

**LCM FUNDING UK LIMITED**

**AND**

**DAVID ROWNTREE**

**FUNDING AGREEMENT**

**As amended and restated by way of a deed of confirmation  
dated 23 February 2024**

**LITIGATION FUNDING AGREEMENT** dated 14 September 2021 and amended and restated by way of Deed of Confirmation dated 23 February 2024

**BETWEEN**

**LCM Funding UK Limited** of Bridge House, 181 Queen Victoria Street, London EC4V 4EG (company number 12365749) (the "**Funder**")

**AND**

**David Rowntree** of [REDACTED] (the "**Claimant**")

(together the "**Parties**", and each a Party)

**RECITALS**

- A. The Claimant is bringing a claim on behalf of the Class Members against the Defendant for money, compensation, damages, interest and/or other relief in the Action and is entitled to pursue the Action.
- B. Together with an independent solicitor, the Solicitors have advised the Claimant as to the available options for funding the Action. That advice has included advice on after-the-event ("ATE") insurance, conditional fee agreements ("CFAs"), self-funding, external funding and the cost, advantages and disadvantages of each. That advice has also included advice on the funding terms contained herein which represented, in the professional opinion of the Solicitors, the best terms that are understood to be presently available on the market.
- C. The Claimant's solicitors engaged a firm of funding advisors who advised the Claimant that the terms contained herein represent the best terms that the market would offer.
- D. The Claimant is of the view, after carefully considering the advice from the Solicitors and other professional advisers, that it is in the best interests of the Class Members to progress the Action and enter into this Agreement.
- E. The Funder intends to provide the Claimant with financial assistance in respect of the Action.
- F. In consideration of the Funder's financial assistance, the Parties intend that certain payments will be made to the Funder in accordance with this Agreement.

**OPERATIVE PROVISIONS**

**1. TERMS**

In this Agreement, unless the context otherwise requires:

1.1. "**Action**" means, as regards the Claim, as applicable:

1.1.1. Proceedings before a Tribunal;

1.1.2. Steps taken for, or in, a settlement negotiation or mediation under CAT Rule 94;

- 1.1.3. Proceedings to enforce an Award and/or collect any Recovery; and/or
- 1.1.4. Any appeal if the Funder has issued an Appeal Funding Confirmation Notice pursuant to clause 10.

1.2. **“Action Costs”** means:

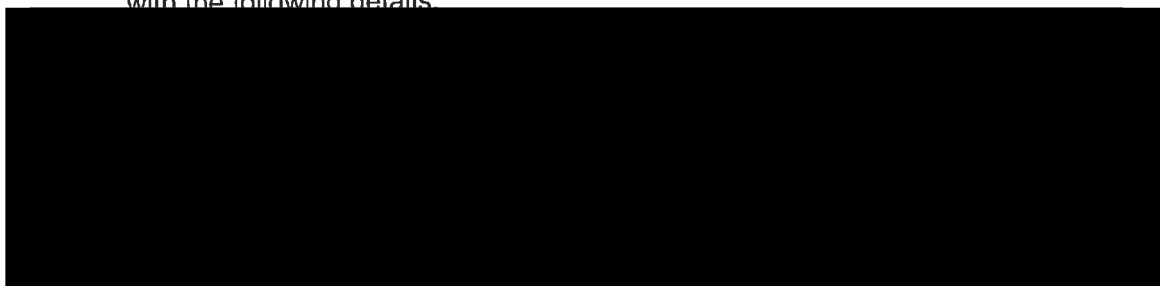
- 1.2.1. The reasonable costs and expenses incurred by the Claimant in pursuit of the Action comprising:
  - 1.2.1.1. The fees and disbursements charged by the Solicitors excluding any conditional element;
  - 1.2.1.2. The fees and disbursements charged by Counsel excluding any conditional element;
  - 1.2.1.3. The fees and expenses of economists, accountants, fact and expert witnesses and other professionals;
  - 1.2.1.4. The Claimant's share of any mediation or settlement costs if so agreed to be paid with the Defendant;
  - 1.2.1.5. Any premiums, taxes, duties or other costs associated with any policy of ATE Insurance that are paid by the Funder;
  - 1.2.1.6. The costs of any litigation support services reasonably required for the efficient pursuit of the Action;
  - 1.2.1.7. The Claimant's reasonable compensation for his time in relation to his involvement in the Action and reasonable expenses;
  - 1.2.1.8. Filing and all other fees and incidental fees of any applicable Tribunal;
  - 1.2.1.9. Any costs incurred by the Claimant in relation to this Agreement, including its negotiation, preparation, administration, amendment or waiver and/or enforcement or attempted enforcement;
  - 1.2.1.10. Any VAT on the above costs and expenses not lawfully recoverable and recovered by the Claimant;
  - 1.2.1.11. Any costs incurred by the Claimant in relation to any discontinuance of the Action.
- 1.2.2. All reasonable costs and expenses (including legal fees, barrister or solicitor fees, expert or consultant fees, disbursements, travel and accommodation costs) incurred by the Funder in relation to:
  - 1.2.2.1. The conduct of Due Diligence;
  - 1.2.2.2. The Action;
  - 1.2.2.3. Monitoring the progression of the Claim and the Action Costs;

- 1.2.2.4. This Agreement, including its negotiation and preparation, administration, amendment or waiver and/or enforcement or attempted enforcement;
- 1.2.2.5. The costs of any Expert Determination under clause 14; and
- 1.2.2.6. Quantifying any Adverse Costs application and/or order.
- 1.2.3. Any other costs, including any amount deemed to be an Action Cost pursuant to clause 5.4, paid by the Funder pursuant to this Agreement.
- 1.3. **"Adverse Costs"** means the Defendant's costs in the Action which a Tribunal orders the Claimant or the Funder to pay or that the Claimant agrees to pay with the Funder's written consent, including VAT and interest on costs.
- 1.4. **"Appeal"** means each and every appeal made in respect of any Award in the Action.
- 1.5. **"Appeal Funding Confirmation Notice"** means a written notice provided by the Funder to the Claimant pursuant to clause 10.3.
- 1.6. **"Associate"** means an associate within the meaning of section 435 of the Insolvency Act 1986 or any subsidiary or holding company, or any other subsidiary of any holding company, of a party, and for the purposes of this definition "subsidiary" and "holding company" shall have the same meaning as in section 1159 of the Companies Act 2006.
- 1.7. **"ATE Insurance"** means an after-the-event insurance policy in respect of the Action.
- 1.8. **"Award"** means any judgment, order (whether interim or final) or award of the Tribunal made in respect of the Action.
- 1.9. **"Budget"** means the budget agreed between the Parties in respect of Action Costs to be incurred pursuant to clause 1.2.1 only of this Agreement.
- 1.10. **"Business Day"** means a day that is not a Saturday, Sunday or public holiday in England.
- 1.11. **"Capital Deployed"** means at any time the whole or any of the following:
  - 1.11.1. Action Costs paid by the Funder;
  - 1.11.2. Adverse Costs paid or payable by the Funder (notwithstanding the provisions of clause 5.1 of this Agreement); and
  - 1.11.3. Any security for Adverse Costs paid or payable by the Funder (notwithstanding the provisions of clause 5.4 of this Agreement) in connection with the Action, (including by way of funding the cost of ATE Insurance or a Deed of Indemnity).

A certificate signed by any then director of the Funder as to the total and/or composition of the Capital Deployed on a certain date is sufficient evidence of the matter unless proved incorrect.

- 1.12. **"CAT"** means the Competition Appeal Tribunal.

