

DATED 21 February 2025

ASERTIS LTD

- and -

BULK MAIL CLAIM LIMITED

**AMENDMENT AND RESTATEMENT
AGREEMENT**

Brabners

100 Barbirolli Square
Manchester
M2 3AB

CONTENTS

Clause

1. Definitions and Interpretation 2

2. Amendment and Restatement of the Original LFA 2

3. Representations and Warranties 2

4. Continuity 3

5. Costs and Expenses 3

6. Further Assurance 3

7. Miscellaneous 3

8. Third Party Rights 3

9. Governing Law and Jurisdiction 3

Schedule 1 - Restated LFA 4

THIS AGREEMENT is dated the 21 day of February 2025 and made between

- (1) **ASERTIS LTD** incorporated in England and Wales with company number 11269006 whose registered office is at 100 Barbirolli Square, Manchester M2 3AB (the “**Funder**”); and
- (2) **BULK MAIL CLAIM LIMITED (formerly known as Equity Recoveries (2023) Limited)** incorporated in England and Wales with company number 15032344 whose registered office is at C/O Lewis Silkin LLP, Arbor House, 255 Blackfriars Road, London, United Kingdom, SE1 9AX (the “**Claimant**”).

RECITALS:

- (A) The Funder and the Claimant entered into a litigation funding agreement dated 23 November 2023, pursuant to which the Funder agreed to make Claim Funding of up to [REDACTED] (including VAT) available to the Claimant to pursue the Claim (**Original LFA**).
- (B) The Funder and the Claimant have agreed to amend and restate the Original LFA as set out in this Agreement.

IT IS AGREED THAT:

1. Definitions and Interpretation

- 1.1 Terms defined in the Original LFA shall, unless otherwise defined in this Agreement, have the same meaning in this Agreement. In addition, the following definitions apply in this Agreement.

Original LFA has the meaning given to it in recital (A).

Restated LFA the Original LFA as amended and restated by this Agreement in the form set out in Schedule 1.

- 1.2 The rules of interpretation of the Original LFA shall apply to this Agreement as if set out in this Agreement, save that references in the Original LFA to “this Agreement” shall be construed as references to this Agreement.

- 1.3 Unless the context otherwise requires, references in the Original LFA to “this Agreement” shall be to the Original LFA as amended and restated by this Agreement.

- 1.4 In this Agreement:

1.4.1 any reference to a “clause” or “Schedule” is, unless the context otherwise requires, a reference to a clause or Schedule of this Agreement; and

1.4.2 clause and Schedule headings shall not affect the interpretation of this Agreement.

- 1.5 This Agreement is a designated Litigation Claim Funding Document.

- 1.6 Schedule 1 forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes Schedule 1.

2. Amendment and Restatement of the Original LFA

With effect from the date of this Agreement, the Original LFA shall be amended and restated, so that it shall be read and construed for all purposes as set out in Schedule 1.

3. Representations and Warranties

The Claimant makes the representations and warranties set out in clauses 3.1 and 3.2 of the Original LFA to the Funder on the date of this Agreement by reference to the facts and circumstances then existing, and as if each reference in those representations and warranties to “this Agreement” includes a reference to this Agreement and the Restated LFA.

4. **Continuity**

The provisions of the Original LFA shall, save as amended in this Agreement, continue in full force and effect, and shall be read and construed as one document with this Agreement.

5. **Costs and Expenses**

Any costs and expenses (including legal fees) incurred by the Funder in connection with this Agreement shall constitute Claim Funding and shall be deemed to be Drawn Funds in accordance with the terms of the Original LFA.

6. **Further Assurance**

6.1 The Claimant shall promptly, at the request of the Funder and at its own expense, do all such acts or execute all such documents (including, but not limited to, notices and instructions) as the Funder may reasonably specify:

6.1.1 to give effect to the amendments made or to be made pursuant to this Agreement; or

6.1.2 to give effect to any other amendments as the Funder may from time to time require,

in each case in order to ensure the Restated LFA is legally valid, binding and enforceable (including but not limited to as a result of any change of law or regulation or any decision by any Court in England and Wales which might otherwise render the Restated LFA unenforceable).

7. **Miscellaneous**

7.1 The provisions of clauses 13, 14, 19 and 21 of the Original LFA shall apply to this Agreement, as if set out in full and so that references in those provisions to "this Agreement" shall be construed as references to this Agreement and references to "party" or "parties" shall be construed as references to parties to this Agreement.

7.2 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts together shall constitute one agreement. No counterpart shall be effective until each party has executed at least one counterpart.

7.3 Transmission of an executed counterpart of this Agreement by e-mail attachment shall take effect as delivery of an executed counterpart of this Agreement and shall be binding.

8. **Third Party Rights**

8.1 Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

8.2 Notwithstanding any term of this Agreement, the consent of any person who is not a party to this Agreement is not required to rescind or vary this Agreement at any time.

9. **Governing Law and Jurisdiction**

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

9.2 Save for a Termination Dispute pursuant to Clause 12.8 (*Termination Dispute*) of the Restated LFA, or a dispute in relation to any Settlement in respect of the Claim or in relation to the Minimum Quantum, the Parties irrevocably agree that the Courts of England and Wales are to have exclusive jurisdiction in relation to this Agreement.

This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule 1 - Restated LFA

Originally dated 23 November 2023 and as amended and restated on 21 February 2025

-
- (1) **ASERTIS LTD**
 - (2) **BULK MAIL CLAIM LIMITED**
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LITIGATION FUNDING AGREEMENT

CONTENTS

| | | |
|-----|--|----|
| 1. | Definitions and Interpretations..... | 1 |
| 2. | Conditions Precedent | 10 |
| 3. | Representations and Warranties | 11 |
| 4. | General Undertakings..... | 12 |
| 5. | Confidential Information..... | 15 |
| 6. | Data Protection | 15 |
| 7. | The Litigation Funding Agreement | 17 |
| 8. | Budget, Reporting and Invoicing | 20 |
| 9. | Claim Trust Account | 21 |
| 10. | Settlement (including Reasonable Offers)..... | 22 |
| 11. | Application of Proceeds..... | 24 |
| 12. | Termination and Consequences | 25 |
| 13. | Releases, Waivers and Remedies | 27 |
| 14. | Severability | 27 |
| 15. | Default | 27 |
| 16. | Illegality..... | 28 |
| 17. | Security for Costs | 28 |
| 18. | General Information..... | 28 |
| 19. | Entire Agreement and Variation | 29 |
| 20. | Costs and Indemnities | 30 |
| 21. | Notices..... | 31 |
| 22. | Payments..... | 31 |
| 23. | Counterparts | 31 |
| 24. | Governing Law and Jurisdiction | 32 |
| | Schedule 1 - Key Terms | 33 |
| | Schedule 2 - Special Conditions | 36 |
| | Schedule 3 - Dispute Resolution | 39 |
| | Schedule 4 - Irrevocable Letter of Instruction from Claimant to Law Firm | 41 |
| | Schedule 5 - Form of Budget | 45 |
| | Schedule 6 - Form of Monthly Progress and Budget Report | 46 |
| | Schedule 7 - Form of Conditional Fee Agreement..... | 48 |

This Agreement was originally dated 23 November 2023 and as amended and restated on 21 February 2025 and made between:

- (1) **ASERTIS LTD** incorporated in England and Wales with company number 11269006 whose registered office is at 100 Barbirolli Square, Manchester M2 3AB (the "**Funder**"); and
- (2) **BULK MAIL CLAIM LIMITED** incorporated in England and Wales with company number 15032344 whose registered office is at C/O Lewis Silkin LLP, Arbor House, 255 Blackfriars Road, London, United Kingdom, SE1 9AX (the "**Claimant**").

IT IS AGREED as follows:

RECITALS

- (A) The Claimant, acting as class representative, intends to bring the Claim against the Defendant on behalf of the Class Members pursuant to the Competition Act 1998.
- (B) The Claimant is lawfully entitled to pursue the Claim and has no conflict of interest with regard to the Class Members which it seeks to represent.
- (C) The Claimant will be in sole control of the Claim and will act justly and reasonably in the interests of the Class Members.
- (D) The Claimant has taken independent legal advice in relation to the Litigation Claim Funding Documents and has also received independent advice on after the event insurance options available in respect of the Claim
- (E) The Claimant is of the view, after having taken the above advice, that it is in the best interests of the Class Members for the Claimant to enter into this Agreement and progress the Claim.
- (F) The Funder has agreed to provide litigation funding on the terms of this Agreement.
- (G) The Claimant has agreed to apply to the CAT for the approval of certain payments to the Funder in accordance with this Agreement.

1. Definitions and Interpretations

1.1 Definitions

In this Agreement (including in the recitals):

Adverse Costs means, in relation to the Claim, any of the following made or agreed during the Duration of this Agreement:

- (a) any costs order made by a Court against the Claimant and/or the Funder; or
- (b) any costs the Claimant and/or the Funder agrees to pay to the Defendant in relation to the Proceedings; or
- (c) any costs the Claimant agrees to pay to the Defendant as part of any Settlement;

Advice means the written advice of Counsel dated [REDACTED] on liability in respect of the Claim, as updated on [REDACTED];

Agreed Percentages means the following percentages:

- (a) in respect of the Law Firm's Fees (excluding any uplift / success fee):
 - (i) [REDACTED]; and

- (ii) [REDACTED];
- (b) in respect of Disbursements (excluding Counsel's Fees) submitted by the Law Firm:
 - (i) 100% to be paid by the Funder on behalf of the Claimant;
 - (ii) 0% to be Deferred Fees; and
- (c) in respect of Counsel's Fees (excluding any uplift / success fee):
 - (i) 100% to be paid by the Funder on behalf of the Claimant; and
 - (ii) 0% to be Deferred Fees,

PROVIDED THAT the agreed percentage the Funder shall pay in respect of the Law Firm's Fees (as specified at paragraph (a)(i) above and as recorded in the Budget) shall only be [REDACTED] where the Minimum Quantum is satisfied and continues to be satisfied, otherwise the agreed percentage the Funder shall pay in respect of the Law Firm's Fees shall be 0%, and all of the Law Firm's Fees shall become Deferred Fees (as opposed to [REDACTED] as specified at paragraph (a)(ii) above);

Amendment and Restatement Agreement means the amendment and restatement agreement dated on or around the Amendment Date and entered into between the Funder and the Claimant.

