

DISCLAIMER – PLEASE READ

This document has been made available by LionFish Litigation Finance Limited (“we”, “us” and “our”) following your acceptance of the Terms of Use available at <https://www.lflf.co.uk/terms-of-use/> (“Terms of Use”).

This document is part of a suite that consists of example versions of a litigation funding agreement, a priorities deed and an assignment deed. They are only made available by way of download on the basis of acceptance of our Terms of Use and acknowledgment that all documents in this suite are intended for illustrative purposes only for the person(s) who have accepted said terms (“you”). Neither this document, nor any of those contained in the suite, may be distributed, published or reproduced (in whole or in part) for any purpose by you except as specifically permitted in our Terms of Use.

For ease, core elements of our Terms of Use, which you have already accepted, are repeated below:

This document is intended for professional advisers (including solicitors, barristers, accountants, forensic experts, insurers and insurance brokers) located and carrying out business in England and Wales. Any other users of this document do so at their own risk.

We remain the sole owners or licensees of all intellectual property rights in this document which are protected by copyright laws and treaties globally. All such rights are reserved by us and our licensors.

This document may be used in connection with your personal affairs, or the affairs of clients where you are engaged by them in a professional capacity with respect to a litigation/arbitration claim or potential litigation/arbitration claim.

You may download this document to your computer or device.

You may copy this document for your own use, and may only distribute it, in an unmodified form, internally within your organisation. If you would like a third party outside your organisation to use all or any substantial part of this document, please direct them to our website in order for them to download their own copy directly. You may not grant any sublicences of this document.

You must not modify this document in any way, including removing or altering any watermarks, trademarks, disclaimers or by using any illustrations, photographs, video/audio sequences or any graphics separately from any accompanying text.

Our status (and that of any identified contributors) as the authors of this document must always be acknowledged.

You must not use any part of this document for any commercial purposes without obtaining a specific licence to do so from us.

If you use any part of this document in breach of these terms of use, your right to use this document will cease immediately and you must return (or, if we request, destroy) any copies of it which you have made.

NO RELIANCE ON INFORMATION

This document:

- is provided for the purposes of illustration and general information only;

- is not intended to amount to an offer, solicitation, or encouragement of an offer to provide any goods or services whatsoever;
- is not an agreement to enter into any transaction;
- is not a representation of the terms, conditions, pricing or any other factor on which any funding will or may be made available or that funding will be available, or that any application will be considered;
- does not restrict us in any way with respect to the information which we may request with respect to any application for funding, or any services we may consider offering; and
- is not intended to amount to any legal, financial, taxation or any other form of advice on which you should rely.

You must obtain professional or specialist advice before taking, or refraining from taking, any action on the basis of the contents on this document.

We will require, as a precondition to us diligencing any application for funding, that you have appointed professional legal advisers, suitably qualified in the UK or other applicable jurisdiction, to advise you in relation to the application for funding and all related documentation (including but not limited to this document). We may require them to certify to us that they have advised you in this regard.

We make no representations, warranties or guarantees, whether express or implied, that this document is accurate, complete, up-to-date, error-free, or fit for any particular purpose (whether or not that purpose has been notified to us).

LIMITATION OF OUR LIABILITY

Nothing in this disclaimer excludes or limits our liability for death or personal injury arising from our negligence, or our fraud or fraudulent misrepresentation, or any other liability that cannot be excluded or limited by English law.

This document is provided for free on an “as is” basis and without any warranty, representation or other terms as to its suitability, completeness or accuracy in any respect.

To the fullest extent permitted by law, we exclude all conditions, warranties, representations or other terms which may apply to this document or our making it available via our website or otherwise, whether express or implied.

We will not be liable to you or any other user of this document for any loss or damage, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, even if foreseeable, arising under or in connection with the use of, or inability to use, this document, or any use of or reliance (whether by you or any person informed by you) on this document.

We will not be liable for any loss of profits, sales, business, or revenue, nor for business interruption, loss of anticipated savings, loss of business opportunity, goodwill or reputation, nor for any indirect or consequential loss or damage arising from your use of this document.