- 1.13. **"CAT Rules"** means the Competition Appeal Tribunal Rules 2015, S.I. 2015/1648, as amended from time to time.
- 1.14. **"Claimant"** means David Rowntree. For the avoidance of doubt, any Class Members other than David Rowntree are excluded from this definition.
- 1.15. **"Claim"** means the claim for opt-out competition law damages in respect of an alleged breach of competition law against the Defendant.
- 1.16. **"Claim Information"** means any legal advice, information, communications and documents disclosed to, provided to, generated by or exchanged between the Parties and/or the Solicitors in relation to the Action.
- 1.17. **"Claims Administrator"** means a company that processes Class Members' claims for their damages pursuant to CAT Rule 93(1)-(3) or CAT Rules 94-97.
- 1.18. **"Claimant's Appeal"** means the Claimant's appeal from an Award that is not in favour of the Claimant (in whole or in part).
- 1.19. **"Class Member"** has the meaning set out in Rule 73(2) of the CAT Rules.
- 1.20. **"Collective Settlement Approval Order"** means an order of the CAT approving a proposed collective settlement within the meaning of and under CAT Rule 94(1).
- 1.21. **"Collections Account"** means the bank account in the name of the Funder with the following details:



- 1.22. **"Confidential Information"** means any confidential or proprietary information disclosed by a Party or their representatives to the other Party and that Party's representatives including, but not limited to any information relating to:
- (a) the Disclosing Party or their Associates, including the existence or terms of this Agreement, the Funder's involvement in the subject matter of this Agreement and the discussions and negotiations prior to entry into this Agreement;
  - (b) the Action, including the names of the parties and potential other parties, experts and witnesses involved in the Action, persons interviewed or otherwise involved in the Action, the factual, legal, technical, economic and financial background, and the procedural status, theories, strategies and tactics for the prosecution or defence and the details of any settlement or potential settlement;
  - (c) financial or fee arrangements, financial statements, accounts or other similar information or materials;
  - (d) algorithms, computer databases, computer programs, computer software and systems, intellectual property, trade secrets, trademarks,

research, scientific data, specifications, technical data, techniques and technology; and

(e) other proprietary or non-public information, data or material,

(and regardless of whether such information is written or oral, irrespective of the form or storage medium, or specifically identified as "Confidential"), provided that Confidential Information does not include information that: (i) was or becomes generally available to the public other than as a result of a disclosure by the Recipient; (ii) was available to the Recipient on a non-confidential basis prior to its disclosure; or (iii) was developed independently of the information derived from the Confidential Information.

- 1.23. **"Costs Budgeting and Claim Monitoring Services"** means the Funder's review of the Action Costs and thereafter its continuous monitoring of the Claim and the Action Costs on the basis of Monthly Reports and other information provided to the Funder.
- 1.24. **"Counsel"** means Mark Brealey KC of Monckton Chambers and/or any other Kings Counsel and Mr David Went and Mr Tom St Quintin and/or any other Junior Counsel retained by the Claimant or the Solicitors in relation to the Action.
- 1.25. **"Deed of Indemnity"** means a deed whereby an insurer or the Funder indemnifies the Defendant in respect of part or all of its costs of the Action on terms satisfactory to the Funder in its absolute discretion.
- 1.26. **"Defendant"** means The Performing Right Society Limited (company number 00134396) and / or other companies or other legal entities that may reasonably be named as a Defendant in the Action.
- 1.27. **"Defendant's Appeal"** means the Defendant's appeal from an Award that is in favour of the Claimant (in whole or in part).
- 1.28. **"Disclosing Party"** means the party who discloses or makes available Confidential Information to the other party.
- 1.29. **"Due Diligence"** means the investigations and tasks carried out by the Funder into the circumstances and merits of the Claim, and the financial standing of the Claimant and the Defendant.
- 1.30. **"Effective Date"** means 14 September 2021.
- 1.31. **"Funder's Fee"** means the fees due to the Funder calculated in accordance with Clause 9, including Capital Deployed and the applicable multiple(s) on Capital Deployed.
- 1.32. **"Funding Advisors"** means Exton Advisors Limited (company number 10976291) with registered office 46 Gresham Street, London, EC2V 7AY.
- 1.33. **"Funding Advisors Engagement Letter"** means the engagement letter between the Funding Advisors and the Claimant dated on or 16 February 2024
- 1.34. **"Funding Limit"** means £13,529,900 (including VAT and any ATE Insurance Premium and Insurance Premium Tax) and is the total amount the Funder will provide in accordance with the Budget pursuant to this Agreement or such other sum as the Parties may from time to time agree.

- 1.35. **"Funding Notice"** means the funding notice to be provided to the Funder in a form agreed by the Claimant and the Funder.
- 1.36. **"Irrevocable Instructions"** means an irrevocable instructions letter to be provided by the Claimant to the Solicitors.
- 1.37. **"Monthly Report"** means the monthly report to be provided to the Funder to enable the Funder to provide Costs Budgeting and Claim Monitoring Services.
- 1.38. **"Principal Fee Earner(s)"** means Julian Maitland-Walker and Adrian Render, of the Solicitors.
- 1.39. **"Priorities Deed"** means the priorities deed to be entered into between the Funder, the Claimant, the Solicitors, Counsel, the Funding Advisors and any ATE Insurance providers setting out the priority order for paying the sums due to each of them from any Recovery made.
- 1.40. **"Recipient"** means the party which receives Confidential Information from another party.
- 1.41. **"Recovery"** means all and any amounts received by or on behalf of the Claimant and/or Class Members, or to which the Claimant and/or Class Members is/are or become(s) entitled (whether paid or liable to be paid by the Defendant, or otherwise) related to or arising out of the Claim or the Action, including, for the avoidance of doubt, any and all amounts related to or arising out of the Claim or the Action and:
- 1.41.1. Any Award, settlement or compromise;
  - 1.41.2. Any Award, settlement or compromise in respect of interest and/or costs;
  - 1.41.3. Any capital sum or income;
  - 1.41.4. The value of any releases or other consideration or benefits of whatever form received by the Claimant and/or Class Members;
  - 1.41.5. Any interest earned on sums posted as security for Adverse Costs;
  - 1.41.6. Any payment by the Defendant to the Claimant in respect of the Claimant's costs, fees and disbursements (including for the avoidance of doubt the Funder's Fee, and any ATE Insurance premiums (if recoverable)).
- 1.42. **"Representative"** means Patrick Moloney and/or any other person nominated in addition or substitution by the Funder and notified to the Claimant from time to time.
- 1.43. **"Solicitors"** means Maitland Walker LLP registered in England and Wales with registered number 0353393 whose registered office is at 22 The Parks, Minehead, Somerset, TA24 8BT and includes any firm appointed in substitution or replacement.
- 1.44. **"Solicitors' Letter of Engagement"** means the letter of engagement (or similar agreements) from the Solicitors to the Claimant in relation to the Claim.

- 1.45. **"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).
- 1.46. **"Tax Deduction"** means a deduction or withholding for or on account of Tax from a payment in relation to the subject matter of this Agreement.
- 1.47. **"Tax Payment"** means either the increase in a payment made by the Claimant to the Funder under clause 20.1 or a payment under clause 20.2.
- 1.48. **"Time Period"** means the time from the Effective Date until the Funder receives the Funder's Fee in the Collections Account.
- 1.49. **"Tribunal"** means the CAT, a court, tribunal or any similar judicial or quasi-judicial body that determines the Action or any part thereof.
- 1.50. **"Undistributed Damages"** means damages that are part of the Recovery and that have not been claimed by Class Members within any period stipulated by the Tribunal or agreed with the Defendant for distribution to Class Members whether following a judgment under section 47B or 47C of the Competition Act 1998 or a settlement under section 49A or 49B of the Competition Act 1998.
- 1.51. **"Unpaid Action Costs"** means the balance of the Action Costs incurred during the course of the Action pursuant to the Solicitors' Letter of Engagement (which for the avoidance of doubt exclude any additional fees (whether by way of basic charges or success fee) that may become payable under any conditional fee agreement in the event that success is achieved under that agreement save as expressly provided for within the definition of Action Costs), for which the Funder is otherwise liable but has not paid.
- 1.52. **"VAT"** means value added tax at the rate for the time being in force (as may be varied from time to time by HM Government).