Amendment Date means 21 February 2025.

Application means the application submitted and signed by the Law Firm in relation to the Claim, as was updated in subsequent correspondence, and including all information and documentation in relation to the Claim which is contained in the Data Room;

Award means, in respect of the Claim, all monetary amounts (inclusive of interest) which have been awarded to the Claimant for the benefit of the Class Members pursuant to any interim order, interim payment, insurance payment, Final Judgment or otherwise (including any damages, costs and/or disbursements) or under any Settlement;

Budget means the sum of [REDACTED] (including VAT (noting that the Funder is funding VAT under this Agreement) and including any Insurance Premium and Insurance Premium Tax), being the estimate of the Claimant's costs of pursuing the Claim, including the Law Firm's Fees, Disbursements and VAT, as approved by the Funder and set out in Schedule 5 (*Form of Budget*), as the same may be varied and approved by the Funder from time to time, in accordance with the terms of this Agreement;

Budget Variation means an amendment to the Budget requested by the Claimant or the Law Firm in anticipation of, or as a result of, a Cost Overrun or in relation to a cost which was not provided for in the Budget and, in each case, agreed by the Funder;

Budget Variation Fee has the meaning given to it in paragraph (6) of Schedule 1 (*Key Terms*);

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general business in London;

Case Proceeds means:

- (a) any Recovered Costs;
- (a) any amount paid from Undistributed Damages to the Claimant pursuant to an order of the Court in respect of the costs, fees or disbursements incurred by the Claimant within the meaning of CAT Rule 93(4);

- (b) any amount allocated in a Collective Settlement Approval Order to the Claimant's costs, fees or disbursements within the meaning of CAT Rule 94 and/or 97;
- (c) any amount as may otherwise be ordered or permitted by the CAT to be paid from the Award in respect of the Claimant's liability to the Funder, the Law Firm's Fees, Counsel's Fees, Disbursements and/or any Insurance Premium; and
- (d) any other amounts in the Claim Trust Account including credit interest (if any) accruing on the amounts in the Claim Trust Account;

CAT means the United Kingdom Competition Appeal Tribunal;

CAT Rules means the Competition Appeal Tribunal Rules 2015, S.I. 2015/1648, as amended from time to time, including any applicable Civil Procedure Rules;

CFA means any conditional fee agreement made between the Law Firm and the Claimant and entered into from time to time, in the same or substantially the same form as the document which is set out at Schedule 7 (*Form of Conditional Fee Agreement*) or, if no such conditional fee agreement is appended at Schedule 7 (*Form of Conditional Fee Agreement*), in such form as the Funder may (in its absolute discretion) agree from time to time;

Claim means the collective, opt-out proceedings against the Defendants for damages in respect of harm caused by an alleged breach of section 2 of the Competition Act 1998 and/or Article 102 of the Treaty on Functioning of the European Union, as a result of the Ofcom decision entitled "*Discriminatory pricing in relation to the supply of bulk mail delivery services in the UK*" dated 14 August 2018, as referred to at paragraph (1) of Schedule 1 (*Key Terms*), which has been summarised in the Application. For the avoidance of doubt, the Claim shall extend to any appeal whether or not the Funder agrees to fund such an appeal, subject to Clause 7.4 below, but the Claim shall not extend to the Claimant bringing claims against any opponents other than the Defendants, and Claim Funding shall only be used for bringing claims against the Defendants;

Claim Funding means the total amount the Funder will provide or has provided in accordance with the Budget, subject to any change in that amount as a result of any Budget Variation, together with the costs and expenses (including, without limitation, legal fees) incurred in connection with (i) the preparation, negotiation and completion of the Litigation Claim Funding Documents and (ii) any request by the Claimant for an amendment or variation to any Litigation Claim Funding Document;

Claim Information means information in relation to the Claim including:

- (a) documents produced where disclosure to the Funder will not amount to a waiver of legal professional privilege and/or common interest privilege; and
- (b) documents in relation to the Claim;

Claim Trust Account means the account identified in paragraph (4) of Schedule 1 (*Key Terms*), being a designated client account of the Law Firm, or such other account as agreed between the Parties, or as ordered by the CAT;

Claimant means Bulk Mail Claim Limited, a private limited company registered in England and Wales with company number 15032344 whose registered office is C/O Lewis Silkin LLP, Arbor House, 255 Blackfriars Road, London, United Kingdom, SE1 9AX, or any other person authorised as the class representative in the Claim and to whom the rights and obligations under this Agreement have been validly transferred;

Claimant's Remuneration means the fees and any related expenses to be paid to the Claimant in bringing and managing the Claim in accordance with the Budget;

Class Members means all persons falling within the definition of the certified class and any subclasses pursuant to the Claim, with such class definition to be determined by order of the CAT;

Collective Settlement Approval Order means an order of the CAT approving a proposed collective settlement with the meaning of and under CAT Rule 94 and/or CAT Rule 97;

Conditions Precedent has the meaning given to it in Clause 2.1 (*Conditions Precedent*);

Confidential Information means:

- (a) where it relates to information received by the Funder and/or the Funder's representatives, all information relating to the Claimant, the Law Firm and other professional advisors, the Claim or the Proceedings, and shall include the terms of the Litigation Claim Funding Documents;
- (b) where it relates to information received by the Claimant, all information relating to the Funder or the Claim of which the Claimant becomes aware in relation to the arrangements under the Litigation Claim Funding Documents and shall include the terms of the Litigation Claim Funding Documents; and
- (c) all information relating to (i) the provision of the Claim Funding to the Claimant by the Funder and (ii) the Funder's identity,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information, but excludes information that:

- (i) is or becomes public information other than as a direct or indirect result of any breach by a Party of Clause 5 (*Confidential Information*);
- (ii) is identified in writing at the time of delivery as non-confidential by the disclosing Party or any of its advisers;
- (iii) is required or reasonably requested, upon advice from the Law Firm, to be disclosed by the Claimant for the purposes of and/or pursuant to the Claim; or
- (iv) is known by the recipient before the date the information is disclosed to it or is lawfully obtained by it from a source which is, as far as it is aware, unconnected with the other Party, and which, in either case, as far as it is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality;

Contingent Insurance Premium means the premium payable to an Insurance Company under an Insurance Policy which becomes due after a successful outcome (howsoever defined in such Insurance Policy) is achieved in respect of the Claim;

Cost Overrun means, without double counting, at any time:

- (a) the amount by which the Law Firm or the Funder determines (acting reasonably in consultation with each other) a Phase in the Budget has been or will be exceeded at that time; and/or
- (b) any cost or expense in connection with the Claim which is not anticipated in a Budget or agreed as a substitute for a budgeted cost;

Counsel means the barrister(s) instructed by the Law Firm from time to time in relation to the Claim being, as at the date of this Agreement, the barristers whose details are set out at paragraph (3) of Schedule 1 (Key Terms);

Counsel's Fees means the legal fees and disbursements of Counsel incurred in respect of the Claim;

Court means the CAT and any other court in the United Kingdom;

CPO means a 'Collective Proceedings Order', as defined in the CAT Rules;

Data Protection Laws means all applicable laws relating to data protection, the processing of personal data and privacy, including: the Data Protection Act 2018, the General Data Protection Regulation (EU) 2016/679 ("EU GDPR") and UK General Protection Regulation ("UK GDPR"), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications), and any other data protection and/or privacy legislation applicable in the UK from time to time, (each as amended, updated, replaced or re-enacted from time to time and including all subordinate legislation made from time to time under or giving effect to the same) and references to "Controller", "Personal Data", "Special Category Data", "process", "processing" and "supervisory authority" have the meanings set out in, and will be interpreted in accordance with, such applicable laws;

Data Room means the data room established on 14 November 2023 and entitled "Royal Mail data room", together with all emails and correspondence therein;

Defendants means International Distributions Services Plc and any subsidiaries, affiliated or related entities thereto, and its or their directors, and any other entities that may reasonably be named as a Defendant in the Claim and "**Defendant**" means any one of them. The opponents in the Claim are expressly restricted to International Distributions Services Plc and any subsidiaries, affiliated or related entities thereto, and its or their directors unless otherwise agreed by the Funder and the Claimant;

Deferred Fees means the Agreed Percentage of the Law Firm's Fees and Disbursements and Counsel's Fees (where applicable) incurred during the Duration of this Agreement in connection with the Claim which are stated to be Deferred Fees in any CFA and which are deferred for payment, and any fees in excess of the Budget which are not approved as a Budget Variation, such fees to be payable by the Claimant on Final Judgment or Settlement in the event of a Successful Outcome and shall also include the success fee or uplift as may be defined under the terms of any valid CFA existing at the date of this Agreement or following the date of this Agreement;

Deposit Insurance Premium means the premium payable to the Insurance Company upon the inception of an Insurance Policy for Adverse Costs;

Disbursements means the disbursements incurred in respect of the Claim, including but not limited to any Deposit Insurance Premium for Adverse Costs, any Insurance Premium for the Claimant's costs (if applicable), any Insurance Premium or other charge for an insurance bond, deed of indemnity or equivalent (if applicable), Counsel's Fees (if applicable), Expert's Fees (if applicable), consultants fees, the costs of any Counsel determination pursuant to this Agreement and the Insurance Policy, claims administrator costs, the fees to be paid to the member(s) of any consultative group appointed to assist the Claimant, the costs of e-disclosure, and third party costs orders for disclosure;

Drawn Funds means the amount of the Claim Funding which has been used to pay Invoices and the Statements of Account in accordance with Clause 8.5, which shall include, for the avoidance of doubt, the fees and costs referred to in the definition of Claim Funding and any amounts drawn down under the Existing LFA, which in each case shall be deemed to be Drawn Funds under this Agreement;

