentiality, common interest privilege and/or legal professional privilege.

19. LITIGANT TO RETAIN SOLE CONDUCT OF THE LEGAL ACTION

19.1 Notwithstanding the obligations of the Litigant under this Agreement to provide information about the Legal Action to the Funder, and subject to the remainder of this clause 19 (*Litigant to Retain Sole Conduct of the Legal Action*), the Litigant, as advised by the Solicitor and Counsel, shall (i) have complete control over the conduct of the Legal Action and (ii) the right to conduct the Legal Action as it considers appropriate, including the right to:

- (a) agree to a Settlement Offer on any terms it considers appropriate subject to clause 11.5(g)(i);
- (b) abandon, withdraw, stay or discontinue the Legal Action or any part of the Legal Action;

- (c) pursue the Legal Action against the Opponent to trial or appeal or defend any such appeal;
 - (d) institute or participate in any process of Alternative Dispute Resolution; and/or
 - (e) take all such actions that it considers appropriate to enforce any Settlement or any judgment, award or order obtained in or related to the Legal Action.
- 19.2 The Litigant shall not give instructions to, or take any steps which cause, or would be reasonably likely to cause, the Solicitor or Counsel to act in breach of their professional duties whether under the SRA Standards and Regulations or the Bar Code of Conduct (or, in either case, any equivalent code of conduct in any other applicable jurisdiction) or otherwise. The Litigant shall not take any action in respect of the Legal Action that, in the reasonable assessment of the Solicitor or Counsel, would have, or would be reasonably likely to have, a Material Adverse Effect, nor will it act against the advice of the Solicitor or Counsel at any time, unless to do so would, in the reasonable assessment of the Funder and/or any provider of ATE Insurance, result in a Material Adverse Effect.
- 19.3 Subject to clause 11.5(g)(i), the Litigant shall have the right, but not the obligation, to consult with the Funder about any step in the Legal Action, and following any such consultation, the Litigant shall be entitled to follow or disregard any opinions offered by the Funder in connection with any aspect of the Legal Action.

20. **TERMINATION EVENTS**

- 20.1 Each of the events or circumstances set out in this clause 20.1 is a Termination Event:
- (a) the Litigant (or the Solicitor on behalf of the Litigant) fails to apply any Proceeds in accordance with this Agreement and the Priorities Deed, in each case, when due and payable thereunder;
 - (b) the Litigant and/or the Solicitor commits any breach or fails to observe any provision of this Agreement or any other Finance Document (other than that referred to in clause 20.1(a) above) save that no Termination Event under this clause 20.1(b) will occur if the failure to comply is, in the Funder's sole opinion, capable of remedy and is remedied to the Funder's satisfaction within five (5) Business Days of the earlier of (i) the Funder giving notice to the Litigant and/or the Solicitor and (ii) the Litigant or the Solicitor becoming aware of the failure to comply;
 - (c) any representation, warranty or statement made by the Litigant and/or the Solicitor under or pursuant to this Agreement or any other document delivered by or on behalf of the Litigant or the Solicitor under or in connection with this Agreement is, or proves to have been, incorrect or misleading in any respect when made or deemed to be made or repeated unless the failure to comply is, in the Funder's sole opinion, capable of remedy, and is remedied to the Funder's satisfaction within five (5) Business Days of the earlier of (i) the Funder giving notice to the Litigant and/or the Solicitor and (ii) the Litigant or the Solicitor becoming aware of the failure to comply;
 - (d) any financial indebtedness of the Litigant is not paid when due or within any

originally applicable grace period or is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described) or any creditor of the Litigant becomes entitled to declare any financial indebtedness of the Litigant due and payable prior to its specified maturity as a result of an event of default (however described);