## **2. INTERPRETATION**

In this Agreement unless the contrary intention is evident:

- 2.1 The Recitals form part of this Agreement.
- 2.2 Neuter includes masculine and feminine.
- 2.3 Singular includes plural and vice versa.
- 2.4 A month is a calendar month.
- 2.5 A reference to a person includes a body, politic or corporate, an individual or partnership and trust and vice versa.
- 2.6 A reference to legislation includes a reference to that legislation as amended, re-enacted or replaced and includes any subordinate legislation or regulations issued under that legislation.
- 2.7 Headings do not affect construction.
- 2.8 No rule of construction applies to the disadvantage of a party because that party put forward this Agreement or any portion of it.

- 2.9 A reference to a party includes a successor to the rights or obligations of that party under this Agreement.
- 2.10 If a party to this Agreement is made up of more than one person, or a term is used in this Agreement to refer to more than one party, an obligation to those persons is joint and several, a right to those persons is held by each of them separately and any reference to that party or term is a reference to each of those persons separately.
- 2.11 Any reference to “in writing” or “written” shall include written or produced by any legible and non-transitory substitute for writing (including in electronic form) or partly in one manner and partly in another.
- 2.12 Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.13 Any reference to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England and Wales, be deemed to include what most nearly approximates in that jurisdiction to the English legal term.

### **3. CONDITIONS PRECEDENT**

- 3.1 The Funder having completed Due Diligence to its satisfaction, at its absolute discretion, this Agreement shall not come into force unless and until the Funder has received a copy, signed/executed by all parties to the same, of the following as agreed between the Parties:
- 3.1.1 the conditional fee agreements entered into between the Claimant and Counsel; and,
  - 3.1.2 the conditional fee agreement entered into between the Claimant and the Solicitors; and,
  - 3.1.3 the Irrevocable Instructions letter; and,
  - 3.1.4 the Solicitors’ Letter of Engagement; and,
  - 3.1.5 any relevant ATE Insurance policy, or proposed ATE Insurance policy, in terms which are acceptable to the Funder; and
  - 3.1.6 the Solicitors letter to the Funder confirming *inter alia* that the Solicitors have complied with money laundering procedures and other relevant client care matters; and
  - 3.1.7 the Funding Advisors Engagement Letter;
  - 3.1.8 the Priorities Deed; and
  - 3.1.9 a deed of adherence entered into between the Funder, the Solicitors and Counsel.

#### **4. PAYMENT OF ACTION COSTS**

- 4.1 For the avoidance of doubt, the Funder's obligations to pay the Action Costs after the Effective Date are subject to the provisions of this clause 4.
- 4.2 Subject to and in accordance with the terms of this Agreement, including for the avoidance of doubt satisfaction of the provisions of clause 3 above, the Funder agrees to pay the Action Costs after the Effective Date up to the amount of the Funding Limit, in accordance with this clause 4.
- 4.3 In conducting the Action, the Claimant shall take all reasonable steps to minimise and control the Action Costs.
- 4.4 Any request for payment of Action Costs submitted to the Funder by or on behalf of the Claimant must be in the form of a Funding Notice and must be issued no more frequently than once in each calendar month. For the avoidance of doubt, any Funding Notice must be submitted within ten (10) Business Days of the end of each calendar month, must include all Action Costs incurred in the preceding month, must be accompanied by copies of all invoices in respect of Action Costs for which it makes a claim and must not claim an amount which is the subject of another Funding Notice.
- 4.5 Subject to this clause 4, the Funder must pay the total amount of the Action Costs sought by the Claimant in any compliant Funding Notice within thirty (30) Business Days of the Funder's receipt of such Funding Notice and all supporting information required.
- 4.6 The Claimant shall require that the Solicitors will only apply the monies paid by the Funder pursuant to clause 4 in satisfaction of the Action Costs specified in the applicable Funding Notice.
- 4.7 In the event that the Funder disputes its obligation to make payment in respect of the full amount of any Funding Notice:
  - 4.7.1 the Funder may request that the Claimant provides further information, explanation or evidence in relation to the Funding Notice and the Claimant must provide this information, explanation or evidence within five (5) Business Days. Such a request must be made within thirty (30) days of the Funder receiving the Funding Notice;
  - 4.7.2 if after receipt of the information outlined in clause 4.7.1, the Funder continues to dispute its obligation to make payment in respect of the full amount of the Funding Notice, that dispute must be resolved in accordance with the procedure set out in clause 14;
  - 4.7.3 the Funder is not required to pay the amount in dispute to the Solicitors or the Claimant until such time as the dispute is resolved in accordance with clause 14.

## **5. ADVERSE COSTS**

- 5.1 The Funder shall not be liable for any Adverse Costs and expressly disclaims any liability in relation to the same (subject always to any contrary order of the Tribunal).
- 5.2 The Claimant shall:
  - 5.2.1 have in place an ATE Insurance policy in respect of the Action and shall comply with the terms and conditions of that policy;
  - 5.2.2 maintain each ATE Insurance policy until: (i) the Action has been concluded and any Recovery has, where applicable, been paid to the Funder; or (ii) the Funder has ceased making any funding available in relation to the Action and any Recovery due to the Funder in respect of that Action has been paid in full to the Funder; and
  - 5.2.3 provide the Funder with a copy of the relevant ATE Insurance policy in accordance with Clause 3.1.6.
- 5.3 To the extent that the premium (or any part thereof) for an ATE Insurance policy:
  - 5.3.1 is paid by the Funder it is to be an Action Cost;
  - 5.3.2 is deferred and contingent:
    - (a) it is to be paid out of the Recovery; and
    - (b) it is not to be an Action Cost.
- 5.4 If notwithstanding the other provisions of this clause 5, the Funder agrees to or the Tribunal orders the Funder to provide security for Adverse Costs or the Tribunal makes an Adverse Costs order against the Funder, the amount that the Funder is ordered or agrees to pay shall be deemed to be an Action Cost.
- 5.5 The Funder in its absolute discretion may arrange that security for Adverse Costs be provided by way of an ATE Insurance policy or Deed of Indemnity if accepted by the Tribunal or agreed by the Defendant.

## **6. CLAIMANT'S OBLIGATIONS**

The Claimant must, through the Irrevocable Instructions to the Solicitors:

- 6.1 Diligently prosecute the Action and pursue all of the Claimant's and the Class Members' legal and equitable rights in connection with the Claim and/or Action where it is reasonable to do so.
- 6.2 Diligently collect and enforce any Award, settlement or compromise and seek to maximise the Recovery.
- 6.3 Co-operate fully and at all times throughout the Action with, and promptly provide such full, frank and honest instructions and assistance to the Solicitors as they may require for pursuing the Claim and/or Action, including providing, or procuring the provision of, documents in their possession or control so far as advised by the Solicitors.