THIS DISCLAIMER IS GOVERNED BY ENGLISH LAW AND IS SUBJECT TO the exclusive jurisdiction of the courts of England and Wales.

DATED

20[●]

[LITIGANT]

[SOLICITOR]

LIONFISH LITIGATION FINANCE LIMITED

[FUNDER2]

[FUNDER3]

[INSURER 1]

[INSURER 2]

PRIORITIES DEED

Ref: [●]

THIS PRIORITIES DEED 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**”);
- (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, United Kingdom, SE1 9SG (“**Funder1**”);
- (4) [●], a company incorporated and registered in England and Wales with company number [●] whose registered office is at [●] (“**Funder2**”); and
- (5) [●], a company incorporated and registered in England and Wales with company number [●] whose registered office is at [●] (“**Funder3**”, and together with Funder1 and Funder2, the “**Funders**” and each a “**Funder**”)
- (6) [INSURER 1], a company incorporated and registered in England and Wales with company number [●] whose registered office is at [●] [acting as duly authorized underwriting agent for [●], a company incorporated and registered in England and Wales with company number [●] whose registered office is at [●] (“**Insurer1**”); and
- (7) [INSURER 2], a company incorporated and registered in England and Wales with company number [●] whose registered office is at [●] (“**Insurer2**”),

(together the “**Parties**” and each a “**Party**”, and the Litigant, the Solicitor, Insurer1 and Insurer2, together the “**Subordinated Parties**”).

RECITALS

- (A) The Litigant has a Legal Action against the Opponent.
- (B) In connection with the Legal Action, the Litigant has, on or about the date of this Deed:
 - (i) entered into a litigation funding agreement with the Funders and the Solicitor (the “**Litigation Funding Agreement**”);
 - (ii) taken out a contract of insurance from Insurer1 [and/or Insurer2] which provides insurance cover to the Litigant in relation to the Legal Action (the “**ATE Insurance**”); and
 - (iii) entered into a fee agreement with the Solicitor (the “**Solicitor Fee Agreement**”),

(each of the Litigation Funding Agreement, the ATE Insurance and the Solicitor Fee Agreement are hereinafter collectively referred to as the “**Funding Agreements**”).

- (C) The Parties have agreed to set out in this Deed the order and ranking of their respective entitlement to payments under the Funding Agreements from the Proceeds.
- (D) It is intended that this document takes effect as a deed notwithstanding the fact that a Party may only execute this document under hand.

WHEREBY IS IT AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Save as expressly defined in this Deed, capitalised terms defined in the Litigation Funding Agreement shall have the same meaning when used herein. The following definitions apply in this Deed (including the Recitals):

“Adverse Costs Order” means any adverse costs order made in favour of the Opponent against the Litigant during, or at the conclusion of, the Legal Action.

“ATE Insurance” has the meaning given to such term in the Recitals.

“Business Day” means a day (other than a Saturday, Sunday or bank holiday) when banks are open for general business in London.

“Client Account” means the segregated client account of the Solicitor which from time to time holds or will hold:

- (a) all amounts advanced by the Funders under the Litigation Funding Agreement; and
- (b) all Proceeds.

“Enforcement Action” means, in relation to any Liabilities, any action whatsoever to:

- (a) demand payment, declare prematurely due and payable or otherwise seek to accelerate payment of, or place on demand, all or any part of such Liabilities;
- (b) demand payment, declare prematurely due and payable or otherwise seek to accelerate payment of or place on demand all, or any part, of such Liabilities;
- (c) recover all or any part of such Liabilities (including by exercising any rights of set-off or combination of accounts);
- (d) exercise or enforce directly or indirectly any rights under or pursuant to the provisions of any guarantee,

surety or any security document or other document (including the crystallisation of any floating charge) in relation to or given in support of all or any part of such Liabilities;

- (e) petition for (or take any other steps which may lead to) an Insolvency Event in relation to the Litigant; or
- (f) commence or support legal proceedings against the Litigant.

“Funder’s Account” means a Funder’s bank account (or, if applicable, the client account of a Funder’s solicitor) as notified by a Funder to the other Parties (and/or any of them) from time to time.