- (e) the Litigant admits its inability, ceases, threaten to cease, or becomes unable to pay its debts as they fall due (within the meaning of Section 123 of the Insolvency Act 1986) or make or propose a composition or arrangement with some or all of its creditors, or any analogous procedure or step is taken in any other jurisdiction³;
- (f) the Solicitor admits its inability, ceases, threaten to cease, or becomes unable to pay its debts as they fall due (within the meaning of Section 123 of the Insolvency Act 1986) or make or propose a composition or arrangement with some or all of its creditors, or any analogous procedure or step is taken in any other jurisdiction and the Litigant has not replaced the Solicitor in accordance with clause 22 (*Replacement of Solicitor or Counsel*) within thirty (30) Business Days of such admission by the Solicitor;
- (g) any corporate action is taken or any proceedings are commenced for the Litigant's bankruptcy, winding-up or for the appointment of an administrator, receiver, trustee or similar officer over any or all of the Litigant's assets or any such appointment is made, or any analogous procedure or step is taken in any jurisdiction (other than any winding-up petition or any legal proceeding, procedure or step preliminary to a winding-up petition in respect of the Litigant which is frivolous or vexatious and is discharged, stayed or dismissed within thirty (30) Business Days of commencement);
- (h) any corporate action is taken or any proceedings are commenced for the Solicitor's bankruptcy, winding-up or for the appointment of an administrator, receiver, trustee or similar officer over any or all of the Solicitor's assets or any such appointment is made, or any analogous procedure or step is taken in any jurisdiction (other than any winding-up petition or any legal proceeding, procedure or step preliminary to a winding-up petition in respect of the Solicitor which is frivolous or vexatious and is discharged, stayed or dismissed within 21 days of commencement) and the Litigant has not replaced the Solicitor in accordance with clause 22 (*Replacement of Solicitor or Counsel*) within thirty (30) Business Days of such admission by the Solicitor;
- (i) the Litigant rejects a Settlement Offer contrary to the advice given by the Solicitor or Counsel (and, in the case of conflicting advice from the Solicitor and Counsel, contrary to the advice of Counsel) or is in breach of the terms of any ATE Insurance in respect of any Settlement Offer;
- (j) the Litigant settles, abandons, withdraws or discontinues the Legal Action, contrary to the advice of the Solicitor or Counsel (and, in the case of conflicting advice from the Solicitor and Counsel, contrary to the advice of Counsel);

³ This clause does not apply where the Legal Action is in relation to an insolvency dispute, where the Litigant is a court-appointed Insolvency Practitioner exercising control over an insolvent company.

- (k) the Litigant rescinds or repudiates, or evidences an intention to rescind or repudiate, this Agreement, any other Finance Document or the Solicitor Fee Agreement (in each case to which it is party);
- (l) the Litigant is, or, in the Funder's reasonable opinion, will be, unable to fund either any amount which is not a Legal Action Cost, or any amount over and above the Investment Amount, in each case, necessary to achieve a Successful Outcome and to recover all Proceeds;
- (m) the Litigant or the provider of any ATE Insurance cancels, discontinues or terminates any ATE Insurance for any reason or any ATE Insurance otherwise lapses or is discontinued or is voided or is treated as invalid or the provider of any ATE Insurance otherwise considers itself discharged from all liability under any ATE Insurance, in each case, as a result of any act or omission by or on behalf of the Litigant or the Solicitor;
- (n) any provider of ATE Insurance declines, or evidences an intention to decline, cover, whether in whole or in part, under any ATE Insurance in accordance with its terms;
- (o) there is or, in the Funder's reasonable opinion, there will be, a material adverse change to the merits of the Legal Action and/or prospects of a Successful Outcome (including as to quantum) by reason of the Litigant's or the Solicitor's negligence, misconduct or breach of contract;
- (p) the Litigant appoints a new solicitor or counsel otherwise than in accordance with clause 22 (*Replacement of Solicitor or Counsel*) of this Agreement;
- (q) the Funder and the Litigant do not agree upon the appointment of a Replacement Solicitor or a Replacement Counsel (as applicable) under and in accordance with clause 22 (*Replacement of Solicitor or Counsel*) of this Agreement; or
- (r) any party to the Priorities Deed (other than the Funder) fails to comply with the provisions of, or does not perform its obligations under, the Priorities Deed and, if non-compliance is capable of remedy, it is not remedied within five (5) Business Days of the earlier of the Funder giving notice to that party or that party becoming aware of the non-compliance.