Due Diligence means the due diligence undertaken by the Funder for the Claim including activities and investigations as to the prospects of the success of the Claim and the ability to recover damages in the Claim;

Duration of this Agreement means the period from the date of this Agreement until the later of:

- (a) the date on which all of the Claim Funding has been deployed or drawn down under this Agreement;
- (b) the date on which all amounts due to the Funder under this Agreement have been paid to, and received by, the Funder in accordance with this Agreement; and
- (c) the date on which this Agreement is terminated in accordance with its terms;

Duty means any duty, obligation or liability (actual liability or liability that may arise following the occurrence of certain events) of any kind;

Expert's Fees means the fees and expenses of an expert witness incurred in respect of the Claim;

Final Judgment means a judgment or ruling which determines the Claim which:

- (a) cannot be appealed or reviewed by any court or tribunal of competent jurisdiction; or
- (b) the Claimant or a Defendant have chosen not to appeal or ask to be reviewed by any court or tribunal of competent jurisdiction and the time for doing so has expired;

Final Judgment does not include judgments or rulings on interlocutory issues (unless the interlocutory issues determine the Claim, for example by summary judgment or strike-out);

GT Report means the report of Grant Thornton Economic Consulting dated [REDACTED], as updated on [REDACTED];

Insolvent means, in relation to a person:

- (a) an inability or admission of an inability to pay its debts as they fall due;
- (b) any resolution is passed or order made for the winding up, dissolution, insolvency or bankruptcy, administration or reorganisation of that person, a moratorium is declared in relation to any indebtedness of that person or an administrator is appointed to that person;
- (c) any composition, compromise, assignment or arrangement is made with any of its creditors;
- (d) the appointment of any liquidator, receiver, administrator, receiver, trustee in bankruptcy, administrator, compulsory manager or other similar officer in respect of that person or any of its assets; or
- (e) any analogous procedure or step is taken in any jurisdiction;

Insurance Company means any insurance company which provides an Insurance Policy in relation to the Claim, which is duly authorised and regulated by the relevant authorities in the United Kingdom and which has been approved by the Funder in writing;

Insurance Policy means an after-the-event insurance policy or policies entered into between the Claimant and an Insurance Company in relation to the Claim which the Funder has confirmed satisfies the Funder's requirements;

Insurance Premium means any Deposit Insurance Premium or any Contingent Insurance Premium;

Interest Payment Amount means an amount equal to the Interest Rate calculated daily on the amount of any Case Proceeds or any Settlement monies that are paid into the Claim Trust Account and which are due to be paid to the Funder under the terms of this Agreement and the Priorities Agreement, and calculated daily in accordance with Clause 7.15;

Interest Rate means the rate set out in in paragraph (11) of Schedule 1 (*Key Terms*);

Invoice means an invoice showing the Law Firm's Fees and Disbursements submitted by the Law Firm in relation to the Claim;

Irrevocable Letter of Instruction means the irrevocable letter of instruction set out at Schedule 4 (*Irrevocable Letter of Instruction from Claimant to Law Firm*);

KC means King's Counsel;

Key Terms means the terms set out at Schedule 1 (*Key Terms*);

Law Firm means Lewis Silkin LLP, incorporated and registered in England and Wales with company number OC317120, whose registered office is at Arbor, 255 Blackfriars Road, London SE1 9AX, being the firm of lawyers engaged by the Claimant in relation to the Claim or any other law firm appointed in that firm's place pursuant to Clause 4.1.19;

Law Firm's Fees means the legal fees incurred by the Law Firm in respect of the Claim together with VAT (if applicable);

Litigation Claim Funding Documents means:

- (a) the Application;
- (b) this Agreement;
- (c) the Amendment and Restatement Agreement;
- (d) any CFA;
- (e) the Priorities Agreement; and
- (f) any other document designated as such by the Funder and Claimant at any time;

Monthly Report means the monthly progress and budget report in the form at Schedule 6 (*Form of Monthly Progress and Budget Report*);

Non-Deferred Fees means the amounts payable by the Funder to the Law Firm, including in relation to Disbursements, in line with the relevant CFAs and the Budget under this Agreement. For the avoidance of doubt, and without prejudice to Clause 8.8, the Claimant shall remain liable for any of the Law Firm's Fees and/or Disbursements payable under the CFAs with the Law Firm, but the Funder has committed to pay the Non-Deferred Fees on the Claimant's behalf on the terms, and subject to the conditions, of this Agreement;

Parties means the parties to this Agreement and **Party** means either of them;

Phase means a phase of the Claim and Proceedings as set out in the Budget;

Priorities Agreement means the agreement to be entered into between the Funder, the Claimant, the Law Firm, Counsel and the Insurance Company as to the distribution of Case Proceeds;

Proceedings means any and all legal proceedings (including but not limited to any application for any form of interim injunctive relief prior to issuing legal proceedings) issued for the prosecution of the Claim.

Reasonable Offer has the meaning given in Clause 10.3 (*Settlement (Including Reasonable Offers)*);

Recovered Costs means costs within the meaning of CAT Rule 104 which are incurred by the Claimant and recovered from a Defendant (or anyone on a Defendant's behalf) in connection with the Claim;

Right means any right, privilege, power, immunity, or other interest or remedy of any kind;

Security means any mortgage, charge, standard security, pledge, lien, hypothecation, assignment by way of security, assignation in security or trust arrangement for the purpose of providing security or other security interest of any kind in any jurisdiction, including any right of set-off created by agreement;

Settlement means any settlement of all or part of the Claim whether at first instance or following any appeal whether or not the Funder agrees to fund such an appeal, and **Settle** shall be construed accordingly. **Settlement** does not include settlement of interlocutory applications (save where such Settlement determines all or part of the Claim);

Special Conditions means those terms and conditions set out at Schedule 2 (*Special Conditions*) which must be satisfied or complied with prior to the Funder making, or continuing to make, Claim Funding available under this Agreement;

Statement of Account means a summary of the Claimant's Remuneration as submitted by the Claimant to the Funder in relation to the Claim;

Success Fee has the meaning given to it in paragraph (9) of Schedule 1 (*Key Terms*) and is payable from available Case Proceeds following a Successful Outcome;

Successful Outcome means a Final Judgment or Settlement pursuant to which the Claimant or Class Members become entitled to an Award;

Termination Dispute means any disagreement between the Parties as to whether this Agreement has been properly terminated;

Termination Notice means a written notice provided by any Party to the other Party giving notice of their intention to terminate this Agreement;

Undistributed Damages are damages that have not been claimed by Class Members within any period stipulated by the Court for distribution to Class Members whether following a judgment or a settlement;

Unsuccessful Outcome means, in relation to the Claim, a Final Judgment or Settlement which is not and does not result in a Successful Outcome;

Unused Amount has the meaning given to it in Clause 8.1 (*Budget, Reporting and Invoicing*); and

VAT means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

1.2 Interpretation

1.2.1 The Recitals form part of this Agreement.

1.2.2 A month is a calendar month;

- 1.2.3 The Schedules to this Agreement are deemed to be incorporated and form part of this Agreement.
- 1.2.4 To the extent of any inconsistencies between the Litigation Claim Funding Documents and the Law Firm's engagement, the terms of the Litigation Claim Funding Documents shall prevail save for any regulatory obligations under the Law Firm's engagement which cannot be varied.
- 1.2.5 To the extent of any inconsistencies between this Agreement, the Priorities Agreement and the Law Firm's engagement, the terms of the Priorities Agreement shall prevail save for any regulatory obligations under the Law Firm's engagement which cannot be varied.
- 1.2.6 To the extent of any inconsistencies as between the Litigation Claim Funding Documents, the order of precedence is as follows:
 - 1.2.6.1 the Priorities Agreement;
 - 1.2.6.2 this Agreement;
 - 1.2.6.3 the other Litigation Claim Funding Documents.
- 1.2.7 Any reference to a breach of a Litigation Claim Funding Document or any provision of, or Duty arising under, a Litigation Claim Funding Document shall include a failure to comply with such Litigation Claim Funding Documents, provision or Duty.
- 1.2.8 Unless a contrary intention appears, in this Agreement:
 - 1.2.8.1 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;
 - 1.2.8.2 no rule of construction applies to the disadvantage of a party because that party put forward this Agreement or any portion of it;
 - 1.2.8.3 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;
 - 1.2.8.4 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;
 - 1.2.8.5 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 & Wales, be deemed to include what most nearly approximates in that jurisdiction to the English legal term.
 - 1.2.8.6 the table of contents headings are inserted for convenience only and do not affect the interpretation of this Agreement;
 - 1.2.8.7 references to Clauses, Schedules and paragraphs are to Clauses of, Schedules to, and paragraphs of, this Agreement;
 - 1.2.8.8 the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules;

- 1.2.8.9 references to any Litigation Claim Funding Documents or any other document are to that document as from time to time amended, restated, novated or replaced, however fundamentally;
- 1.2.8.10 references to a person include an individual, firm, company, corporation, unincorporated body of persons and any government entity;
- 1.2.8.11 references to a person include its successors in title, permitted assignees and permitted transferees;
- 1.2.8.12 words importing the plural include the singular and vice versa;
- 1.2.8.13 references to any enactment include that enactment as re-enacted; and, if an enactment is amended, any provision of the Litigation Claim Funding Documents which refers to that enactment will be amended in such manner as the Funder, after consultation with the Claimant and the Law Firm, determine to be necessary to preserve the intended effect of this Agreement;
- 1.2.8.14 subsidiary and holding company mean “subsidiary” and “holding company” (respectively) and a company shall be treated, for the purposes only of the membership requirements as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) a nominee;
- 1.2.8.15 no term of this Agreement is enforceable by anyone who is not a Party;
- 1.2.8.16 “£” or “Sterling” means the lawful currency of the United Kingdom; and
- 1.2.8.17 any reference to “the date of this Agreement” or any similar phrase or term means 23 November 2023.