- 6.4 Keep and preserve any documents relating to the Action and/or the Defendant.
- 6.5 Consider the advice given by the Solicitors and/or Counsel, including whether it would be appropriate to make or accept any offer to settle the Claim and/or Action.
- 6.6 Immediately inform the Funder and the Solicitors of any offer of settlement or compromise received or proposed to be made in relation to the Claim and/or Action.
- 6.7 Do all things necessary to keep in force and comply in all material respects with the terms of any ATE Insurance policy.
- 6.8 Procure that payments be made in accordance with clause 9 and the Priorities Deed.
- 6.9 Act at all times with the utmost good faith in pursuance of the Claim.
- 6.10 Unless prohibited by law or otherwise contrary to an order of the Tribunal provide the Funder with:
  - 6.10.1 all information reasonably requested by the Funder;
  - 6.10.2 copies of all documents requested by the Funder that are in the possession or control of the Claimant and/or the Solicitors and/or obtained from, or provided to, the Defendant relating to the Claim and/or Action (save where to do so would amount to waiver of privilege); and
  - 6.10.3 sufficient notice of and the opportunity to attend (in an observer capacity only) significant internal meetings (including meetings with counsel and experts) and to send an observer to any hearing, settlement conference or mediation relating to the Claim and/or Action.
- 6.11 Immediately inform the Funder and the Solicitors of any information, circumstance or change in circumstance that is material to:
  - 6.11.1 the operation of this Agreement;
  - 6.11.2 the prospects of success or failure of the Claimant in the Claim and/or the Action;
  - 6.11.3 the prospects of recovering any Recovery;
  - 6.11.4 the distribution of any Recovery; and/or
  - 6.11.5 the warranties given by the Claimant pursuant to clause 11.
- 6.12 Not, without the prior written consent of the Funder:
  - 6.12.1 create a security interest, charge, mortgage or otherwise encumber or permit a lien over the Claim and/or Action and/or the Recovery, or any part thereof;
  - 6.12.2 bring or permit to be brought or continue any proceeding which claims relief arising out of the same or similar facts

pleaded in any Action, or any proceeding which could result in a reduction in the amount recoverable pursuant to any Action; or

6.12.3 assign any of his rights under this Agreement.

## **7. SOLICITORS**

- 7.1 The Claimant has retained the Solicitors as the solicitors to act on behalf of the Claimant in the Action and the Claimant will provide all instructions to the Solicitors.
- 7.2 The Claimant will notify the Funder immediately upon becoming aware that the Principal Fee Earner(s) cease(s) or is likely to cease, having conduct of the Action.
- 7.3 Notwithstanding that the Claimant may instruct any solicitors it wishes, the Claimant agrees not to appoint another solicitor or replace the Solicitors except with the prior written agreement of the Funder (such agreement not to be unreasonably withheld).
- 7.4 Upon the appointment of any new solicitors or additional solicitors, the Claimant will inform such party of the Claimant's obligations under this Agreement, provide them with an Irrevocable Instructions letter, and secure their execution of the Priorities Deed and a conditional fee agreement on equivalent terms to those on which the Solicitors previously acted.

## **8. PROCEEDINGS**

- 8.1 Subject to the provisions of this Agreement, the Claimant shall have control of the Action.
- 8.2 Without prejudice to any consequences provided for under this Agreement following any action or inaction by the Claimant, nothing in this Agreement will permit the Funder to override any advice given by the Solicitors or to require the Claimant to conduct the Claim otherwise than in accordance with that advice.
- 8.3 The Claimant shall not abandon, withdraw or discontinue the Action otherwise than in accordance with this clause 8.
- 8.4 In the event that a decision is required as to whether to abandon, withdraw or discontinue any Action (including any part of any Action or by entering into a settlement or compromise agreement), the Claimant shall instruct the Solicitors to prepare or obtain a written opinion in respect of whether the Action should be abandoned, withdrawn or discontinued and provide a copy of such an opinion to the Funder at least ten (10) Business Days before making a decision to abandon, withdraw or discontinue any Action.
- 8.5 The Claimant shall not abandon, withdraw or discontinue any Action (including any part of any Action or by entering into a settlement or compromise agreement) against the reasonable written legal advice of the Solicitors.

## **9. RECEIPT AND DISTRIBUTION OF ANY RECOVERY**

- 9.1 Subject to any Order of a Tribunal to the contrary, the Claimant shall procure payment of any and all Recovery directly into a bank account, which shall be a client account held by the Solicitors or the account of a Claims Administrator approved by the Solicitors and approved by a Tribunal.

- 9.2 Subject to any order of a Tribunal the Solicitors shall hold the Recovery on trust for the Class Members and the Funder and, to the extent their charges have not been paid, Solicitors, Counsel, the Funding Advisors and the ATE Insurance providers.
- 9.3 The Claimant shall seek approval from the Tribunal for the payment from any Recovery of the Claimant's costs, fees and disbursements (including for the avoidance of doubt the Funder's Fee, any ATE Insurance premiums, any deferred fees and the success fees payable under any conditional fee agreements) in accordance with this Clause 9.
- 9.4 Notwithstanding any other clause of this Agreement:
- 9.4.1 The Claimant's liability to the Funder for the Funder's Fee (and any VAT payable in accordance with clause 20) shall in no circumstances exceed the amount which a Tribunal has approved the Claimant to pay to the Funder in respect of the Funder's Fee from the Recovery; and
- 9.4.2 The Claimant shall have no liability to pay the Funder's Fee save to the extent that: (i) it is payable out of the Recovery; and (ii) the Recovery has actually been received by or on behalf of the Claimant and/or the Class Members.
- 9.5 In the event that successive recoveries of Awards are made, from any Defendant or from any third party or otherwise in connection with the Action, the duties under this Clause 9 shall apply anew to each successive Recovery.

*Payment of the Funder's Fee other than wholly from Undistributed Damages*

- 9.6 In the event that a Tribunal approves the payment of the Funder's Fee otherwise than wholly from Undistributed Damages, the Funder's Fee shall be calculated in accordance with clause 9.7.
- 9.7 Where clause 9.6 applies the total Funder's Fee payable shall be calculated following a determination by the Tribunal or agreement between the Parties of the proportion of the Capital Deployed repayable from Undistributed Damages and the proportion of Capital Deployed repayable other than from Undistributed Damages such that;
- 9.7.1 To the extent that Capital Deployed is repayable other than from Undistributed Damages the Funder's Fee relative to that proportion shall be calculated in accordance with the table at clause 9.7.3; and
- 9.7.2 To the extent that Capital Deployed is repayable from Undistributed Damages the Funder's Fee relative to that proportion shall be calculated in accordance with the table at clause 9.9.

| <b>Time Period</b>                       | <b>Funder's Fee</b>                                                                                 |
|------------------------------------------|-----------------------------------------------------------------------------------------------------|
| $\leq 6$ months                          | Capital Deployed plus 2x Capital Deployed                                                           |
| 6 months and 1 day $< X \leq 12$ months  | Capital Deployed plus 2.25x Capital Deployed                                                        |
| 12 months and 1 day $< X \leq 18$ months | Capital Deployed plus 2.5x Capital Deployed                                                         |
| 18 months and 1 day $< X \leq 24$ months | Capital Deployed plus 2.75x Capital Deployed                                                        |
| 24 months and 1 day $< X \leq 30$ months | Capital Deployed plus 3x Capital Deployed                                                           |
| 30 months and 1 day $< X \leq 36$ months | Capital Deployed plus 3.25x Capital Deployed                                                        |
| 36 months and 1 day $< X \leq 42$ months | Capital Deployed plus 3.5x Capital Deployed                                                         |
| 42 months and 1 day $< X \leq 48$ months | Capital Deployed plus 3.75x Capital Deployed                                                        |
| 48 months and 1 day $< X \leq 54$ months | Capital Deployed plus 4.00x Capital Deployed                                                        |
| 54 months and 1 day $< X \leq 60$ months | Capital Deployed plus 4.25x Capital Deployed                                                        |
| 60 months and 1 day $< X \leq \infty$    | Capital Deployed plus 4.50 x Capital Deployed<br>+ 30% annual compound interest on Capital Deployed |

*Payment of the Funder's Fee from Undistributed Damages*

9.8 In the event that a Tribunal approves the payment of the Funder's Fee wholly from Undistributed Damages, the Funder's Fee shall be calculated in accordance with clause 9.9.