20.2 At any time following the occurrence of a Termination Event which is continuing, the Funder may, without prejudice to its continuing rights under clause 20.3, by notice to the Litigant:

- (a) cancel the Investment Amount whereupon it shall immediately be cancelled and the Funder shall have no further obligations to fund the Litigant under this Agreement;
- (b) declare that all or part of the Drawn Investment Amount be immediately due and payable, together with all accrued interest thereon whereupon such amount shall become immediately due and payable;
- (c) exercise any or all of its rights, remedies, powers or discretions under the Finance Documents; and/or

- (d) require the Litigant to make an insurance claim under any ATE Insurance if ATE Insurance remains in place and insofar as the ATE Insurance is applicable.
- 20.3 Notwithstanding any notice served, or action taken, by the Funder pursuant to clause 20.2 following a Termination Event or pursuant to clause 20.4, or as a result of clause 7 (*Illegality*) or any notice served, or action taken, by the Litigant pursuant to clause 2.11 and, in each case, any payment of the Drawn Investment Amount (and accrued interest thereon) made to the Funder:
 - (a) the Litigant and the Solicitor will each be under a continuing obligation:
 - (i) to use their respective best endeavours to achieve a Successful Outcome and to recover all Proceeds, and to notify the Funder promptly if a Successful Outcome is achieved, together with (if applicable) the detailed terms of any Settlement;
 - (ii) to comply with clause 15 (*Information and Access*) in all respects; and
 - (iii) to notify the Funder immediately if, in respect of the Legal Action, there is a Settlement (together with the detailed terms of any such Settlement), a Settlement Offer, or if there is a Successful Outcome; and
 - (b) if there is a Successful Outcome or if any Proceeds are received prior to a Successful Outcome, the Litigant (and the Solicitor on behalf of the Litigant) will remain liable to pay to the Funder, in addition to the Drawn Investment Amount, all amounts payable under and in accordance with clause 6 (*Funder Returns*) to which the Funder would have been entitled in accordance with this Agreement as if no such Termination Event had occurred and no notice served or action taken by the Funder pursuant to clause 20.2 following a Termination Event, pursuant to clause 20.4 or as a result of clause 7 (*Illegality*) or any notice served, or action taken, by the Litigant pursuant to clause 2.11.
- 20.4 If, at any time, there is, or the Funder reasonably believes that there will be, a material adverse change to the merits of the Legal Action and/or the prospects of a Successful Outcome and/or the recovery of all Proceeds, other than by reason of the Litigant's or the Solicitor's negligence, misconduct or breach of contract, the Funder may, by notice to the Litigant or the Solicitor:
 - (a) cancel the Investment Amount whereupon it shall immediately be cancelled and the Funder shall have no further obligations to fund the Litigant under this Agreement;
 - (b) declare that all or part of the Drawn Investment Amount be immediately due and payable, together with all accrued interest thereon, whereupon such amount shall become immediately due and payable; and/or
 - (c) exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

21. ASSIGNMENT AND TRANSFER

- 21.1 The Funder may at any time assign all or any of its rights, or transfer by novation or sub-participate all or any of its rights and obligations under the Finance Documents to another financial institution, individual, trust, fund or corporate entity in part or in whole at its sole discretion save where it would be unlawful for the potential assignee to receive the benefit of any rights or perform any of the Funder's obligations under the Finance Documents.
- 21.2 The rights of the Litigant under this Agreement are personal to it and, accordingly, they are not capable of assignment or transfer.
- 21.3 Neither the Solicitor nor Counsel may at any time assign all or any of its respective rights, or transfer by novation or sub-participate all or any of its respective rights and obligations under the Finance Documents to another Solicitor or Counsel (as applicable). Any replacement of the Solicitor or Counsel shall only be made in accordance with clause 22 (*Replacement of Solicitor or Counsel*).