1.3 The parties hereby agree and acknowledge that this Agreement replaces and supersedes the litigation funding agreement dated 30 June 2022 (**Existing LFA**) and that the Existing LFA is terminated with effect from the date of this Agreement and no provision thereof shall survive such termination.

2. **Conditions Precedent**

2.1 Upon receipt by the Funder of the following conditions precedent (**Conditions Precedent**) each in form and substance satisfactory to it, the Funder will make available the Claim Funding under this Agreement. The Funder shall promptly notify the Claimant upon being so satisfied:

- 2.1.1 the Application;
- 2.1.2 this Agreement, duly signed by the Claimant;
- 2.1.3 the Claimant has provided to the Law Firm the Irrevocable Letter of Instruction in the form set out at Schedule 4 (*Irrevocable Letter of Instruction from Claimant to Law Firm*), and the Law Firm has provided the Funder with a copy of the Irrevocable Letter of Instruction signed by the Claimant and the Law Firm;
- 2.1.4 a copy of the resolutions duly passed by the Claimant:
 - (a) approving the entry into, and terms of, and transactions contemplated by, the Litigation Claim Funding Documents to which it is party and resolving that it execute, deliver and perform the Litigation Claim Funding Documents to which it is a party;

- (b) authorising a specified person or persons to execute the Litigation Claim Funding Documents to which it is a party on its behalf, to give notices and take all other action in connection with the Litigation Claim Funding Documents to which it is a party; and
 - (c) confirming that the entry into the Litigation Claim Funding Documents to which it is a party is in the best interests of the Class Members;
- 2.1.5 a copy of the Claimant's letter of engagement with the Law Firm; and
- 2.1.6 the documents and evidence referred to at paragraphs 1 to 6 (inclusive) of Schedule 2 (*Special Conditions*).
- 2.2 The Parties shall use all reasonable endeavours to complete the Conditions Precedent as soon as practicable and keep each other informed as to their progress.
- 2.3 If the Conditions Precedent have not been satisfied within 30 days of the date of this Agreement (or any such longer period as may be agreed between the Parties acting in good faith), the Funder may terminate this Agreement immediately by providing written notice to the Claimant.

3. Representations and Warranties

- 3.1 The Claimant represents and warrants that, on the date of this Agreement and on each day during the Duration of this Agreement:
 - 3.1.1 the Claimant has taken, or had the opportunity to take, legal advice in relation to the terms of this Agreement and any Litigation Claim Funding Documents to which the Claimant is a party;
 - 3.1.2 the Claimant is not Insolvent;
 - 3.1.3 to the best of the Claimant's knowledge and belief (having made due and careful enquiry and having taken legal advice from the Law Firm), the Application and any other factual information provided or verified by the Claimant is true as at the date it was provided or verified, or as at the date (if any) at which it is stated, and do not omit any facts which would make it misleading;
 - 3.1.4 to the best of the Claimant's knowledge and belief (having made due and careful enquiry and having taken legal advice from the Law Firm), since the date(s) of the Application and the delivery or verification of the factual information referred to in Clause 3.1.3, nothing has occurred or been omitted that results in that Application or information being untrue or misleading unless disclosed in writing to the Funder;
 - 3.1.5 to the best of the Claimant's knowledge and belief (having made due and careful enquiry and having taken legal advice from the Law Firm), the obligations expressed to be assumed by the Claimant in this Agreement are (subject to the principle that equitable remedies are discretionary) legal, valid, binding and enforceable obligations;
 - 3.1.6 the Claimant has the power and authority to execute the Litigation Claim Funding Documents to which it is a party and to exercise its Rights and perform its Duties under the Litigation Claim Funding Documents and no limit on its powers will be exceeded as a result of the funding contemplated by the Litigation Claim Funding Documents;
 - 3.1.7 the Claimant is duly incorporated and validly existing under the law of its jurisdiction of incorporation, with the power to own its assets and to carry on its business (and other activities) as they are being conducted;
 - 3.1.8 entering into this Agreement and performing the Claimant's obligations and exercising the Claimant's Rights under this Agreement does not conflict with any law applicable

to the Claimant, the Claimant's constitutional documents (if applicable) or any agreement binding upon the Claimant (or the Claimant's assets); and

- 3.1.9 the execution of the Litigation Claim Funding Documents to which the Claimant is a party and the exercise of the Claimant's Rights and the performance of the Claimant's Duties under them will not result in the Claimant being in breach of any Duty or being required to create any Security in favour of any person (other than the Funder (as applicable)) or perform any other action as a result of any Duty.
- 3.2 The Claimant represents and warrants that, on the date of this Agreement and on each day during the Duration of this Agreement, it is not aware of any matter, fact and/or circumstance not disclosed to the Funder which:
 - 3.2.1 could have had a material effect on the Funder's decision on whether or not to sign this Agreement; and/or
 - 3.2.2 could have a material adverse effect on:
 - 3.2.2.1 the Claim;
 - 3.2.2.2 the likelihood of bringing a successful Claim and/or obtaining a Successful Outcome;
 - 3.2.2.3 successfully enforcing a Successful Outcome; and/or
 - 3.2.2.4 the prospects of the Claimant being awarded its costs in the Final Judgment subject only to assessment by the Court in the usual way.

4. **General Undertakings**

- 4.1 The Claimant shall:
 - 4.1.1 devote the Claimant's time, attention and necessary resource to the Claim so as to enable the Law Firm to facilitate and advance the Claim efficiently and to minimise the costs and length of any Proceedings in so far as it is in the interests of the Class Members to do so;
 - 4.1.2 cooperate fully with the Law Firm and provide full, clear and honest instructions to the Law Firm in a timely manner;
 - 4.1.3 not amend any CFA in relation to the Claim without the Funder's prior written consent (such consent not to be unreasonably withheld or delayed);
 - 4.1.4 provide any necessary support and cooperation in the Claim, including but not limited to attending all court hearings in relation to the Claim, either in person or via electronic means (where requested to do so by the Law Firm);
 - 4.1.5 assist the Law Firm to conduct all Proceedings in respect of the Claim reasonably, in accordance with all court orders for the Claim, and in accordance with all regulations including the CAT Rules;
 - 4.1.6 co-operate in any negotiations, mediation or other alternative dispute resolution process unless the Claimant reasonably determines that not to do so would be in the Class Members' best interests;
 - 4.1.7 not take any action which might reasonably be expected to increase the risk or quantum of any Adverse Costs order being made against the Claimant, the Law Firm or the Funder whilst acting in the best interests of the Class Members and in accordance with advice from the Law Firm and Counsel;

- 4.1.8 if a Defendant fails to comply with an agreement or order to pay damages or costs and the Law Firm and the Claimant are not taking reasonable action so as to secure payment, cooperate fully with the Funder in pursuing any money that is due from that Defendant and give the Funder authority to take action in the Claimant's name to enforce an order or settlement agreement;
 - 4.1.9 pursue the Claim at all times in good faith;
 - 4.1.10 subject to Clause 7.8 below, not seek or enter into any agreement to obtain funding in respect of the Claim from any party (other than the Funder or in respect of an Insurance Policy) except with the Funder's prior written consent;
 - 4.1.11 act fairly and justly in the interests of the Class Members at all times;
 - 4.1.12 immediately notify the Law Firm of any issue which may compromise the Claimant's obligations to the Class Members, in accordance with the CAT Rules;
 - 4.1.13 use all reasonable endeavours, in accordance with the terms of this Agreement, to achieve the recovery of an Award and Recovered Costs as soon as reasonably possible and in the best interests of Class Members;
 - 4.1.14 take all reasonable steps to achieve the authorisation of the Claimant and the certification of the Claim pursuant to Rules 78 and 79 of the CAT Rules;
 - 4.1.15 following any application to the Court for a Collective Settlement Approval Order, pursuant to CAT Rule 94, 96 and/or 96, seek to satisfy the CAT that the terms of the Settlement insofar as they relate to costs and expenses are in accordance with the content of this Agreement, unless otherwise agreed by the Funder, and are just and reasonable;
 - 4.1.16 subject to any order of the Court to the contrary, instruct the Law Firm to seek payment of and take all reasonable steps to procure payment of any Case Proceeds directly into the Claim Trust Account;
 - 4.1.17 following a Final Judgment or a Settlement, instruct the Law Firm to request that the Court makes an order that all or part of the Award may be paid to the Claimant in respect of the costs, fees and disbursements (including the Success Fee);
 - 4.1.18 take all reasonable steps to attain or realise the Success Fee in full; and
 - 4.1.19 not terminate its engagement with the Law Firm unless:
 - 4.1.19.1 the prior written consent (such consent not to be unreasonably withheld) of the Funder is obtained;
 - 4.1.19.2 another law firm has been appointed, with the prior written approval of the Funder (provided that, for the avoidance of doubt, such law firm shall be, in the reasonable opinion of the Funder, of materially equivalent standing as the Law Firm and shall be appointed on similar terms as the Law Firm); and
 - 4.1.19.3 the Claimant has provided such other law firm with an Irrevocable Letter of Instruction, duly signed by the Claimant and that law firm, and a copy is returned to the Funder.
- 4.2 The Claimant shall procure that no Security is created over:
- 4.2.1 any CFA;