9.9 Where clause 9.8 applies, the Funder's Fee shall be calculated in accordance with the following table:

| <b>Time Period</b>                       | <b>Funder's Fee</b>                                                                                |
|------------------------------------------|----------------------------------------------------------------------------------------------------|
| $\leq 6$ months                          | Capital Deployed plus 4x Capital Deployed                                                          |
| 6 months and 1 day $< X \leq 12$ months  | Capital Deployed plus 4.25x Capital Deployed                                                       |
| 12 months and 1 day $< X \leq 18$ months | Capital Deployed plus 4.5x Capital Deployed                                                        |
| 18 months and 1 day $< X \leq 24$ months | Capital Deployed plus 4.75x Capital Deployed                                                       |
| 24 months and 1 day $< X \leq 30$ months | Capital Deployed plus 5x Capital Deployed                                                          |
| 30 months and 1 day $< X \leq 36$ months | Capital Deployed plus 5.25x Capital Deployed                                                       |
| 36 months and 1 day $< X \leq 42$ months | Capital Deployed plus 5.5x Capital Deployed                                                        |
| 42 months and 1 day $< X \leq 48$ months | Capital Deployed plus 5.75x Capital Deployed                                                       |
| 48 months and 1 day $< X \leq 54$ months | Capital Deployed plus 6.00x Capital Deployed                                                       |
| 54 months and 1 day $< X \leq 60$ months | Capital Deployed plus 6.25x Capital Deployed                                                       |
| 60 months and 1 day $< X \leq \infty$    | Capital Deployed plus 6.50x Capital Deployed<br>+ 30% annual compound interest on Capital Deployed |

9.10 Any sums payable from the Recovery in respect of the Claimant's costs, fees and disbursements (including for the avoidance of doubt the Funder's Fee, any ATE Insurance premiums, any conditional fees and the success fees payable under any conditional fee agreements), and including any sums payable in those respects under CAT rule 93(4), CAT rule 94(8) or any other power to award Claimant's costs, fees and disbursements, shall be paid, in the order of priority set out in the Priorities Deed and as repeated below, within 10 (ten) Business Days of such sums being authorised for payment pursuant to any order of the Tribunal:

9.10.1 First:

- (a) to reimburse any claims paid pursuant to any ATE Insurance or to pay any outstanding Adverse Costs due to be paid; and
- (b) to pay any contingent premium (or any part thereof) and applicable tax payable pursuant to any ATE Insurance policy;

9.10.2 Second, save where clause 9.10.3(b) applies, to pay any Unpaid Action Costs;

9.10.3 Third:

- (a) to pay to the Funder's Collections Account an amount equal to the Capital Deployed; or
- (b) where any Recovery is in respect of an interim costs payment by the Defendant to the Claimant, to pay such Recovery to the Funder's Collections Account in or towards payment of the Funder's Fee due in respect of that Recovery at the date of payment;

9.10.4 Fourth, pro rata to pay:

- (a) the Solicitors deferred or conditional fees (which does not include any success fees) due under their CFA; and
- (b) Counsel, deferred or conditional fees (which does not include any success fees) due under their CFAs;

9.10.5 Fifth pro rata to pay:

- (a) to the Funder's Collections Account the balance of the Funder's Fee after giving credit for the repayment of Capital Deployed or any payments of or towards the Funder's Fee pursuant to clause 9.10.3;
- (b) to the Solicitors, the success fees due under their CFA;

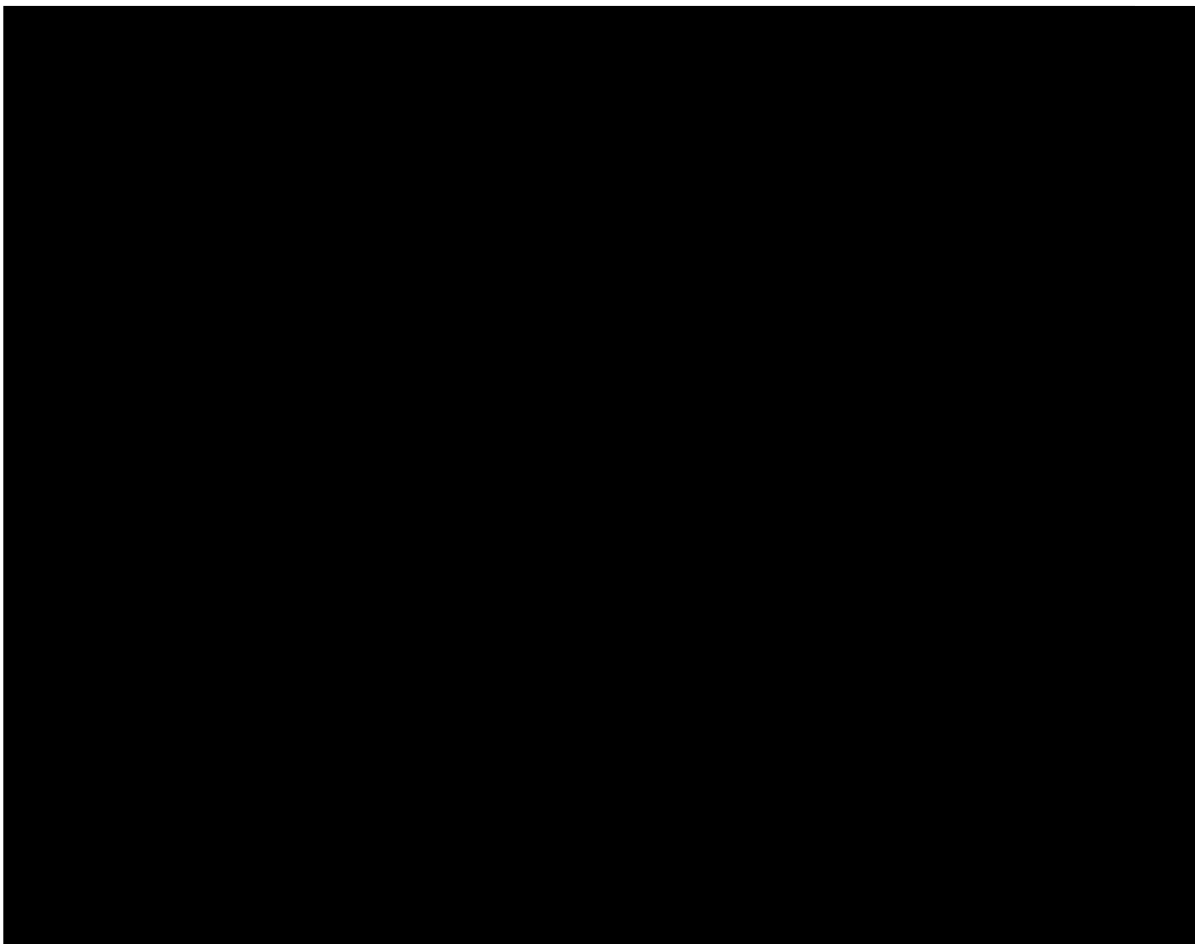
- (c) to Counsel, the success fees due under their CFAs;
- (d) to the Funding Advisors, the fees due under the Funding Advisors Engagement Letter

9.10.6 Sixth, any remaining sums shall be applied as directed by the Tribunal.

9.11 The Claimant's application of the Recovery in accordance with Clause 9.10 above shall fully discharge the Claimant's obligations to pay the Funder's Fee, even if the Funder's Fee calculated in accordance with this Clause 9 has not been paid in full.