22. **REPLACEMENT OF SOLICITOR OR COUNSEL**

- 22.1 The Litigant may, subject to the conditions set out in this clause 22 (*Replacement of Solicitor or Counsel*):
- (a) replace the Solicitor and instruct and appoint a new firm of solicitors to act on its behalf in respect of the Legal Action, pursuant to, and in accordance with, clause 21 (*Assignment and Transfer*) of this Agreement (such new firm of solicitors being, the "**Replacement Solicitor**"); and/or
 - (b) instruct the Solicitor to instruct and appoint new Counsel to act on its behalf in respect of the Legal Action (such new counsel being, the "**Replacement Counsel**").
- 22.2 If the Litigant elects to replace the Solicitor or to instruct the Solicitor to instruct and appoint new Counsel in accordance with clause 22.1 above, the Litigant:
- (a) must provide at least thirty (30) Business Days (or such shorter period as the Funder may agree) written notice to the Funder before it ends its retainer with the Solicitor or the Solicitor's retainer with Counsel, provided that no such written notice may in any circumstances be delivered to the Funder within the period of thirty (30) Business Days of any hearing in relation to the Legal Action and any notice so delivered in such period will be deemed to have been delivered on the Business Day following such hearing; and
 - (b) must clearly set out the reasons for the Litigant's reasons for wishing to end its retainer with the Solicitor or the Solicitor's retainer with Counsel;
 - (c) must consult with the Funder when determining which proposed Replacement Solicitor or Replacement Counsel to instruct and appoint; and
 - (d) prior to any such instruction or appointment, the Litigant must obtain the Funder's prior written approval to such instruction or appointment.

22.3 The Funder may, by giving notice to the Litigant, require the Litigant to end its retainer with the Solicitor and instruct and appoint a Replacement Solicitor as soon as practicable if:

- (a) any representation, warranty or statement made by the Solicitor under or pursuant to this Agreement, as set out in clause 12 (*Representations, Warranties and Covenants of the Solicitor*) is untrue or becomes untrue in any material respect or the Solicitor otherwise fails to comply with its obligations under any Finance Document which is materially adverse to the interests of the Funder;
- (b) the Solicitor fails to conduct the Legal Action reasonably and/or in a proper and timely manner and/or acts, or evidences an intention to act, in any way in relation to the Legal Action without due regard to the Overriding Objectives (as defined and set out at Part 1.1 of the Civil Procedure Rules), or, if applicable, in breach of any equivalent procedural rules in the relevant court of the applicable jurisdiction;
- (c) the Solicitor fails to take all reasonable steps to mitigate any circumstances which arise and which would result in the Legal Action Costs increasing by more than the estimated Legal Action Costs set out in Schedule 1 (*Legal Action Costs*) (as updated from time to time), and has not remedied the situation to the satisfaction of the Funder (at its sole discretion) by promptly funding the shortfall at no expense, cost or disadvantage to the Funder or the Litigant;
- (d) the Solicitor fails to comply with any order made by a court in the Legal Action or to comply with any of its obligations under the SRA Standards and Regulations or, if applicable, in accordance with any equivalent procedural rules in the relevant court of any applicable jurisdiction;
- (e) a Termination Event occurs (and is continuing) under clause 20.1(f) or clause 20.1(h); or
- (f) the Solicitor ceases or threatens to cease to carry on its business as a law firm or there is a material change in the nature of its business which has or might be reasonably likely to have a material adverse effect on the Legal Action or the rights of the Funder under any Finance Document.