- 4.2.2 any of the assets that are in the Claim Trust Account or may be paid into to the Claim Trust Account; or
- 4.2.3 any Rights that the Claimant has in relation to the Claim.
- 4.3 The Claimant shall not amend, vary or supplement the Law Firm's agreed fee structure for the Claim without the prior written consent of the Funder save where any change is required for regulatory reasons.
- 4.4 The Claimant shall not transfer (either by assignment, transfer, assignation or by novation) any of the Claimant's Rights or Duties in the Claim without the Funder's prior written consent, such approval to not be unreasonably withheld or delayed.
- 4.5 If Robin Hugh Aaronson is unable, for any reason, to fulfil their role as a director of the Claimant:
 - 4.5.1 the Claimant undertakes to use its best endeavours to:
 - 4.5.1.1 appoint a replacement director, having agreed the proposed replacement director with the Funder and the Law Firm in advance; and
 - 4.5.1.2 obtain approval from the CAT, so far as it is necessary, to the replacement director being appointed and/or the Claim continuing; and
 - 4.5.2 the Funder shall be entitled to cease to provide Claim Funding or terminate this Agreement if:
 - 4.5.2.1 no replacement director is appointed or proposed;
 - 4.5.2.2 in the reasonable opinion of the Funder, the Funder considers that the proposed replacement director(s) are not suitable; or
 - 4.5.2.3 the CAT does not approve the replacement director being appointed or the Claim continuing.
- 4.6 The Claimant shall:
 - 4.6.1 make full and frank disclosure of all material information in connection with the Claim to the Insurance Company providing an Insurance Policy to the Claimant;
 - 4.6.2 comply in all respects with the terms of an Insurance Policy;
 - 4.6.3 perform all the Claimant's obligations arising under or in connection with an Insurance Policy; and
 - 4.6.4 at all times maintain adequate insurance against Adverse Costs under an Insurance Policy, which the Funder has confirmed satisfies the Funder's requirements, and shall not amend, vary or supplement the terms of the Insurance Policy without the prior written consent of the Funder.
- 4.7 Where Counsel advises that there is a reasonable prospect of success of a claim under and in respect of the Insurance Policy and the Funder requires the Claimant to do so, the Claimant, as the Insured under that Insurance Policy, must pursue a claim under that Insurance Policy or the Claimant must assist the Funder in pursuing a claim under that Insurance Policy on the Claimant's behalf. If the Claimant does not pursue a claim under an Insurance Policy where the Funder reasonably requests the Claimant to do so, the dispute resolution process at Schedule 3 (*Dispute Resolution*) shall be utilised. If the result of that process is that it is agreed that a claim should be pursued and the Claimant chooses not to pursue the claim itself, the Claimant authorises the Funder to pursue that claim on the Claimant's behalf and the Claimant will take all reasonable steps to assist the Funder in the pursuit of this. The Funder's additional costs of pursuing such a claim (including, without limitation, legal fees) shall be deemed to be a

Budget Variation and treated as Claim Funding, and Drawn Funds, for the purposes of this Agreement.

- 4.8 Unless otherwise agreed by the Parties, the Claimant shall permit and instruct the Law Firm to receive any Case Proceeds, subject to any order of the Court to the contrary, and apply them in accordance with the terms of this Agreement and the Priorities Agreement. If the Claimant receives all or part of the Case Proceeds directly from a Defendant or another party to the Claim or from any other person in relation to the Claim, subject to any order of the Court to the contrary, the Claimant shall pay the Case Proceeds into the Claim Trust Account as soon as reasonably possible and no later than within five Business Days of receipt by the Claimant.
- 4.9 By the Claimant's entry into this Agreement, it accepts the terms of this Agreement, the allocation of the Case Proceeds in accordance with paragraph (10) of Schedule 1 (*Key Terms*) and the Priorities Agreement and it undertakes to comply with all of the terms of this Agreement (as applicable to it).

5. Confidential Information

- 5.1 Each Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 5.2, and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.
- 5.2 Each Party may disclose such Confidential Information as it shall consider appropriate and provided it does not cause any loss of legal privilege:
- 5.2.1 to any of its affiliates, investors, officers, directors, employees, professional advisers, auditors, partners and representatives, any Insurance Company, the Law Firm and Counsel (if any); and
- 5.2.2 as required pursuant to the CAT Rules or otherwise ordered by the CAT;
- 5.2.3 to any person:
- 5.2.3.1 to whom such information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- 5.2.3.2 to whom such information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes; or
- 5.2.3.3 with the written consent of the other Party.
- 5.3 Save for disclosure under Clause 5.2.3, any person to whom the Confidential Information is to be given pursuant to Clause 5.2 must be informed in writing of its confidential nature, that some or all of such Confidential Information may be privileged and/or price-sensitive information, and any such person must agree to treat the Confidential Information as Confidential Information on the same or substantially the same terms set out in this Agreement, save there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information.

6. Data Protection

- 6.1 The Parties consider that data sharing is necessary under this Agreement. The aim of the Parties' data sharing is to facilitate supporting the Claim (**Agreed Purposes**). This clause 6 sets out the framework for the sharing of personal data between the Parties as Controllers.

- 6.2 The Parties shall comply with all Data Protection Laws and their respective obligations thereunder. Each Party shall comply with all the obligations imposed on a Controller under the Data Protection Laws.
- 6.3 Each Party acknowledges that, during the Duration of this Agreement, the Funder may request copies of legal advice and other information which may contain Personal Data relating to the Claimant and/or other related individuals in connection with Claim for the Agreed Purposes (**Relevant Personal Data**).
- 6.4 The Claimant will:
- 6.4.1 ensure it has all the necessary notices and independent consents and lawful basis in place to enable lawful transfer of the Relevant Personal Data for the Agreed Purposes;
 - 6.4.2 ensure that all Relevant Personal Data provided is complete and accurate (other than in respect of Relevant Personal Data provided by third parties);
 - 6.4.3 ensure that it has legitimate grounds under Data Protection Laws and is lawfully entitled to process and disclose the Relevant Personal Data to the Funder. Where the legal basis is consent there must be written evidence of that consent;
 - 6.4.4 ensure that it provides information necessary to ensure the fair processing of the Relevant Personal Data;
 - 6.4.5 ensure that it is lawfully entitled to process any Relevant Personal Data for the purposes of assessing the Application and continuing to monitor the Claim, including making any necessary disclosures to any third parties whose personal data Controllers forms part of the Relevant Information in accordance with the Data Protection Laws;
 - 6.4.6 comply with and not cause the Funder to breach any of the Data Protection Laws;
 - 6.4.7 ensure that it maintains and shall continue to maintain appropriate technical and organisational security measures to protect Relevant Personal Data;
 - 6.4.8 ensure that there are appropriate internal procedures in place for the secure transfer of data to the Funder which provide a level of security appropriate to the risk represented by the nature of Relevant Personal Data to be protected;
 - 6.4.9 ensure that for any international transfer there are appropriate safeguards in accordance with Data Protection Laws that will ensure that enforceable rights and effective legal remedies for Data Subjects are available. Should there be a requirement for Standard Contractual Clauses or an international transfer agreement for any Personal Data transfers the Parties shall agree to automatically implement and incorporate the most current version into this Agreement to ensure the continued transfer of data between the Parties for the purpose of providing appropriate technical and organisational measures to ensure a level of security;
 - 6.4.10 immediately notify the Funder if any instruction received infringes, or might reasonably be considered to infringe, the Data Protection Laws;
 - 6.4.11 provide the Funder with reasonable assistance as is necessary to enable the Funder to respond to and comply with any requests or correspondence from a data subject or Information Commissioner's Office including any subject access request, complaint, claim, right to be forgotten, right to rectification, right to object and to comply with any relevant request within the Data Protection Law statutory timescales;
 - 6.4.12 promptly notify the Funder in writing of any material change in the Relevant Personal Data;

- 6.4.13 notify the Funder in writing if it receives any communication, complaint or enquiry that materially pertains to the Funder from any third party whose personal data forms part of the Relevant Personal Data or any relevant supervisory authority in relation to the processing of the Relevant Personal Data;
 - 6.4.14 notify the Funder without undue delay on becoming aware of any breach of the Data Protection Laws that materially pertains to the Funder;
 - 6.4.15 be liable and indemnify the Funder for any costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) the Claimant causes to the Funder by any breach of this clause or the Data Protection Laws; and
 - 6.4.16 confirm that the Claimant has a valid registration with the Claimant's national Data Protection Authority which covers the intended data sharing pursuant to this Agreement.
- 6.5 The Parties are separate and independent data Controllers and nothing in this Agreement is intended to or shall be deemed to establish any joint control of the Relevant Personal Data.
- 6.6 The Claimant acknowledges that the Funder:
- 6.6.1 is a Controller in respect of all its processing of any Relevant Personal Data;
 - 6.6.2 will process any Relevant Personal Data in accordance with its privacy policy, which the Claimant acknowledges it has read and understood;
 - 6.6.3 may keep a record of any search carried out to verify the information the Claimant and/or the Law Firm have provided;
 - 6.6.4 may pass on any information the Claimant and/or the Law Firm have supplied and the results of any linked checks; and
 - 6.6.5 can use debt collection agencies or tracing agencies to trace the Claimant's whereabouts and recover any monies that the Claimant may owe.

7. **The Litigation Funding Agreement**

Purpose

- 7.1 The purpose of the Claim Funding under this Agreement is to enable the Claimant to pursue the Claim.
- 7.2 Subject to the terms of this Agreement, the Funder has agreed to fund that element of the Agreed Percentages as are stated to be payable by the Funder in respect of the Claim in accordance with the Budget (as may be varied in accordance with the terms of this Agreement).
- 7.3 Save as otherwise agreed by the Funder (in the Funder's absolute discretion), the Funder is not required to pay the costs of any appeal brought by the Claimant.
- 7.4 If a Defendant appeals against a judgment and the Claimant has received written advice from the Law Firm and Counsel (which is shared with the Funder) that defending that appeal is in the best interests of the Claimant and the Class Members and that there are reasonable prospects of successfully defending that appeal, the Claimant will put forward, and the Funder may, in its absolute discretion approve, a Budget Variation to account for the reasonable costs of defending that appeal as determined by a costs draftsman or otherwise agreed between the Parties. Any such Budget Variation shall be subject to a Budget Variation Fee as set out in paragraph (6) of Schedule 1 (*Key Terms*). If the Funder agrees to fund the costs of defending an appeal, it will

not be obliged to continue funding the costs of defending that appeal if, subsequent to such Budget Variation taking place:

- 7.4.1 the Law Firm and Counsel determine that defending the appeal is no longer in the best interests of the Claimant and the Class Members and/or that there are no longer reasonable prospects of successfully defending the appeal;
 - 7.4.2 the Insurance Company has given its approval, pursuant to the terms of the Insurance Policy, to conceding the appeal; and
 - 7.4.3 the Funder has given 10 Business Days' written notice of its intention not to fund the costs of defending the appeal and that notice period has expired.
- 7.5 Costs incurred prior to the expiry of the written notice period will remain payable by the Funder, even if invoiced after the date of the expiry of the notice, save that the Claimant will be under a duty to limit costs to those that the Law Firm and/or Counsel deem necessary to try to minimise any adverse costs exposure arising from the withdrawal of the appeal.
- 7.6 If the Funder requires the Claimant to appeal a decision relating to the amount of costs, fees and expenses that are payable under Rule 93(4) or 94, 96 or 97 of the CAT Rules or out of an Award, then the Funder shall pay the Claimant's costs of and incidental to such an appeal. Such costs shall fall outside of the Budget and be payable in addition by the Funder notwithstanding any other provision of this Agreement.
- 7.7 The Funder will not provide Claim Funding under this Agreement for any VAT payable where the Claimant is entitled to recover the same as an input tax credit in the Claimant's VAT returns. The Funder reserves the right to insist that the Claimant provides a certificate from the Claimant's accountant or auditor (or such other evidence the Funder agrees to be acceptable) confirming the Claimant's VAT status.
- 7.8 In circumstances where the Funder does not agree to fund an appeal pursuant to Clauses 7.3 and/or 7.4 the Claimant may seek funding from a third party funder and the Funder agrees to negotiate in good faith with any incoming third party funder to agree a commercial settlement for the appropriate re-allocation of the Success Fee taking into account (i) the amount of Drawn Funds as at the date of cessation of the Funder's Claim Funding and (ii) the amount of additional funding envisaged as being required in order to fund the appeal. Any incoming third party funder under this Clause 7.8 shall be approved by the Funder (such approval not to be unreasonably withheld or delayed) and, where a new third party funder is approved by the Funder, or where the Claimant is unable to secure alternative funding from a third party funder or the Funder reasonably refuses to approve a third party funder, the Parties acknowledge that it may be necessary to amend the allocation of the Case Proceeds waterfall at paragraph (10) of Schedule 1 (*Key Terms*) and the Priorities Agreement, including (if applicable) to recognise that the Law Firm, Counsel and any other person acting in connection with Claim may be acting on greater risk. The Parties agree to act in good faith when considering any amendment to the allocation of the Case Proceeds waterfall at paragraph (10) of Schedule 1 (*Key Terms*) and the Priorities Agreement to include a third party funder, on the basis that the Funder is not subordinated to that third party funder for this purpose.

Claim Funding

- 7.9 The maximum amount the Funder will fund under this Agreement is as set out in the Budget, as the same may be varied and approved by the Funder from time to time, in accordance with the terms of this Agreement, which is provided on a non-recourse, fully contingent basis in accordance with the terms of this Agreement with no liability for the Claimant save out of Case Proceeds (except in the case of any fraud or fraudulent misrepresentation by the Claimant).
- 7.10 An initial drawdown of Claim Funding under this Agreement was used prior to the date of this Agreement solely for the purposes of paying the fees of GT to enhance and update the GT Report and to obtain the updated Advice from independent counsel instructed by Us, in each

case in accordance with the Budget, and as referred to at paragraph 7 of Schedule 2 (*Special Conditions*). That initial drawdown of Claim Funding shall be deemed to be Drawn Funds.

- 7.11 Part of the second drawdown of Claim Funding under this Agreement will be used by the Claimant to pay [REDACTED] of the Law Firm's Fees, in accordance with the Budget, with the remaining [REDACTED] of the Law Firm's Fees becoming part of the Deferred Fees.
- 7.12 Part of the third drawdown of Claim Funding available under this Agreement shall be used by the Claimant solely for the purpose of purchasing an Insurance Policy from an Insurance Company in accordance with the Budget and the Claimant shall provide the Funder with a copy of that Insurance Policy and the Claimant shall deliver to the Funder a certificate of insurance confirming the Insurance Policy for an amount of no less than £10,000,000 is on risk, noting that the Parties each agree and acknowledge that they will co-operate in good faith to ensure that the Insurance Policy is effected as soon as reasonably practicable after the date of this Agreement. If, during the Duration of this Agreement, the Claimant, having received advice from the Law Firm, reasonably considers the level of cover provided under the Insurance Policy to be insufficient to cover the risk of Adverse Costs, the Claimant shall, on the Funder's written request, purchase appropriate insurance top up cover for Adverse Costs in connection with the pursuit of the Claim against the Defendant(s) as is advised is appropriate by the Law Firm. The costs of such additional insurance shall not form part of the initial Budget and shall necessitate a Budget Variation. Notwithstanding Clause 8.3 below, the Funder shall use its best endeavours and act in good faith to agree a Budget Variation pursuant to this Clause 7.12.
- 7.13 Subject to the terms of this Agreement, the Funder will make available for payment of Invoices and Statements of Account, in accordance with Clause 8.5 below, the Claim Funding within 10 Business Days of the later date to occur of (i) the date of this Agreement and (ii) the date on which the Funder provides the Claimant with written notice confirming that all of the Conditions Precedent have been satisfied or complied with by the Claimant (including, for the avoidance of doubt, any Special Conditions), provided always that at the relevant time the Claimant and the Law Firm are in not in breach of any of their respective obligations under this Agreement and the Irrevocable Letter of Instruction.
- 7.14 The Claim Funding made available under Clause 7.13 above will be paid in accordance with Clause 8.5 below.

Default Interest Payments

- 7.15 Interest at the Interest Rate is calculated daily on the amount of the Case Proceeds or any Settlement monies that are paid into the Claim Trust Account and accumulates (but does not compound) and the Interest Payment Amount is calculated daily on such sums standing to the credit of the Claim Trust Account from the last date upon which any such amounts are due to be paid by the Law Firm to the Funder in accordance with the Priorities Agreement.

Insurance Premium

- 7.16 Subject to any Special Conditions, Claim Funding may be used to satisfy any Deposit Insurance Premium due in respect of an Insurance Policy. The cost of such Deposit Insurance Premium must be included by the Law Firm in one of its monthly Invoices to the Claimant in accordance with Clause 8.5.

Rights and Obligations

- 7.17 The total liability of the Funder under the Litigation Claim Funding Documents (including, without limitation, this Agreement) in respect of any breach (including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise), is limited to an amount equivalent to the Budget (as may be varied and approved by the Funder from time to time, in accordance with the terms of this Agreement), provided that nothing in this Agreement shall limit the Funder's liability for fraud or fraudulent misrepresentation.

- 7.18 Subject to the provisions of this Agreement, the Funder is not obliged to continue funding the Claim and/or it may terminate this Agreement where one or more of the settlement or termination provisions set out in Clauses 10 (*Settlement (Including Reasonable Offers)*) or 12.1 (*Termination and Consequences*) are invoked.
- 7.19 The Funder will pay the Non-Deferred Fees element of the Law Firm's Fees and Disbursements as provided for in the Budget that are incurred prior to the date of Claim Funding ceasing or the date of termination of this Agreement even if such costs and disbursements do not fall to be invoiced until after the date Claim Funding ceases or the date of termination of this Agreement.
- 7.20 The Funder may use third parties to perform any of the Funder's Duties under this Agreement other than, subject to Clause 7.21, the provision of the Claim Funding.
- 7.21 The Funder may only assign or transfer by novation any of its Duties under this Agreement to a new funder (**New Funder**) which the Funder warrants is able to meet all of the Funder's obligations under this Agreement. The Claimant hereby consents to such assignment and agrees to promptly do all such acts or execute all such documents as the Funder may reasonably specify (and in such form as the Funder may reasonably require) in order to give effect to this Clause 7.21. Such an assignment will be effective, and conditional, upon:
- 7.21.1 receipt by the Claimant of written confirmation from the New Funder that the New Funder will assume the same Duties as the Funder under this Agreement and the Priorities Agreement; and
- 7.21.2 CAT approval of the New Funder.

8. **Budget, Reporting and Invoicing**

- 8.1 If and to the extent the aggregate amount of Invoices and Statements of Account (howsoever apportioned between individual cost items and/or between solicitors and counsel, but always subject to the overall budgeted amount), for any Phase is less than the amount set out in the Budget for that Phase (the difference being referred to below as the "**Unused Amount**"), then the Budget for the next Phase (howsoever apportioned between individual cost items and/or between solicitors and counsel, but always subject to the overall budgeted amount), may be increased by an amount equal to the Unused Amount, provided that the prior written consent of the Funder has been provided (such consent not to be unreasonably withheld or delayed).
- 8.2 The Claimant may request a Budget Variation if the Claimant believes that there has been or will be a Cost Overrun. Such a request must be submitted to the Funder in writing. If the Funder approves a Budget Variation, it shall charge a Budget Variation Fee as set out in paragraph (6) of Schedule 1 (*Key Terms*).
- 8.3 Subject to Clause 8.1 above, the Funder may, in the Funder's absolute discretion, approve or refuse a Budget Variation.
- 8.4 In the event that the Funder does not approve a Budget Variation, subject to Clause 10 (*Settlement (Including Reasonable Offers)*) the Funder will continue to perform its obligations under this Agreement including, without limitation, the payment of Invoices and Statements of Account in line with the existing Budget and any of the Law Firm's Fees and Disbursements that are not covered by the Claim Funding are to form part of the Deferred Fees (unless they are paid by or on behalf of the Claimant).