9.12 This Clause 9 shall survive the termination of this Agreement.

## **10. APPEAL**



## **11. WARRANTIES**

11.1 The Claimant warrants and represents on the date of this Agreement and on every date on which he submits a Funding Notice to the Funder, having made all reasonable and diligent enquiries and to the best of his knowledge, information and belief, that:

11.1.1 he has full power and authority to enter into this Agreement;

11.1.2 he has disclosed to the Funder all information material to:

- (a) the operation of this Agreement;
  - (b) the prospects of success or failure of the Claimant in the Claim and/or the Action;
  - (c) the prospects of recovering the Recovery; and
  - (d) the distribution of the Recovery;
- 11.1.3 all information provided by the Claimant to the Funder is true, accurate and not intentionally misleading;
- 11.1.4 he is not insolvent, in bankruptcy or unable to pay his debts when they fall due, and there are no insolvency or bankruptcy proceedings threatened or outstanding against him and he has no reason to believe that it may not be able to pay amounts due to the Funder in accordance with this Agreement;
- 11.1.5 he has taken legal advice from the Solicitors or other legal advisors on the terms of this Agreement, or has had the opportunity to do so, prior to entering into it.
- 11.2 If during the period of this Agreement the Claimant becomes aware of any material facts which may alter or affect the warranties and representations in clause 11.1 (or which should have been disclosed to the Funder had they been known by the Claimant on or before the date on which such warranties and representations were made or are deemed to have been made), the Claimant shall promptly disclose in writing to the Funder all relevant facts.
- 11.3 The Claimant acknowledges that the Funder has relied upon the truth and accuracy of the warranties contained in clause 11.1 in entering into this Agreement and will continue to rely on the truth and accuracy of the warranties in performing its obligations pursuant to this Agreement.

## **12. CONFIDENTIALITY**

- 12.1 The Parties agree to keep the Confidential Information confidential.
- 12.2 Confidential Information shall remain at all times the exclusive property of the Disclosing Party (or its Associates) and the Recipient shall have no rights (whether at law or in equity) in or to such Confidential Information nor any aspect or embodiment thereof.
- 12.3 The Recipient shall ensure that the Confidential Information it receives is not divulged or disclosed to any person except its representatives who have a "need to know" such information, such as brokers, advisors, insurers and potential insurers, finance providers and potential finance providers. The Recipient shall be solely responsible for its failure to comply with the provisions of this Agreement.
- 12.4 The Recipient must not disclose any Confidential Information to any third party unless such disclosure is:
  - 12.4.1 required by law;
  - 12.4.2 authorised by this Agreement;

- 12.4.3 made on a confidential basis with the Disclosing Party's prior written consent to the fact and contents of that confidential disclosure;
  - 12.4.4 made on a confidential basis by the Funder for the purposes of obtaining legal or financial advice or assistance; or
  - 12.4.5 required by the rules of any financial market on which the Funder is listed.
- 12.5 Notwithstanding the foregoing, the Funder shall be entitled to disclose to its finance providers or potential finance providers the existence and terms of this Agreement.
- 12.6 Clause 12 survives the termination of this Agreement.

### 13. PRIVILEGE

- 13.1 The Claimant does not by any disclosure of Claim Information to the Funder waive any legal professional privilege.
- 13.2 All privileged information disclosed to the Funder is disclosed on the basis that the Funder has, or will have, a common interest in the pursuit and success of the Claim and/or Action and the Funder will use reasonable endeavours to preserve that privilege.
- 13.3 If the Claimant withholds information from the Funder other than as permitted by this Agreement on the basis of privilege, work product, or any similar doctrine of confidentiality, he must provide immediate written notice to the Funder of the same.
- 13.4 Clause 13 shall survive the termination of this Agreement.

### 14. EXPERT DETERMINATION

- 14.1 Notwithstanding clauses 15 or 16 below, if a dispute arises in respect of the reasonableness of any Action Costs to be paid in accordance with clause 4, or the Funder reasonably considers that the merits of any Claim are no longer satisfactory or are no longer economically viable under clause 16.1, either Party (the "**Disputing Party**") may serve a dispute notice ("**Dispute Notice**") on the other Party.
- 14.2 The Dispute Notice must set out the nature and grounds of the dispute, the outcome sought and must require the appointment of an independent specialist King's Counsel ("**Expert**") to undertake an independent assessment and determination.
- 14.3 If the Disputing Party does not withdraw the Dispute Notice within five (5) Business Days of deemed receipt of that notice on the other Party, then the Parties shall, within ten (10) Business Days of service of the Dispute Notice,

agree and appoint an Expert to make an independent assessment and determination of the issues identified in the Dispute Notice.

- 14.4 If the Parties are not able to agree and appoint an Expert in accordance with clause 14.3, either Party may apply to the Chairman of the Bar Council of England & Wales to appoint a suitable Expert.
- 14.5 The Expert shall determine in their absolute discretion the procedures and rules to apply in the conduct of the independent assessment and determination. The Expert's decision in relation to the Dispute Notice shall be final and binding.
- 14.6 The costs and expenses relating to the Expert's determination in accordance with clause 14.1 – 14.5 shall be paid for by the Funder.

## **15. DISPUTE RESOLUTION**

- 15.1 The Parties must use their best endeavours and act in good faith to resolve any dispute between them in relation to this Agreement.
- 15.2 Prior to implementing the dispute resolution procedure set out in clause 15.3, written notice of the dispute must be given by the Disputing Party to the other and the Parties may convene a meeting between the Representative and/or a nominee of the Representative and the Claimant and/or a solicitor from the Solicitors and endeavour to resolve the dispute between them within 28 Business Days of notice of the dispute first being given.
- 15.3 Any dispute arising out of or in connection with this Agreement (excluding any dispute in respect of which a Party exercises its rights under clause 14 but including any question regarding its existence, validity, interpretation, performance, breach or termination), shall be resolved by a sole arbitrator under the rules of the London Court of International Arbitration ("LCIA").
- 15.4 The seat of arbitration will be London and the language of the arbitration will be English.
- 15.5 The arbitrator will be appointed by agreement of the Parties provided that, if they cannot reach agreement within ten (10) Business Days of first notification of the relevant dispute, then the Parties will apply to have the arbitrator appointed by the LCIA. Any attempt by either Party to seek relief or remedies in any other forum, save for pursuant to clause 15.6, shall constitute a breach of this Agreement and entitle the other Party to damages, equitable relief and full indemnification against all costs and expenses incurred in connection therewith.
- 15.6 Nothing in this Agreement shall prevent either party from seeking any provisional or preliminary or interim relief (including, but not limited to, injunctions, attachments or other such orders in aid of arbitration) from any court of competent jurisdiction, and any such application to a court for provisional/preliminary relief shall not be deemed incompatible with the above agreement to arbitrate or a waiver of the right to arbitrate.
- 15.7 The arbitration award shall be final and binding on the Parties. The Parties undertake to carry out any award without delay and waive their right to any

form of recourse based on grounds insofar as such waiver can validly be made.