22.4 As part of the consultation process referred to in clause 22.2, the following must be delivered to the Funder:

- (a) written confirmation from the proposed Replacement Solicitor that it has no conflict in acting for the Litigant in the Legal Action;
- (b) evidence that the proposed Replacement Solicitor has an appropriate level of legal experience (determined in the reasonable opinion of the Funder) in similar matters to the Legal Action;
- (c) evidence that the proposed Replacement Solicitor has an appropriate level of professional indemnity cover;
- (d) a written statement of the proposed fee estimate of the proposed Replacement Solicitor which shall be at a rate that is consistent with such fees/expenses generally

payable at the relevant time for the provision of legal services for the Legal Action or which is otherwise acceptable to the Funder; and

- (e) a copy of a conditional fee arrangement, contingency agreement, damages-based agreement or other similar fee agreement between the Litigant and the Replacement Solicitor in a form satisfactory to the Funder and which, unless the Funder otherwise agrees at its sole discretion, provides that the Replacement Solicitor shall receive less than 50% of the total estimated fees in the event of an Unsuccessful Outcome,

in each case, in form and substance satisfactory to the Funder.

- 22.5 If the Funder agrees to the appointment of the Replacement Solicitor, following the consultation process referred to above, the Litigant must procure that the Replacement Solicitor delivers to the Funder a duly completed and executed Accession Deed, that the Replacement Solicitor accedes to the Priorities Deed and that the Funder receives all of the documents and other evidence as may be required by it, in each case, in form and substance satisfactory to the Funder.
- 22.6 The Funder shall notify the Litigant and the Replacement Solicitor promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence referred to in clause 22.4 above.
- 22.7 The Funder may, by giving notice to the Litigant and the Solicitor, require the Solicitor to end its retainer with Counsel and instruct and appoint Replacement Counsel if Counsel:
 - (a) fails to conduct the Legal Action reasonably, or in a proper and timely manner; or
 - (b) fails to comply with any order made by a court in the Legal Action.
- 22.8 In circumstances:
 - (a) where the Funder and the Litigant do not agree upon the appointment of a Replacement Solicitor within twenty (20) Business Days of any notice given by the Litigant pursuant to clause 22.2 or by the Funder to the Litigant pursuant to clause 22.3 (as applicable); or
 - (b) where the Funder, the Litigant and the Solicitor do not agree upon the appointment of Replacement Counsel within twenty (20) Business Days of the notice given by the Funder to the Litigant and the Solicitor pursuant to clause 22.7,

the Funder will notify the Litigant and/or the Solicitor that a Termination Event has occurred and the Funder shall be immediately entitled to enforce its rights under clause 20 (*Termination Events*) of this Agreement.

23. NOTICES

- 23.1 Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by email.
- 23.2 The address and email address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made

or delivered under or in connection with this Agreement is that identified with its name below, or any substitute address, email address or department or officer as any Party may notify to the other Parties by not less than ten (10) Business Days' notice.

Funder

Name: LIONFISH LITIGATION FINANCE LTD
Address: c/o Foresight Group LLP, The Shard, 32 London Bridge Street, London SE1 9SG, United Kingdom
Email: tets.ishikawa@lflf.co.uk / tanya.lansky@lflf.co.uk
Contact: TETSUYA ISHIKAWA / TANYA LANSKY

Solicitor

Name: [•]
Address: [•]
Email: [•]
Contact: [•]

Litigant

Name: [•]
Address: [•]
Email: [•]
Contact: [•]

- 23.3 Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective and will be deemed received if delivered by way of email, when actually received in the inbox of the recipient in readable form.
- 23.4 A notice or other communication given as described in this clause 23 (*Notices*) on a day which is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.
- 23.5 Promptly upon receipt of notification of an email address, or change of email address, or changing its email address, each Party will promptly notify the other Parties.
- 23.6 Any notice given, or document provided, under or in connection with this Agreement must be in English or if not in English, and if so required by the Funder, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

24. MISCELLANEOUS PROVISIONS

- 24.1 If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any laws of any applicable jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.
- 24.2 The obligations of the Litigant and the Solicitor under this Agreement do not apply to any obligation to the extent that it would result in any provision (including, without limitation, any clause, sub-clause or paragraph) of this Agreement, constituting an unlawful obligation based on the 2023 ruling of the Supreme Court in R (on the application of PACCAR Inc and others)

(Appellants) v Competition Appeal Tribunal and others.