“Funding Agreements” has the meaning given to such term in the Recitals.

“Insolvency Event” means any event where:

- (a) the Litigant admits its inability, ceases, threatens 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
- (b) the Litigant makes or proposes a composition or arrangement with some or all of its creditors; or
- (c) any corporate action is taken or any proceedings are commenced for the Litigant’s 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 other jurisdiction, provided that no Insolvency Event shall be deemed to have occurred where the Legal Action is in relation to an insolvency dispute and where the Litigant is a court-appointed Insolvency Practitioner exercising control over an insolvent company.

“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 [●].

“Liabilities” means all present and future liabilities and obligations due, owing or incurred by the Litigant to the Parties (or any of them) pursuant to the Funding Agreements (including all Proceeds allocated in accordance with this Deed), in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety.

“Litigation Funding Agreement” has the meaning given to such term in the Recitals.

1.2 Interpretation

The following rules of interpretation apply in this Deed.

- (a) Clause and schedule headings in this Deed are for ease of reference only and shall not affect its interpretation.
- (b) Any references in this Deed 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 Deed to:
 - (i) this Deed, any other Funding Agreement or any other agreement, instrument or document is a reference to that agreement, instrument or document as amended, novated, supplemented, replaced, extended or restated (however fundamentally) 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 Deed and any personal representative (if relevant);
 - (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, inter-governmental 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; and
 - (viii) any Schedules shall be treated as an integral part of this Deed and references to this Deed shall include the Schedules.
- (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 Deed 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 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 Deed 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).
- 1.3 Unless expressly provided to the contrary in this Deed, 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 Deed. Notwithstanding any term of this Deed, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.
- 1.4 Where the Litigant comprises two or more persons, the obligations of all persons named as Litigant under the Funding Agreements are joint and several so that each Litigant will be responsible for satisfying all of the Litigant’s obligations under the Funding Agreements and will be liable under the Funding Agreements both individually and collectively, and any reference to the Litigant in this Deed and any other Funding Agreement 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 Funders or any Funder any amount under this Deed or any other Funding Agreement, those Funders are, or that 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 no Funder is required to take action against more than one Litigant where it is able to recover what is owed to it from one Litigant alone.
- 1.5 All payments to be made under or pursuant to this Deed shall be discharged in sterling and shall be calculated and made without (and free and clear of any deduction for) set-off or counterclaim.
- 1.6 This Deed is intended to take effect as a deed notwithstanding the fact that a Party may only execute this Deed under hand.
2. **RANKING AND APPLICATION OF PROCEEDS**
- 2.1 It is agreed that the entitlement of the Parties to the payment of all and any Proceeds due to them pursuant to the Funding Agreements will rank in right and priority of payment in the following order:
- (a) firstly (if applicable), to pay any sum required to be paid under any Adverse Costs Order (after taking into account any amount in relation to any such Adverse Costs Order that has been, or is to be, paid directly to the Opponent by Insurer1 [and Insurer2];

- (b) secondly, to pay each Funder on a pari passu basis their respective Drawn Investment Amount in full, being the aggregate amount of capital advanced by each Funder to the Litigant under the Litigation Funding Agreement;
 - (c) thirdly, to pay each Funder on a pari passu basis [●] per cent. (%) of their respective allocation of the balance of the Funder Returns (as advised by the Funder's Representative);
 - (d) fourthly, to pay on a pari passu basis (in proportion to the respective amounts owing to each of them):
 - (i) each Funder on a pari passu basis their respective allocation of the balance of the Funder Returns (as advised by the Funder's Representative), together with any other amounts owing to the Funders under the Litigation Funding Agreement; and
 - (ii) Insurer 1 [and Insurer2 on a pari passu basis] any amounts owing under the ATE Insurance;
 - (e) fifthly, to pay the Solicitor and the Litigant their respective unpaid disbursements (if any) on a pari passu basis;
 - (f) sixthly, to pay the Solicitor the Solicitor Overrun Charges (if any);
 - (g) seventhly, to pay the Solicitor its unbilled work in progress (other than any Solicitor Overrun Charges) at the Solicitor's standard hourly rates;
 - (h) eighthly, to pay the Solicitor the Solicitor's success fees (if any) howsoever defined; and
 - (i) ninthly, to pay the Litigant any remaining balance.
- 2.2 For the avoidance of doubt, each level of payment referred to in clause 2.1 shall be paid in full and in order until all available funds have been paid out, even if this means later entitlements are not paid.
- 2.3 Notwithstanding any provision of this Deed postponing, subordinating or preventing the payment of any Liabilities owing to the Parties (or any of them), such Liabilities shall remain due and payable in accordance with their respective terms.
- 2.4 The ranking and priority provided for in this clause 2 (*Ranking and Application of Proceeds*) shall apply regardless of:
- (a) the date upon which any Liabilities arose;
 - (b) whether a person is obliged to advance any such Liabilities;
 - (c) the date or order of execution, registration, filing or giving of notice of any document; or