Payment Invoices and Statements of Account

- 8.5 The Law Firm shall be entitled to submit Invoices to the Funder, and the Claimant shall be entitled to submit Statements of Account to the Funder, on a monthly basis. Subject to Clause 8.6, the Funder shall arrange for approval and payment of such Invoices and Statements of Account to the Law Firm's designated client account out of the Claim Funding within 10 Business Days of receipt provided that:

- 8.5.1 each Invoice and/or Statement of Account has been submitted within 15 Business Days following the end of each calendar month, save for any delays which, in the Funder's opinion, are reasonable or as otherwise agreed by the Parties, together with detailed narrative by way of an estimated time record. The Funder will endeavour to approve (such approval not to be unreasonably withheld) and pay each such Invoices and/or Statement of Account within 10 Business Days of receipt of that Invoice and/or Statement of Account and its accompanying narrative. For the avoidance of doubt Invoices and/or Statement of Accounts that are not submitted within 15 Business Days of the end of a calendar month may be submitted no later than 15 Business Days after the end of the following month;
 - 8.5.2 the Special Conditions have been satisfied or complied with in all respects (as determined by the Funder in the Funder's sole discretion);
 - 8.5.3 the Claimant is not in material breach of any term of the Litigation Claim Funding Documents and any representation or warranty given by the Claimant in the Litigation Claim Funding Document is true in all respects, save where such term is breached or representation or warranty is untrue as a result of the acts or omissions of the Funder;
 - 8.5.4 each Invoice and/or Statement of Account is accompanied by a Monthly Report, which shall be true and accurate to the best of the Claimant's knowledge and belief;
 - 8.5.5 the relevant Invoices and/or Statements of Account in respect of each Phase is for an aggregate amount no greater than [REDACTED] of the amount set out in the Budget for that Phase (as increased by any Unused Amount), and any amount over and above this shall require a Budget Variation; and
 - 8.5.6 the total sum payable under the Invoices and/or Statements of Account do not exceed the total amount set out in the Budget, and any amount more than this shall require a Budget Variation.
- 8.6 If and to the extent any Claim Funding has already been deposited in the Claim Trust Account by the Funder as at the date the Law Firm submits an Invoice or the Claimant submits a Statement of Account, the Law Firm may apply such Claim Funding in or towards payment of that Invoice and/or Statement of Account, but only to the extent that the Invoice and/or Statement of Account has been submitted in accordance with the provisions of Clause 8.5 and the Funder has provided its prior written approval to apply the Claim Funding as such. Notwithstanding any other provision of this Agreement, all amounts of Claim Funding requested by the Claimant and deposited in the Claim Trust Account by the Funder shall, irrespective of whether that Claim Funding has been applied in or towards payment of Invoices and/or Statements of Account, be deemed to be Drawn Funds under this Agreement.
- 8.7 The Claimant shall not be entitled to grant any person or permit to subsist any Security over the Case Proceeds or the Claim Trust Account, save as provided for this Agreement or the Priorities Agreement.
- 8.8 The Law Firm's Fees and Disbursements are incurred by the Claimant, and the Funder shall not bear any liability or obligation in respect of such Fees and Disbursements other than through the provision of Claim Funding for the payment of Invoices and Statements of Account under this Agreement.
- 9. Claim Trust Account**
- 9.1 The Claimant agrees that the Case Proceeds held in the Claim Trust Account are held on trust for the Funder, the Insurance Company, the Law Firm and Counsel and that the Case Proceeds shall be applied and distributed as directed by this Agreement and the Priorities Agreement. The Claimant must ensure that all Case Proceeds payable to the Claimant in connection with or under:
- 9.1.1 the Litigation Claim Funding Documents;

9.1.2 an Insurance Policy (where applicable); and

9.1.3 the Claim,

are paid into the Claim Trust Account and the Claimant must provide the Law Firm with an Irrevocable Letter of Instruction, which shall provide (amongst other things) that the Law Firm must hold and distribute monies in accordance with this Agreement and the Priorities Agreement.

10. **Settlement (including Reasonable Offers)**

10.1 The Claimant shall, when it is in the best interests of the Class Members and in accordance with the advice from the Law Firm and Counsel, at all times actively seek to and/or use the Claimant's best endeavours to identify an appropriate opportunity to Settle the Claim on the best possible terms and the Claimant shall notify the Funder promptly if the Claimant receives an offer for Settlement.

10.2 The Claimant shall instruct the Law Firm to keep the opportunities for Settlement under review and shall notify the Funder and each Insurance Company in writing in advance when it considers it is appropriate in the circumstances to make an offer of Settlement (or series of offers), such notification to include details of what level of offer the Claimant and Law Firm consider is reasonable in respect of that offer of Settlement and the settlement strategy.

Reasonable Offers

10.3 Subject to Clauses 10.7 to 10.13 (inclusive) below, if the Law Firm advises the Claimant that it considers it is reasonable to make an offer of Settlement and in the best interests of the Class Members at a given level, and (if applicable) Counsel agrees in writing, the offer that is the subject of that advice will constitute a reasonable offer (**Reasonable Offer**) and the provisions of Clause 10.6 below shall apply, provided that, if the Funder does not agree that the offer is a Reasonable Offer, the provisions of Clauses 10.7 to 10.13 (inclusive) below shall apply (with the Funder to notify the Claimant and the Law Firm of the dispute in accordance with Clause 10.7 and the Claimant to receive the Notice of Dispute pursuant to Clause 10.8).

10.4 If a Defendant proposes a Settlement, the Claimant must request that the Law Firm provides the Claimant with an opinion on the reasonableness of that Settlement unless the Law Firm is satisfied that the proposed Settlement is wholly unreasonable. If the Law Firm's advice is that the Settlement offer proposed is reasonable in the circumstances, it will, subject to Clauses 10.7 to 10.13 (inclusive) below, constitute a Reasonable Offer and the provisions of Clause 10.6 below shall apply, provided that, if the Funder does not agree that the offer is a Reasonable Offer, the provisions of Clauses 10.7 to 10.13 (inclusive) below shall apply.

10.5 If the Claimant fails or refuses to instruct the Law Firm as required by Clauses 10.2 and 10.4 above, the Funder retains the right to instruct counsel (of its choosing) to provide the relevant advice and the cost of such advice shall be a Disbursement.

10.6 Subject to Clauses 10.7 to 10.13 (inclusive) below, if the Claimant does not instruct the Law Firm to accept a Reasonable Offer made by a Defendant or to put a Reasonable Offer to a Defendant, when advised to do so by the Law Firm, the Funder shall have a right to cease to provide Claim Funding or terminate this Agreement pursuant to Clause 12.1.1.

Disputes as to Settlement

10.7 If there is a dispute as to whether an offer is a Reasonable Offer for the purposes of Clauses 10.3 to 10.5 (inclusive) above (which for the avoidance of doubt includes a dispute as to the amount and/or timing of the offer), the Claimant must notify the Funder and the Law Firm in writing (such notice being a **Notice of Dispute**) within two Business Days of receipt of the Law Firm's or Counsel's advice regarding the Settlement offer, failing which Clause 10.6 above will apply.

- 10.8 On receipt by the Funder of a Notice of Dispute, the matter will be referred as a matter of urgency to an independent KC (**Independent KC**) jointly instructed by the Claimant and the Funder.
- 10.9 If the Parties fail to agree the identity of the Independent KC within five Business Days of receipt of the Notice of Dispute, the Independent KC shall be determined at the request of either Party by the Chairman for the time being of the Bar Council who shall be asked to choose a suitably qualified and experienced KC to deal with the dispute in question.
- 10.10 The provisions of paragraphs 5, 6, 7, 9, 10, 11, 12, 13, 18, 19 and 20 of Schedule 3 (*Dispute Resolution*) shall apply to the Independent KC's procedure for determining a dispute in relation to Settlement.
- 10.11 If the Independent KC determines that the offer of Settlement in question is reasonable, it will constitute a Reasonable Offer and the provisions of Clause 10.6 above shall apply and the Claimant shall not be entitled to issue a further Notice of Dispute.
- 10.12 If the Independent KC agrees that the offer of Settlement by a Defendant is reasonable, but the period for accepting the offer has expired, then, if the Law Firm is of the view that it remains reasonable for the Claimant to make a Settlement offer to a Defendant in the same amount, it shall constitute a Reasonable Offer and the provisions of Clause 10.6 above shall apply.
- 10.13 If the Independent KC determines that the offer of Settlement in question is not reasonable, the Claim will continue.
- 10.14 If the Claimant proposes to abandon, withdraw and/or discontinue all or any part of the Claim before Final Judgment or Settlement, the Claimant must notify the Funder in writing. The Claimant must instruct the Law Firm to instruct Counsel to provide an opinion on the reasonableness of the Claimant's actions and to share that opinion with the Funder (and the cost of such opinion shall be a Disbursement). If that opinion states that the proposed course of action is:
- 10.14.1 Unreasonable, the Claimant will have five Business Days from receipt of the opinion to advise the Funder that the Claimant is no longer intending to abandon, withdraw and/or discontinue all or any part of the Claim. If the Claimant does not so advise, the Funder shall have the right to terminate this Agreement and the provisions of Clause 12.1 and Clause 12.2 (*Termination and Consequences*) shall apply;
- 10.14.2 Reasonable in relation to all of the Claim, the Claimant may terminate this Agreement and the provisions of 12.6.2 (*Termination and Consequences*) and Clause 12.7 (*Termination and Consequences*) shall apply; or
- 10.14.3 Reasonable in relation to part of the Claim, the Claimant may instruct the Law Firm to withdraw or discontinue such part or parts (as necessary) on best possible terms and the balance of the Claim will continue.
- 10.15 If the Claimant fails or refuses to instruct the Law Firm as required by Clause 10.14 above, the Funder retains the right to instruct Counsel (of its choosing) to provide an opinion on the reasonableness of the Claimant's decision as per Clause 10.14 above (and the cost of such opinion shall be a Disbursement). If this opinion states that the proposed action is:
- 10.15.1 Unreasonable, the Funder has the right to terminate this Agreement and the provisions of Clause 12.1 and Clause 12.2 (*Termination and Consequences*) shall apply; or
- 10.15.2 Reasonable in relation to all of the Claim, the Claimant may terminate this Agreement and the provisions of 12.6.2 (*Termination and Consequences*) and Clause 12.7 (*Termination and Consequences*) shall apply; or
- 10.15.3 Reasonable in relation to part of the Claim, the Claimant may instruct the Law Firm to withdraw or discontinue such part or parts (as necessary) on best possible terms and the balance of the Claim will continue.

- 10.16 Should there be any dispute as to the discontinuance of all or any part of the Claim before Final Judgment or Settlement, the provisions of Schedule 3 (*Dispute Resolution*) shall apply.