- 24.3 No failure to exercise, nor any delay in exercising, on the part of the Funder, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 24.4 Any term of this Agreement may be amended only with the written consent of each Party and any such amendment will be binding on all Parties.
- 24.5 Each Party (other than the Funder) shall promptly execute all documents and do all things (including the execution and delivery of any notice and instructions) that the Funder may reasonably specify (and in such form as the Funder may reasonably require) for the exercise of any rights, powers and remedies in favour of the Funder under this Agreement or by law.
- 24.6 This Agreement (and each other Finance Document to which they are party) are the entire agreement between the Parties concerning the subject matter of this Agreement. Any prior arrangement, agreement, representation or undertaking is superseded and, except as expressly provided, each Party acknowledges that it has not relied on any arrangement, agreement, representation or understanding not expressly set out in this Agreement.
- 24.7 This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
- 24.8 Where the Funder receives a request in writing from the Litigant (or the Solicitor on behalf of the Litigant) under this Agreement to give any consent or waiver hereunder, it shall use its reasonable endeavours to reply to any such request within ten (10) Business Days of receipt of such request provided that, if the Funder fails to so respond, the Funder will not be deemed to have given its consent and the provisions of this clause 24.8 are, in any event, without prejudice to the Funder's right to refuse any such request at its sole discretion.
- 24.9 In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the Funder are prima facie evidence of the matters to which they relate.
- 24.10 Any certification or determination by the Funder of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.
- 24.11 The Parties agree that any document, information or evidence which the Litigant or the Solicitor transfers to the Funder shall be subject to common interest privilege.
- 24.12 For the avoidance of doubt, and to the extent necessary, no waiver of privilege is intended or made by referring to the Solicitor Fee Agreement, any ATE Insurance or the Priorities Deed in this Agreement, and any such referral shall not waive or diminish in any way, the confidentiality and privilege that subsists in such documents or arrangements.
- 24.13 The Solicitor shall procure that any person that the Funder agrees shall become an Additional Litigant after the date of this Agreement must deliver to the Funder a duly completed and

executed Accession Deed evidencing that the Additional Litigant accedes to this Agreement, the Priorities Deed and any other Finance Document together with any other documents and other evidence as may be required by the Funder, in each case, in form and substance satisfactory to the Funder.

- 24.14 Any interest accruing under a Finance Document will accrue from day to day and the amount of any such interest is calculated on the basis of the actual number of days elapsed and a year of 360 days and shall be rounded to 2 decimal places.

25. **GOVERNING LAW AND DISPUTE RESOLUTION**

- 25.1 This Agreement and any non-contractual obligations arising out of it or any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

- 25.2 The Parties shall act in good faith in seeking to resolve any complaint or dispute arising out of or in connection with this Agreement (a “**Dispute**”) and each Party shall be obliged to attend a meeting (which may be in person or by video/telephone conference) with the other Party/ies on the first reasonably and mutually convenient date called for by any Party upon not less than five (5) Business Days prior written notice.

- 25.3 If the Parties do not, or are unable to, resolve any Dispute between them following such meeting, they may, subject at all times to clause 25.4 below, at their sole discretion and without prejudice to the resolution of the Dispute, agree to submit such Dispute to an expert, in which case the following provisions shall apply:

- (a) the Parties shall, acting in good faith, agree in writing on the appointment of an expert to determine the Dispute and on the terms of the expert’s appointment provided that any such expert appointed under this Agreement shall be a King’s Counsel of [●] or [●] or such other Chambers set as is agreed between the Parties;
- (b) any expert appointed under this Agreement is required to prepare a written decision on the applicable Dispute and give notice (including a copy) of such decision to the Parties within a reasonable period and in any event within six weeks of the Dispute being referred to the expert;
- (c) if any expert appointed under this Agreement in respect of any Dispute dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:
 - (i) the Parties may, acting in good faith, agree in writing on the appointment of a replacement expert to determine the Dispute and on the terms of such replacement expert’s appointment provided that any such replacement expert appointed under this Agreement shall be a King’s Counsel of [●] or [●] or such other Chambers set as is agreed between the Parties; and
 - (ii) the provisions of this clause 25.3 apply in relation to the new expert as if he or she were the first expert appointed;