- (d) any fluctuations in the amount of, or any intermediate discharge in whole or in part of, any Liabilities.
- 2.5 Each Party undertakes to each of the other Parties to observe the provisions of this Deed at all times and not in any way to prejudice the enforcement of such provisions.
- 2.6 The Solicitor shall promptly upon request provide each other Party with evidence of the payments made, or to be made, under and in accordance with this Deed.
- 2.7 Any amount payable to the Funders by the Solicitor or any other Party under this Deed shall be paid to the applicable Funder's Account.

3. **PROCEEDS**

- 3.1 Pending payment in accordance with this Deed, all Proceeds paid in to the Client Account will be held by the Solicitor on trust for the benefit of the Parties and in accordance with the provisions of this Deed.
- 3.2 The Litigant hereby irrevocably authorises and instructs the Solicitor (and the Solicitor hereby undertakes) to receive the Proceeds on the Litigant's behalf into the Client Account and shall use its best endeavours to facilitate the prompt and direct transfer of the Proceeds to the Client Account. If the Litigant receives any Proceeds directly (including, without limitation, any amounts receivable pursuant to a claim under any ATE Insurance and/or any amounts of compensation from the Financial Services Compensation Scheme), it shall upon receipt hold all such amounts on trust for the benefit of the Parties, and immediately pay such amounts into the Client Account whereupon such amounts shall be held by the Solicitor on trust for the benefit of the Parties pending payment to the Parties in accordance with, this Deed.

4. **UNDERTAKINGS**

4.1 **Undertakings of the Litigant and the Solicitor**

- (a) The Litigant and the Solicitor undertake that:
 - (i) except with the prior written consent of the other Parties, they will not:
 - (A) make any payment or distribution in respect of, or on account of, the Liabilities other than as set out in this Deed;
 - (B) discharge any of the Liabilities by set-off, combination of accounts or otherwise;
 - (C) create or permit to subsist any security over any of their respective assets for any of the Liabilities other than in favour of the Funders;
 - (D) give any financial support (including, without limitation, the giving of any guarantee, indemnity or other assurance against financial loss, the making of any deposit or the taking of any participation) to any person for or in connection with any of the Liabilities; or

- (E) take or omit to take any action which would or might, directly or indirectly, result in the ranking and/or subordination of the Liabilities being prejudiced or impaired in any respect; and
- (ii) where an insurance and/or litigation funding broker is instructed by them in connection with the Legal Action, they will ensure that the relevant broker confirms in writing to them that it considers that the order and ranking of the relevant broker's entitlement to payments from the Proceeds in accordance with the Funding Agreements as set out in clause 2 (Ranking and Application of Proceeds) is broadly in line with the order and ranking of proceeds on other transactions of this nature and in the prevailing market as at the date of this Deed.