## **16. BREACH, TERMINATION AND ABANDONMENT**

16.1 If the Funder reasonably considers that the merits of any Claim are no longer satisfactory or that any Claim is no longer economically viable (such views to be reached based on independent legal and expert advice that has been provided to the Funder) the Funder may give the Claimant not less than thirty (30) Business Days written notice of its intention to terminate this Agreement, subject to the right of the Claimant to seek Expert determination, of the Funder's determination, under clause 14.

16.2 If the Funder breaches any term of this Agreement:

16.2.1 the Claimant may give the Funder notice in writing:

- (a) specifying the breach; and
- (b) specifying what is required to remedy the breach or stating that the breach is not capable of remedy; and
- (c) allowing the Funder a period of at least twenty (20) Business Days to remedy the breach.

16.2.2 the Claimant may terminate this Agreement:

- (a) if the breach is capable of remedy and is not remedied within twenty (20) Business Days with such termination taking effect immediately upon the expiry of that period; or
- (b) if the breach is not capable of remedy, with such termination taking immediate effect.

16.3 If the Claimant defaults in the performance of any of his obligations under this Agreement:

16.3.1 the Funder may give notice in writing to the Claimant (Notice of Breach):

- (a) specifying the breach; and
- (b) specifying what is required to remedy the breach or stating that the breach is not capable of remedy; and
- (c) if the breach is capable of remedy, allowing the Claimant a period of at least twenty (20) Business Days to remedy the breach.

16.3.2 the Funder may terminate this Agreement:

- (a) if the breach is capable of remedy and is not remedied within twenty (20) Business Days, with such termination taking effect immediately upon the expiry of that period; or

- (b) if the breach is not capable of remedy, with such termination taking immediate effect.

16.4 If this Agreement is terminated pursuant to clause 16.1 or 16.2:

- 16.4.1 save with respect to any costs incurred by the Claimant in relation to any discontinuance of the Action, the Funder's obligation to pay Action Costs arising after the date of termination, or any other sum, ceases immediately on the date of termination;
- 16.4.2 the Funder's right to be paid the Funder's Fee from any Recovery pursuant to clause 9 shall continue as if this Agreement had continued in force; and
- 16.4.3 this clause 16.4 shall survive termination of this Agreement.

16.5 If this Agreement is terminated pursuant to clause 16.3.

- 16.5.1 save with respect to any costs incurred by the Claimant in relation to any discontinuance of the Action, the Funder's obligation to pay Action Costs arising after the date of termination, or any other sum, ceases immediately on the date of termination; and
- 16.5.2 the Funder's right to be paid the Funder's Fee from any Recovery pursuant to clause 9 shall continue as if this Agreement had continued in force; and
- 16.5.3 this clause 16.5 shall survive termination of this Agreement.

16.6 If the Claimant contravenes clause 8.5, then the Claimant acknowledges and agrees that:

- 16.6.1 such an abandonment, withdrawal or discontinuance (including of any part of any Claim or Action or settlement of the same) constitutes a material breach of this Agreement;
- 16.6.2 the Funder shall be entitled to terminate this Agreement by written notice with immediate effect;
- 16.6.3 the Claimant must, within ten (10) Business Days of the abandonment, withdrawal or discontinuance, repay to the Funder all Action Costs and any other payments made by the Funder pursuant to this Agreement in respect of the Action that has been abandoned, withdrawn or discontinued without prejudice to the CAT's powers to appoint a replacement representative of the Class Members under CAT Rule 87. If the CAT approves the appointment of a replacement representative of the Class Members on the terms set out in this Agreement, the Funder shall not require the Claimant to repay to the Funder all Action Costs and any other payments made by the Funder pursuant to this Agreement;
- 16.6.4 the Funder's right pursuant to clause 9 to be paid the Funder's Fee from any Recovery shall apply to any settlement entered into in breach of clause 8.5; and

16.6.5 this clause 16.6 shall survive termination of this Agreement.

16.7 The Claimant's right to terminate under Clause 16 shall apply irrespective of the amount of the Capital Deployed under this Agreement and whether or not the Funding Limit has been reached.

## **17. INTEREST**

17.1 If a Party fails to make any payment due to the other Party under this Agreement within ten (10) Business Days of the due date for payment, then the other Party may charge the defaulting party interest on the overdue amount at the rate of 5% per annum above the National Westminster Bank PLC's base lending rate from time to time.

17.2 Such interest shall accrue daily from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting Party shall pay the interest immediately on demand by the other party.

## **18. INDEMNITIES**

18.1 The Claimant hereby indemnifies, defends and holds the Funder and its Associates, free and harmless from and against any and all actions, losses, costs, charges, damages, claims, sanctions, penalties and expenses (including solicitors' fees and costs of experts and advisors) which may be incurred by the Funder at any time or for any reason arising out of or in connection with:

18.1.1 the breach of, inaccuracy of, or failure to comply with, or the existence of any facts known to the Claimant at the time of entering into this Agreement, resulting in the inaccuracy of, any of the warranties or representations of the Claimant in this Agreement or in any agreements or documents delivered pursuant to or in connection with this Agreement or the Action;

18.1.2 any costs, sanctions, awards or penalties assessed or awarded against the Funder in connection with the Action otherwise than by reason of the Funder's default;

18.1.3 any costs or expenses (including the fees and expenses of the Funder's outside counsel) incurred by the Funder in connection with any legal proceeding or other matter relating to this Agreement or the Action or any agreements, exhibits or documents delivered pursuant to or in connection with this Agreement; and

18.1.4 any claim by any agent or broker claiming to represent the Claimant for compensation on account of the transactions contemplated by this Agreement.

**19. LIABILITY**

- 19.1 Other than as expressly agreed in this Agreement, the Funder shall have no obligation to fund any fees, expenses or other sums and all such fees, expenses or other sums shall be the sole responsibility of the Claimant.
- 19.2 Subject only to clauses 20.3 and 20.4, the liability of the Funder in relation to the subject matter of this Agreement is limited to the aggregate amount of the Action Costs. The Funder disclaims all liability for any damages that may constitute compensatory damages, lost profit, out-of-pocket expenses, costs, losses, charges, expenses, punitive damages or otherwise.
- 19.3 Neither Party shall be liable to the other under this Agreement for any special, indirect or consequential losses or damage, whether or not such losses were within the contemplation of the Parties at the date of this Agreement.
- 19.4 Nothing in this Agreement shall limit either Party's liability for death or personal injury arising from the negligence of that Party or its Associates, fraud or fraudulent misrepresentation, or for any loss which cannot be excluded or limited by applicable law.

**20. TAX**

**20.1 Tax gross up:**

- 20.1.1 The Claimant shall make all payments to be made by it in relation to the subject matter of this Agreement unless a Tax Deduction is required by law.
- 20.1.2 The Claimant shall promptly upon becoming aware that it or the Solicitors must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Funder accordingly.
- 20.1.3 If a Tax Deduction is required by law to be made by the Claimant or the Solicitors, the amount of the payment due from the Claimant shall, if so approved and ordered by the Tribunal, be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required. In the event that the Tribunal does not so order, the Claimant shall have no liability to the Funder for the increase otherwise provided for in this clause.
- 20.1.4 If the Claimant or the Solicitors are required to make a Tax Deduction, the Claimant shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- 20.1.5 Within 30 Business Days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Claimant shall deliver to the Funder a valid original certificate of deduction of tax or other evidence reasonably satisfactory to the Funder that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

20.2 Tax indemnity:

20.2.1 The Claimant shall (within twenty (20) Business Days of demand by the Funder) pay the amount of 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 the subject matter of this Agreement.