- (d) all matters under this clause must be conducted, and the expert's decision shall be, in English and in writing, and all matters concerning the process and result of the determination of any Dispute by the appointed expert shall be kept confidential among the Parties and the expert;
- (e) in the case of any Dispute where an expert has been appointed, the Parties are entitled to make submissions to the expert including oral submissions and will provide or procure that other third parties provide the expert with such assistance and documents as the expert reasonably requires for the purpose of reaching a decision, and each Party shall with reasonable promptness supply each other Party with all information and give each other access to all documentation as the other Parties reasonably require to make a submission under this clause;
- (f) any expert appointed under this Agreement shall act as an expert and not as an arbitrator and shall determine the dispute in question which may include any issue involving the interpretation of any provision of disagreement;
- (g) the expert's fees and any costs properly incurred by him or her in arriving at his or her determination including any fees and costs of any advisers appointed by the expert shall be borne by the Parties in such proportions as the expert shall direct; and
- (h) the expert's written decision on the matters referred to him or her (including his or her determination of any fees and costs) shall be final and binding on the Parties in the absence of manifest error or fraud.

25.4 Following delivery of the expert's written decision to the Parties in accordance with clause 25.3 above and any Party claiming (and providing written evidence of such claim) in writing to each of the other Parties that the expert's written decision is invalid due to manifest error or fraud, such Party may, without prejudice to the resolution of any Dispute, refer (in consultation with each other Party) any Dispute, including but not limited to any question regarding this Agreement's existence, validity or termination, to arbitration under The London Court of International Arbitration Rules (the "**LCIA Rules**"), which LCIA Rules are deemed to be incorporated by reference into this clause 25.4, in which case the following provisions shall apply:

- (a) this Agreement shall be so referred and shall be finally resolved by the LCIA Rules;
- (b) the number of arbitrators shall be one;
- (c) the seat, or legal place, of arbitration shall be London; and
- (d) the language to be used in the arbitral proceedings shall be English.

26. [SERVICE OF PROCESS]⁴

26.1 Without prejudice to any other mode of service allowed under any relevant law, the Litigant

⁴ Include if relevant.

(other than a Litigant incorporated in England and Wales):

- (a) irrevocably appoints the Solicitor as its agent for service of process (and the Solicitor hereby accepts such appointment) in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the relevant Party of the process will not invalidate the proceedings concerned.

26.2 If the appointment by any Party of the person mentioned in clause 26.1 above ceases to be effective, the Litigant shall immediately appoint another person in England as its agent for service of process in relation to any proceeding before the English Courts in connection with this Agreement (or any other Finance Document). If the Litigant fails to do so (and that failure continues for a period of not less than fifteen (15) Business Days), the Funder shall be entitled to appoint such a person by a notice to the relevant Party.

27. **EXECUTION**

This Agreement has been entered into on the date stated at the beginning of this Agreement.

EXECUTION PAGES

<p><u>FUNDER</u></p> <p>Signed by</p> <p>for and on behalf of LIONFISH LITIGATION FINANCE LIMITED</p>	<p>.....</p> <p>DIRECTOR</p>
<p><u>LITIGANT</u></p> <p>Signed by [PRINT NAME]</p> <p>for and on behalf of [LITIGANT]</p>	<p>.....</p> <p>[DIRECTOR]</p>
<p><u>SOLICITOR</u></p> <p>Signed by [PRINT NAME]</p> <p>for and on behalf of [SOLICITOR]</p>	<p>.....</p> <p>[PARTNER]</p>

