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**DATED**

**20[●]**

**[INSURED]**

**[INSURER]**

**LIONFISH LITIGATION FINANCE LIMITED**

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**ASSIGNMENT DEED**

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Ref: [●]

**THIS ASSIGNMENT DEED** is dated

20[●] and is made between

## **PARTIES**

- (1) [INSURED], a company incorporated and registered in England and Wales with company number [●] whose registered office is at [●] (“**Insured**”);
- (2) [INSURER], a company incorporated and registered in England and Wales with company number [●] whose registered office is at [●] [acting as duly authorised underwriting agent for [●], a company incorporated and registered in England and Wales with company number [●] whose registered office is at [●] (“**Insurer**”), 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, United Kingdom SE1 9SG (“**Funder**”),

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

## **RECITALS**

- (A) The Insurer (acting as duly authorised underwriting agent for [●]) has incepted the ATE Insurance for the Insured.
- (B) The Funder has agreed to fund certain costs in connection with the Legal Action.
- (C) The Insured has agreed to assign the benefit of any claim paid out under the ATE Insurance to the Funder in accordance with the terms of this Deed.

**WHEREBY IS IT AGREED** as follows:

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

Unless otherwise expressly stated, terms defined in the Litigation Funding Agreement shall have the same meanings when used in this Deed. In this Deed, the following terms shall have the following meanings (including the Recitals):

“ <b>Assignment</b> ”	has the meaning given to it in clause 2.1 ( <i>Assignment</i> ).
“ <b>ATE Insurance</b> ”	means the contract of insurance obtained by the Insured from the Insurer which provides insurance cover to the Insured in respect of the Legal Action.
“ <b>Business Day</b> ”	means a day (other than a Saturday, Sunday or bank holiday) when banks are open for general business in London.
“ <b>Excluded Payments</b> ”	means any payments under the ATE Insurance in respect of adverse costs that become due and payable to the Opponent

pursuant to any adverse costs order.

- “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.
- “Legal Action”** means the claim for damages, and all associated proceedings in relation to such claim, which the Insured has against the Opponent, known as [●] in the [●] with case number [●].
- “Litigation Funding Agreement”** means the litigation funding agreement dated on or about the date of this Deed between, amongst others, the Litigant and the Funder.
- “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 claimant, 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.
- “Related Rights”** means all rights, titles, benefits and interests of the Insured under or pursuant to the ATE Insurance including, for the avoidance of doubt:
- (a) the right to demand, sue for, recover, receive, retain and give receipts for any amount owing under the ATE Insurance; and
  - (b) the right to receive the benefit of all payments received after the date of this Deed from the Insurer made under or pursuant to the ATE Insurance.

## 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 and any other agreement, instrument or document referred to in this Deed 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;
  - (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; 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 cause 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 This Deed is intended to take effect as a deed notwithstanding the fact that a Party may only execute this Deed under hand.

## 2. **ASSIGNMENT**

- 2.1 The Insured absolutely and unconditionally assigns to the Funder all of its right, title, benefit and interest, present and future, in and to the ATE Insurance, including the benefit of any claim or loss paid or payable under the ATE Insurance whether in respect of any premium, any Own Costs and Disbursements (as defined in the ATE Insurance) or otherwise, together with all Related Rights (the “**Assignment**”), and the Funder hereby accepts the Assignment and acknowledges that it is subject to the terms and conditions of the ATE Insurance including, but not limited to, any limit of indemnity stated therein. The Assignment shall take effect on the date of this Deed without the requirement for further formality.

- 2.2 By entering into this Deed:

- (a) the Insured confirms that, with effect from the date of, and subject to the terms of, this Deed, all rights, interests and benefits whatsoever accruing to or for the benefit of the Insured arising from the ATE Insurance (including all rights to compel performance) belong to, and are exercisable by, the Funder;
- (b) the Insured hereby gives notice of the Assignment to the Insurer (which the Insurer hereby acknowledges) and, with effect from the date of this Deed, the Insured instructs the Insurer (i) to disclose to the Funder, without further approval from the Insured, such information regarding the ATE Insurance as the Funder may from time to time request and (ii) to send to the Funder copies of all notices and any other correspondence issued by the Insurer under the ATE Insurance;
- (c) the Insured instructs the Insurer (and the Insurer hereby agrees) (i) to pay all amounts payable under the ATE Insurance (other than any Excluded Payments) directly to the Funder in accordance with the terms of this Deed in discharge of all and any costs of the Insured in connection with the Legal Action that have been funded by the Funder and the Parties agree that payment of such monies by the Insurer to the Funder shall be a sufficient and complete discharge of all of the Insurer’s obligations to the Insured under the ATE Insurance and (ii) in the case of any Excluded Payments, to pay any Excluded Payments to or for the account of the Opponent in accordance with the terms of any applicable adverse costs order; and
- (d) the Insured instructs the Insurer (and the Insurer hereby agrees) to pay all amounts payable to the Funder in accordance with the terms of this Deed directly to the Funder’s Account.

## 3. **FURTHER ASSURANCE AND INDEMNITY**

The Insured shall, at its cost, at any time as required by the Funder, execute such further assignments, transfers, assurances and documents in favour of the Funder as the Funder may from time to time reasonably require to give effect to the Assignment and to enable the full benefit of the Assignment to vest in the Assignee.

#### 4. NOTICES

- 4.1 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.
- 4.2 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 hereunder is that identified with its name above (in the case of delivery by post or by hand) and below (in the case of email), or any substitute address, email address or department or officer as the Party may notify to each of 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, United Kingdom, SE1 9SG  
Email: Tets.Ishikawa@lflf.co.uk / Tanya.Lansky@lflf.co.uk  
Contact: TETSUYA ISHIKAWA / TANYA LANSKY

##### **Insured**

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

##### **Insurer**

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

- 4.3 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; or

- (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 Funder will be effective only when actually received by the Funder.

- 4.4 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.

- 4.5 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.

## 5. MISCELLANEOUS PROVISIONS

- 5.1 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.
- 5.2 No failure to exercise, nor any delay in exercising, on the part of the Funder, any right or remedy hereunder 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.
- 5.3 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.
- 5.4 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 Deed or by law.
- 5.5 This Deed is 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.
- 5.6 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.
- 5.7 For the avoidance of doubt, and to the extent necessary, no waiver of privilege is intended or made by referring to the Litigation Funding Agreement in this Deed, and any such referral shall not waive or diminish in any way, the confidentiality and privilege that subsists in the Litigation Funding Agreement.

- 5.8 The Funder shall not have any duty or obligation to make any representation, warranty or disclosure of any nature, express or implied (such duty and obligation being expressly waived by the Insurer).
- 5.9 The Funder shall have no liability of any nature to the Insurer for any information provided by (or on behalf of) the Insured and any such information provided by, or non-disclosure by, (or on behalf of) the Insured shall not be a ground or grounds for avoidance of the Insurer's obligations to pay any claim to the Funder.

## 6. GOVERNING LAW AND DISPUTE RESOLUTION

- 6.1 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.
- 6.2 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 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.
- 6.3 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 6.4 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 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 6.3 apply in relation to the new expert as if he 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 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.

6.4 Following delivery of the expert's written decision to the Parties in accordance with clause 6.3 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 6.4, 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.

## 7. **[SERVICE OF PROCESS]**<sup>1</sup>

7.1 Without prejudice to any other mode of service allowed under any relevant law, the Insured

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<sup>1</sup> Include if relevant

(other than an Insured 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.

7.2 If the appointment by any Party of the person mentioned in clause 7.1 above ceases to be effective, the Insured 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. If the Insured 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.

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

**EXECUTION PAGES**

**FUNDER**

**EXECUTED as DEED by**  
**LIONFISH LITIGATION**  
**FINANCE LIMITED**  
acting by its director  
**TETSUYA ISHIKAWA**

**AND**

**TANYA LANSKY**

.....  
  
.....

**INSURED**

**EXECUTED as DEED by**  
**[INSURED]**

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

Witness Name:

Witness Signature:

Witness Address:

Occupation:

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**INSURER**

**EXECUTED** as **DEED** by  
**[INSURER]**

acting by its director

**[PRINT NAME]**

in the presence of:

Witness Name:

Witness Signature:

Witness Address:

Occupation:

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