20.2.2 Clause 20.2.1 shall not apply:

(a) with respect to any Tax assessed on a Funder:

(i) under the law of the jurisdiction in which the Funder is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Funder is treated as resident for tax purposes; or

(ii) under the law of the jurisdiction in which the Funder's office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Funder; or

to the extent a loss, liability or cost is compensated for by an increased payment under clause 21.1.

20.3 Tax credit:

20.3.1 If the Claimant makes a Tax Payment and the Funder determines that:

(a) any credit against, relief or remission for, or repayment of any Tax is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and

(b) that Funder has obtained, utilised and retained that credit, relief, remission or repayment,

the Funder shall pay an amount to the Claimant which the Funder determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Claimant.

20.4 VAT:

20.4.1 All amounts set out, or expressed in this Agreement to be payable to the Funder which (in whole or in part) constitute the consideration for a supply or supplies for VAT purposes shall be deemed to be exclusive of any VAT which is chargeable on such supply or supplies, and accordingly, subject to clause 20.5.2 below, if VAT is or becomes chargeable on any supply made by the Funder to the

Claimant under this Agreement, the Claimant shall, subject to clause 9.4, pay to the Funder (in addition to and at the same time as paying any other consideration for such supply) an amount equal to such VAT (and the Funder shall promptly provide an appropriate VAT invoice to the Claimant).

- 20.4.2 Where this Agreement requires the Claimant to reimburse or indemnify the Funder for any cost or expense, the Claimant shall reimburse or indemnify (as the case may be) the Funder for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that the Funder reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

## **21. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

- 21.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Agreement.

## **22. ASSIGNMENT**

- 22.1 This Agreement shall inure to the benefit of, and shall be binding upon, the Parties and their respective successors, assigns, and legal representatives.
- 22.2 The Funder may not assign this Agreement or any rights, interests, obligations or duties arising hereunder except to an Associate or in connection with any financing of the Funder or its portfolio.
- 22.3 The Claimant may not assign this Agreement, or any rights, interests, obligations or duties arising hereunder, except with express prior consent not to be unreasonably withheld in writing of the Funder.
- 22.4 If, at any time during the term of this Agreement or upon its termination or expiry, the Claimant has any cause or causes of action (a "**Related Claim**") against the Solicitors or other advisors utilised by the Claimant in relation to the Action and whose costs have been paid by the Funder under this Agreement, the Claimant shall notify the Funder and the Solicitors of the grounds for, and circumstances of, that Related Claim.
- 22.5 If the Claimant does not commence an action in respect of the Related Claim within 12 months of becoming aware of the relevant cause or causes of action and if the Funder gives notice to the Claimant that it wishes the Claimant to assign the Related Claim to the Funder, the Claimant agrees that they will sign and execute all documents, transfers and assignments, provide all relevant information and material to the Funder and do all things necessary to assign the Related Claim to the Funder.

## **23. NOTICE**

- 23.1 Any notice or other communication in connection with this Agreement can only be given in writing signed by the Party or its agent or (in the case of the Funder) the Representative addressed to the Party to whom it is given.
- 23.2 Notice can only be given to a Party:

23.2.1 personally and such notice is received at the time it is received by the recipient or (in the case of the Funder) the Representative; or

23.2.2 by registered post to the below addresses and such notice is deemed to be received on the Business Day after it was posted; or

| Party:     | Address:                                                 | Marked for the attention of:                                                      |
|------------|----------------------------------------------------------|-----------------------------------------------------------------------------------|
| Funder     | Bridge House, 181 Queen Victoria Street, London EC4V 4EG | Patrick Moloney or such other person as the Funder may from time to time nominate |
| Claimant   | 22 The Parks, Minehead, Somerset, TA24 8BT               | Julian Maitland-Walker and Adrian Render                                          |
| Solicitors | 22 The Parks, Minehead, Somerset, TA24 8BT               | Julian Maitland-Walker and Adrian Render                                          |

23.2.3 or by email transmission to the below addresses and such notice is deemed to be received on the day that it was sent, unless the sending Party receives notification that the transmission was unsuccessful:

| Party:     | Marked for the attention of:             | Email address:                                                                                                                                                                                    |
|------------|------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Funder     | Patrick Moloney and [REDACTED]           | [REDACTED] such other person as the Funder may from time to time nominate                                                                                                                         |
| Claimant   | Julian Maitland-Walker and Adrian Render | <a href="mailto:julian.maitland-walker@maitlandwalker.com">julian.maitland-walker@maitlandwalker.com</a> ; <a href="mailto:Adrian.Render@maitlandwalker.com">Adrian.Render@maitlandwalker.com</a> |
| Solicitors | Julian Maitland-Walker and Adrian Render | <a href="mailto:julian.maitland-walker@maitlandwalker.com">julian.maitland-walker@maitlandwalker.com</a> ; <a href="mailto:Adrian.Render@maitlandwalker.com">Adrian.Render@maitlandwalker.com</a> |

23.3 A party may from time to time change its address or email address for service by notice in writing to the other parties.

23.4 Any such notice or other communication shall be deemed to have been received if:

23.4.1 left by hand, at the time of leaving it;

23.4.2 sent by registered post, 24 hours from the date of posting; and

23.4.3 sent by email, when sent,

provided that if deemed receipt occurs before 9.00 am on a Business Day the notice shall be deemed to have been received at 9.00 am on that day, and if deemed receipt occurs after 5.00 pm on a Business Day, or on a day which is

not a Business Day, the notice shall be deemed to have been received at 9.00 am on the next Business Day.

23.5 In proving service it shall be sufficient to prove that the notice or other communication was addressed to the address of the relevant Party set out in this Agreement (or as otherwise notified by that Party under this Agreement) and that, if:

23.5.1 left by hand, that the envelope containing the document was left at the relevant address;

23.5.2 sent by post, that the envelope containing that document was delivered into the custody of the postal authorities as a special delivery letter; or

23.5.3 sent by email, that despatch of the email was confirmed.

## **24. GOVERNING LAW**

24.1 This Agreement and any non-contractual obligations arising out of or in connection with it are governed by the laws of England and Wales.

## **25. GENERAL**

25.1 The Claimant agrees and represents to the Funder that he has relied upon, or has had the opportunity to obtain, his own independent legal and financial advice before entering into this Agreement.

25.2 The Funder and its officers, employees or consultants do not offer any assurance as to any economic benefit to the Claimant from entering into this Agreement.

25.3 The Parties acknowledge and agree that the Funder will not and does not provide the Claimant with any legal, taxation, accounting or other advice in relation to the Claim, the Action, this Agreement or otherwise.

25.4 This Agreement and the Priorities Deed is the entire agreement between the Parties.

25.5 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

25.6 There will be no variation or amendment to the terms of this Agreement except by written agreement signed by each of the Parties.

25.7 The failure or delay by a Party to this agreement in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver by that Party of that right or remedy or a waiver of other rights or remedies. A waiver by a Party in respect of a breach of this Agreement:

25.7.1 must be in writing;

25.7.2 does not constitute a waiver with respect to any other breach of this Agreement; and

25.7.3 does not constitute an estoppel with respect to any previous or successive waivers that are made or granted.

## 26. COUNTERPARTS

26.1 This Agreement may be signed in counterparts and each counterpart is taken to be an original. All counterparts together constitute one Agreement.

**EXECUTED** as an agreement

**Executed** on behalf of LCM Funding UK  
Limited

.....

Name: Patrick Moloney  
Position: CEO.

**Executed by**

[Redacted Signature]

Name: David Rowntree