SCHEDULE 1
Legal Action Costs

SAMPLE

SCHEDULE 2
Form of Monthly Report

Case Name: _____

Date of Litigation Funding Agreement: _____

Current Status including the current stage of proceedings in the Legal Action	
Progress Update including Material Developments since the last report, including Directions Orders and applications	
Details of how Material Developments impact the Legal Action	
Any Developments in respect of Settlement	
Estimated Settlement Date / Window	
Changes in Expected Legal Action Costs (please provide reasons)	
Changes in Prospects of the Legal Action	
Any material change in expert or witness evidence	
Any material change to the financial standing of the Opponent	
Any change to the estimated adverse cost exposure	

Potential Security for Costs Application (if so, how much)		
Expected Recovery		
Acceptable Settlement to Client		
Procedural Stages / Directions	[CMC/Disclosure/Exchange of Witness Statements/Experts/Trial]	[Date]
	[Ibid]	[Date]
	[Ibid]	[Date]
Any additional comments, material information or noteworthy points		
Investment Amount		
Drawn Investment Amount		
Upcoming Estimated Drawdown Requests	Current month	£
	Following month	£
	Month after	£

SCHEDULE 3
Form of Drawdown Request

From: [●] as Litigant
To: LionFish Litigation Finance Limited as Funder
CC: [●] as Solicitor
Dated: _____

Dear Sirs,

Litigation Funding Agreement
dated _____ (the "Agreement")

1. We refer to the Agreement. This is a Drawdown Request. Terms defined in the Agreement have the same meaning in this Drawdown Request unless given a different meaning in this Drawdown Request.
2. We wish to make a Drawdown from the Investment Amount on the following terms:

Proposed Drawdown Date: / /
Amount: £ _____
3. We confirm that each condition specified in clauses 3.1(b) and 3.1(c) of the Agreement is satisfied on the date of this Drawdown Request.
4. The proceeds of this Drawdown should be credited to the below Solicitor's Client Account:

Client Account Name:
Sort Code:
Account Number:
5. [Attached to this form are copies of the invoices / expenses and other costs which the Drawn Investment Amount will be used to pay, subject to your satisfactory verification.]
6. [Attached is an updated copy of the expected breakdown and drawdown schedule of the Legal Action Costs remaining in the Legal Action.]
7. This Drawdown Request is irrevocable.

Yours faithfully

.....
Authorised Signatory for
[name of Litigant]

SCHEDULE 4
Form of Accession Deed

To: **LionFish Litigation Finance Limited** as Funder
And **[●]** as Litigant
From: [Replacement Solicitor]/[Additional Litigant]
Dated:

Dear Sirs

Litigation Funding Agreement
dated _____ (the “Agreement”)

1. We refer to the Agreement. This is an Accession Deed. Terms defined in the Agreement have the same meaning in this Accession Deed unless given a different meaning in this Accession Deed.
2. [Replacement Solicitor]/[Additional Litigant] agrees to accede to the Agreement and to become [the Solicitor]/[an Additional Litigant] and to be bound by the terms of the Agreement as [the Solicitor pursuant to [clause 22 (*Replacement of Solicitor or Counsel*) of the Agreement]/[an Additional Litigant] [and further agrees to accede to the Priorities Deed and to become [the Solicitor]/[an additional Litigant] and to be bound by the terms of the Priorities Deed as [the Solicitor]/[an additional Litigant].
3. [Replacement Solicitor]/[Additional Litigant] is a [limited liability partnership duly incorporated under the laws of [name of relevant jurisdiction]].
3. [The/Each] Litigant confirms that no Termination Event or Potential Termination event is continuing or would occur as a result of [Replacement Solicitor becoming the Solicitor]/[the Additional Litigant acceding to the Agreement as a Litigant].
4. [Replacement Solicitor’s]/[Additional Litigant’s] administrative details are as follows:
Address:
Email:
Attention:
5. This Accession Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

This Accession Deed is signed on behalf of the Funder, the Litigant and executed as a deed by the [Replacement Solicitor]/[Additional Litigant] and is delivered on the date stated above.

LionFish Litigation Finance Limited

[●] as Litigant

Executed as a deed

[[Replacement Solicitor]/[Additional Litigant]
[add deed execution clause]

SAMPLE