4.2 Undertakings of the Subordinated Parties

- (a) No Subordinated Party will, other than in accordance with the ranking and priority as set out in this Deed:
 - (i) demand, receive or take any action to receive any payment or distribution in respect of or on account of, the Liabilities;
 - (ii) discharge all or any of the Liabilities by set-off, combination of accounts or otherwise;
 - (iii) receive or permit to subsist any security for all or any of the Liabilities other than in favour of the Funders;
 - (iv) receive or permit to subsist any financial support (including without limitation, any guarantee, indemnity or other assurance against financial loss, deposit or participation) from any person for or in connection with all or any of the Liabilities; or
 - (v) take or omit to take any action which might, directly or indirectly, result in the ranking and/or subordination of the Liabilities provided for in this Deed being prejudiced or impaired in any respect.

5. TURNOVER

5.1 If at any time:

- (a) any Subordinated Party receives or recovers a payment or distribution of any kind in respect of, or on account of, any of the Liabilities in breach of this Deed;
- (b) any Subordinated Party receives or recovers any Proceeds or other amount pursuant to any Enforcement Action;
- (c) any of the Liabilities owing to any Subordinated Party are discharged by set-off, combination of accounts or otherwise; or

- (d) the Litigant or any other person makes any payment or distribution of any kind to any Subordinated Party in respect of, or on account of, the purchase or other acquisition of any of the Liabilities,

which, in any such case, is not made in accordance with clause 2 (*Ranking and Application of Proceeds*) or with the consent of the Parties,

that Subordinated Party will:

- (i) if it actually receives the amount discharged, distributed, set-off or combined or purported to be discharged, distributed, set-off or combined, hold the same to the order of the Solicitor (acting in accordance with the Solicitor's undertaking under clause 4.1) for application in or towards payment of the Liabilities under this Deed and will promptly pay the same to the Client Account whereupon it shall be held on trust by the Solicitor in accordance with this Deed pending application in or towards payment of the Liabilities under this Deed; and
- (ii) if it does not for any reason actually receive the amount discharged, distributed, set-off or combined or purported to be discharged, distributed, set-off or combined, promptly pay an amount equal to the amount discharged or purported to be discharged to the Client Account whereupon it shall be held on trust by the Solicitor in accordance with this Deed pending application in or towards payment of the Liabilities under this Deed.

- 5.2 None of the Liabilities owing to any Subordinated Party shall be deemed to have been reduced or discharged in any way or to any extent by any payment or distribution to the Funders under clause 5 (*Turnover*) or clause 6 (*Subordination on Insolvency*).

6. SUBORDINATION ON INSOLVENCY

- 6.1 Upon the occurrence of an Insolvency Event, any payment or distribution of, or in respect of, any Liabilities owing to any Party (or to which any Party would have been entitled, but for this clause 6.1, to receive from the Litigant or from any liquidator, administrator, receiver, administrative receiver or similar insolvency practitioner appointed in relation to the Litigant or its assets, as applicable) shall be paid in accordance with clause 2 (*Ranking and Application of Proceeds*).
- 6.2 If any payments are received by any Party in breach of clause 6.1, the recipient shall immediately pay (and where appropriate the Parties shall procure that such recipient shall immediately pay) all such receipts to the Client Account for application in accordance with clause 2 (*Ranking and Application of Proceeds*) and, pending such payment, the recipient will hold those amounts to the order of the Solicitor (acting in accordance with the Solicitor's undertakings under clause 4.1).

7. SUSPENSE ACCOUNT

7.1 Until the Funders are satisfied that all amounts owing to it under the Litigation Funding Agreement have been irrevocably paid to it, the Funders may:

- (a) apply any monies received by them under this Deed to any item of account or liability in respect of the Liabilities owed to it by the Litigant in any order or manner which it may determine; and
- (b) hold any monies received by them under this Deed in a suspense account (bearing interest at a market rate usual for account of that type).

8. PROTECTION OF SUBORDINATION

8.1 The subordination provisions in this Deed constitute a continuing subordination and benefit to the ultimate balance of the Liabilities owing to the Parties regardless of any intermediate payment or discharge of such Liabilities.

8.2 The provisions in this Deed will not be affected by any act, omission, matter or thing which but for this clause 8 (*Protection of Subordination*) would reduce, release or otherwise prejudice the subordination and priorities in this Deed or the obligations of any Subordinated Party or the Litigant under this Deed including, without limitation:

- (a) any time, waiver or consent granted to, or composition with any person;
- (b) any release of any person under the terms of any composition or arrangement;
- (c) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (d) any amendment (however fundamental) or replacement of any Funding Agreement or any other document or security; or
- (e) any unenforceability, illegality or invalidity of any obligation of any person under any Funding Agreement or any other document or security.

8.3 Each Subordinated Party waives any rights they may have of first requiring the Funders to claim payment from any person before claiming the benefit of the subordination provided for under this Deed.

9. NOTICES

9.1 Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by letter or email.

9.2 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 Deed is that identified with its name below, or any substitute address, email address or department or officer as the Party may notify to the other Parties by not less than fourteen (14) 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

Funder2

Name: [●]
Address: [●]
Email: [●]
Contact: [●]

Funder3

Name: [●]
Address: [●]
Email: [●]
Contact: [●]

Solicitor

Name: [●]
Address: [●]
Email: [●]
Contact: [●]

Litigant

Name: [●]
Address: [●]
Email: [●]
Contact: [●]

Insurer1

Name: [●]
Address: [●]
Email: [●]
Contact: [●]

Insurer2

Name: [●]
Address: [●]
Email: [●]
Contact: [●]

- 9.3 Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective and will be deemed received:
- (a) if delivered by way of email, when received in the inbox of the recipient in readable form; or
 - (b) if hand delivered by way of letter at the relevant recipient's address set out above:

- (i) if delivered before 5:30pm on a Business Day, on the Business Day it was left at the relevant address;
 - (ii) if delivered after 5:30pm on a Business Day, on the following Business Day after it was left at the relevant address; and
 - (iii) if delivered at any time on a day other than a Business Day, on the following Business Day after it was left at the relevant address; and
- (c) if delivered by way of letter with postage prepaid in an envelope addressed to the recipient at the address set out above three (3) Business Days after being deposited in the post,

save that any communication or document to be made or delivered to the Funders will be effective only when actually received by the Funders.

9.4 Promptly upon receipt of notification of an address and/or email address, or change of address or email address, or changing its address or email address, each Party will promptly notify the other Parties.

9.5 Any notice given, or document provided, under or in connection with this Deed must be in English or if not in English, and if so required by any Party, 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.

10. MISCELLANEOUS PROVISIONS

10.1 If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of that provision under the law of any other jurisdiction will in any way be affected or impaired.

10.2 No failure to exercise, nor any delay in exercising, on the part of the Funders, any right or remedy under the Priorities Deed 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 Deed are cumulative and not exclusive of any rights or remedies provided by law.

10.3 Any term of this Deed may be amended or waived only with the consent of each Party to this Deed and any such amendment or waiver will be binding on all Parties.

10.4 Each Party (other than the Funders) shall promptly execute all documents and do all things (including the execution and delivery of any notice and instructions) that the Funders may reasonably specify (and in such form as the Funders may reasonably require) for the exercise of any rights, powers and remedies in favour of the Funders under this Deed or by law.

10.5 This Deed constitutes the entire agreement between the Parties concerning the subject matter of this Deed. 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 Deed.

- 10.6 This Deed may be executed in any number of counterparts each of which shall be an original but the counterparts shall together constitute one and the same execution version of this Deed.
- 10.7 Until the Funders are satisfied that all amounts owing to it under the Litigation Funding Agreement have been irrevocably paid to it, no Subordinated Party will be subrogated to or entitled to exercise any of the rights of the Funders.
- 10.8 For the avoidance of doubt, and to the extent necessary, no waiver of privilege is intended or made by referring to the Funding Agreements in this Deed, and any such referral shall not waive or diminish in any way, the confidentiality and privilege that subsists in the Funding Agreements.

11. ASSIGNMENT AND TRANSFER

- 11.1 The Litigant may not assign any of its rights or transfer any of its rights or obligations under this Deed.
- 11.2 The Funders may assign any of its rights or transfer any of its rights or obligations under this Deed provided always that it shall be a precondition of such assignment or transfer that the new Funder accedes to, and/or otherwise agrees to be bound by the terms of, this Deed as a Funder at the same time as such assignment or transfer.
- 11.3 Insurer1 and/or Insurer2 may assign any of its respective rights or transfer any of its respective rights or obligations under this Deed provided always that it shall be a precondition of such assignment or transfer that the new Insurer1 [or Insurer2] accedes to, and/or otherwise agrees to be bound by the terms of, this Deed as Insurer1 [or Insurer2 (as applicable)] at the same time as such assignment or transfer.
- 11.4 The Solicitor may assign any of its rights or transfer any of its rights or obligations under this Deed provided always that it shall be a precondition of such assignment or transfer that the new Solicitor accedes to, and/or otherwise agrees to be bound by the terms of, this Deed as Solicitor at the same time as such assignment or transfer and complies with all provisions of the Litigation Funding Agreement as a Replacement Solicitor.

12. GOVERNING LAW AND DISPUTE RESOLUTION

- 12.1 This Deed 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.
- 12.2 The Parties shall act in good faith in seeking to resolve any complaint or dispute arising out of or in connection with this Deed (a “**Dispute**”) and each affected Party shall be obliged to attend a meeting (which may be in person or by video/telephone conference) with the other affected Party/ies on the first reasonably and mutually convenient date called for by any such Party upon not less than five (5) Business Days prior written notice.
- 12.3 If the affected Parties do not, or are unable to, resolve any Dispute between them, they may, subject at all times to clause 12.4 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 Deed 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 Deed 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 Deed 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 12.3 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 Deed 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 12.3 apply in relation to the new expert as if he were the first expert appointed;
- (d) all matters under this clause 12.3 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 12.3;
- (f) any expert appointed under this Deed 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.

12.4 Following delivery of the expert's written decision to the Parties in accordance with clause 12.3 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 Deed'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 12.4, in which case the following provisions shall apply:

- (a) this Deed 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.

13. **[SERVICE OF PROCESS]¹**

13.1 Without prejudice to any other mode of service allowed under any relevant law, the Litigant (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 Funding Agreement; and
- (b) agrees that failure by a process agent to notify the relevant Party of the process will not invalidate the proceedings concerned.

13.2 If the appointment by any Party of the person mentioned in clause 13.1 above ceases to be effective, it 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 Deed (or any other Funding Agreement). If the Litigant fails to do so (and that failure continues for a period of not less than fifteen (15) Business Days), the Funders shall be entitled to appoint such a person by a notice to the relevant Party.

IN WITNESS WHEREOF this Deed has been executed and delivered as a Deed on the date set out above.

¹ Include if relevant.

EXECUTION PAGES

FUNDER1

EXECUTED as DEED by
LIONFISH LITIGATION
FINANCE LIMITED
acting by its directors

TETSUYA ISHIKAWA

AND

TANYA LANSKY

.....

.....

FUNDER2

EXECUTED as DEED by
[FUNDER2]

acting by its director
[PRINT NAME]
in the presence of:

.....

Witness Name:

.....

Witness Signature:

.....

Witness Address:

.....

.....

.....

Occupation:

.....

FUNDER3

EXECUTED as DEED by
[FUNDER3]

acting by its director

[PRINT NAME]

in the presence of:

Witness Name:

Witness Signature:

Witness Address:

Occupation:

LITIGANT

EXECUTED as DEED by
[LITIGANT]

acting by its director

[PRINT NAME]

in the presence of:

Witness Name:

Witness Signature:

Witness Address:

Occupation:

SOLICITOR

EXECUTED as DEED by
[SOLICITOR]

acting by a duly authorised partner

[PRINT NAME]

in the presence of:

Witness Name:

Witness Signature:

Witness Address:

Occupation:

INSURER1

EXECUTED as DEED by
[INSURER1]

acting by its director

[PRINT NAME]

in the presence of:

Witness Name:

Witness Signature:

Witness Address:

Occupation:

INSURER2

EXECUTED as **DEED** by
[INSURER2]

acting by its director
[PRINT NAME]
in the presence of:

Witness Name:

Witness Signature:

Witness Address:

Occupation:

.....

.....

.....

.....

.....

.....