11. Application of Proceeds

- 11.1 In consideration of the Funder entering into this Agreement, if there is a Successful Outcome the Claimant shall be liable to pay to the Funder an amount equal to the Success Fee in the amount set out in paragraph (9) of Schedule 1 (*Key Terms*). The Success Fee shall be paid from the Case Proceeds and applied in the order of priority set out in paragraph (10) of Schedule 1 (*Key Terms*) and the Priorities Agreement. This clause 11.1 shall survive any termination of this Agreement.

Enforcement of a Successful Outcome

- 11.2 If a Defendant does not make payment when due following a Successful Outcome:
- 11.2.1 the Claimant must promptly notify the Funder in writing; and
- 11.2.2 the Claimant must take all reasonable steps to enforce payment of an Award and/or Recovered Costs. If further funding is required, the Claimant shall instruct the Law Firm to submit a reasonable Budget Variation, based on the continuation of the engagement terms between the Law Firm and Claimant, to the Funder reflecting the cost of enforcing the Successful Outcome (if required) and the Funder will approve a reasonable Budget Variation unless the Funder is advised in writing that the anticipated costs of taking the enforcement action may exceed the quantum recovered.

Timing and distribution

- 11.3 The Claimant must provide the Law Firm with an irrevocable instruction:
- 11.3.1 that all Case Proceeds received into the Claim Trust Account from time to time shall be held by the Law Firm on trust for the Funder, the Insurance Company, Counsel and the Law Firm and that the Case Proceeds shall be applied and distributed as ordered by the Court and/or as set out in the Priorities Agreement;
- 11.3.2 to calculate the Case Proceeds available for distribution in accordance with any Court order and/or in accordance with the Priorities Agreement; and
- 11.3.3 within five Business Days of any distribution of Case Proceeds in accordance with the provisions of a Court order and/or the Priorities Agreement, to provide a certificate to the Claimant and the Funder setting out how the application of Case Proceeds has been calculated and made.

Insurance Policies

- 11.4 The Claimant must ensure that all insurance proceeds under an Insurance Policy are paid into the Claim Trust Account and the Claimant must sign all documents as may be necessary to give effect to this Clause 11.4.

Successful Outcome and any other payments

- 11.5 If there is a Successful Outcome, unless otherwise agreed by the Funder in writing, the Claimant will ensure that any Case Proceeds received by the Claimant under a Settlement agreement or Final Judgment is paid into the Claim Trust Account as soon as reasonably practicable.
- 11.6 Following a Successful Outcome, once Case Proceeds have been paid into the Claim Trust Account, the Claimant must instruct the Law Firm to pay out those Case Proceeds in accordance with paragraph (10) of Schedule 1 (*Key Terms*) and the Priorities Agreement promptly and in any event within five Business Days of receipt, but subject always to any order of the Court.

Unsuccessful Outcome

- 11.7 If an Unsuccessful Outcome occurs:
- 11.7.1 the Funder will be responsible for its Agreed Percentage of the final Invoice in respect of the Law Firm's Fees and Disbursements which have been incurred up to the date of the Unsuccessful Outcome but not yet invoiced and any other Invoice(s) which remains outstanding and due but it shall bear no responsibility for any further Law Firm's Fees or Disbursements; and
 - 11.7.2 the Claimant will pay Adverse Costs (if any) awarded against the Claimant and/or the Funder which are not covered by an Insurance Policy and/or insurance bond.
- 11.8 If there are any Case Proceeds remaining in the Claim Trust Account at the date of an Unsuccessful Outcome, subject to any order of the Court to the contrary and subject to anything contrary in the waterfall of payments set out in the Priorities Agreement, the Claimant must instruct the Law Firm to make such payments in the following order of priority:
- 11.8.1 **first**, towards the Funder's Agreed Percentage for the final Invoice(s) for the Law Firm's Fees and Disbursements provided that the Law Firm has complied with all relevant requirements of this Agreement; and
 - 11.8.2 **second**, the balance to the Funder.
- 11.9 The Claimant must instruct the Law Firm to pay out those Case Proceeds promptly and in any event within 10 Business Days of receipt of the Claimant's instruction and confirmation of the recipients' bank details.

12. Termination and Consequences

Termination by the Funder

- 12.1 The Funder may cease to provide Claim Funding or terminate this Agreement in any of the following circumstances:
- 12.1.1 if the Claimant fails or refuses to instruct the Law Firm to accept or make a Reasonable Offer pursuant to Clause 10 (*Settlement (Including Reasonable Offers)*);
 - 12.1.2 if the Claimant fails to comply with or breaches any term of any Litigation Claim Funding Document to which it is a party (other than a breach referred to in Clause 12.1.3 below) and the breach is (i) material and not capable of remedy or (ii) capable of remedy but has not been remedied within 20 Business Days of the earlier of (a) the Funder giving the Claimant notice of the breach and (b) the Claimant becoming aware of the breach;
 - 12.1.3 if the Claimant is in breach of any of the provisions of Clauses 3.1 or 3.2 (*Representations and warranties*);
 - 12.1.4 if the Claimant becomes Insolvent otherwise than by reason of the Funder's failure to discharge its payment obligations under this Agreement;
 - 12.1.5 if the Claimant discontinues, abandons or withdraws the Claim unreasonably (see Clause 10.14.1 (*Settlement (Including Offers)*));
 - 12.1.6 where the Law Firm terminates its engagement or its engagement is terminated and the Funder has not waived the default pursuant to clause 15.1 (*Default*);
 - 12.1.7 if Robin Hugh Aaronson is unable, for any reason, to fulfil their role as a director of the Claimant and any of the matters set out at clause 4.5.2 (*General Undertakings*) applies;
 - 12.1.8 pursuant to Clause 16 (*Illegality*);

- 12.1.9 where the Claimant fails to satisfy any of paragraphs 1 to 6 (inclusive) of Schedule 2 (*Special Conditions*); and/or
- 12.1.10 if Andrew Wanambwa ceases to be a partner, member or employee of the Law Firm or (for whatever reason) ceases to have conduct of the Claim and the Funder's written consent has not been obtained for a replacement solicitor of equivalent standing within 20 Business Days of such cessation (such consent not to be unreasonably withheld or delayed), provided always that the Funder must be satisfied (acting in its sole discretion) that affording a period of 20 Business Days will not prejudice the Claim or the Funder's interest in respect of the Claim, in which case the Funder shall be permitted to reduce this period where it considers it necessary to do so in order to protect its interests.
- 12.2 If the Funder notifies the Claimant that the Funder is ceasing to provide Claim Funding or terminating this Agreement in accordance with Clause 12.1, then the Claimant must, within 20 Business Days of the date of such notice, instruct the Law Firm to return to the Funder any Drawn Funds, plus interest thereon, that the Funder has paid into the Claim Trust Account, less the Non-Deferred Fees element of the Law Firm's Fees and Disbursements that were incurred and were outstanding at the date of termination, whether such costs were invoiced before or after termination;
- 12.3 Clause 12.1 shall survive termination of this Agreement and is without prejudice to Clause 16 (*Illegality*).
- 12.4 The Funder may cease to provide Claim Funding or terminate this Agreement, at any time, where:
- 12.4.1 the Funder reasonably ceases to be satisfied about the merits of the Claim, such a review to be reached based on independent legal advice and, where appropriate, expert advice that has been provided to the Funder; and/or
- 12.4.2 the Funder reasonably believes that the Claim is no longer commercially viable, such a view to be reached based on independent legal advice and, where appropriate, expert advice that has been provided to the Funder.

If the Funder decides to terminate the Agreement under this Clause 12.4, the Funder will provide the Claimant with 20 Business Days' written notice of the Funder's intention to terminate.

- 12.5 If the Funder notifies the Claimant that the Funder is ceasing to provide or terminating this Agreement in accordance with Clause 12.4, then the Claimant must promptly instruct the Law Firm to return any Drawn Funds that the Funder has paid into the Claim Trust Account, less the Non-Deferred Fees element of the Law Firm's Fees and Disbursements that were incurred and were outstanding at the date of termination, whether such costs were invoiced before or after termination.

Termination by the Claimant

- 12.6 The Claimant may terminate this Agreement:
- 12.6.1 if the Funder breaches a material provision of a Litigation Claim Funding Document or any representation, warranty or undertaking given by the Funder in a Litigation Claim Funding Document to which it is a party, and the breach is:
- 12.6.1.1 not capable of remedy; or
- 12.6.1.2 capable of remedy but has not been remedied within 20 Business Days of the Claimant giving the Funder notice of the breach and requiring the Funder to remedy it; or

12.6.2 under Clause 10.14.2 (*Settlement (Including Offers)*), when the Claimant discontinues, abandons or withdraws the Claim reasonably and in accordance with Counsel's opinion given pursuant to Clause 10.14.2 (*Settlement (Including Offers)*);:

12.7 If the Claimant terminates this Agreement in accordance with Clause 12.6, the Claimant must, within 20 Business Days of the date the Claimant notifies the Funder that it is terminating this Agreement, instruct the Law Firm immediately to pay to the Funder any Drawn Funds that the Funder has paid into the Claim Trust Account, less the Non-Deferred Fees element of the Law Firm's Fees and Disbursements that were incurred and were outstanding at the date of termination.

Termination Dispute

12.8 Should there be any Termination Dispute, either Party may make a request for resolution of that dispute and the provisions of Schedule 3 (*Dispute Resolution*) shall apply.

Consequences of Termination

12.9 In addition to the amounts due under Clauses 12.2 or 12.5, where this Agreement is terminated by the Funder in accordance with Clause 12, the Funder will co-operate with the Claimant and shall use reasonable endeavours to provide commercial assistance with regard to such steps as are reasonably required to facilitate the putting in place of replacement funding. If the Claimant goes on to achieve a Successful Outcome, the Funder shall be entitled to receive, and the Claimant undertakes to pay to the Funder, from any Case Proceeds, an amount equal to the Success Fee (less any amounts already paid to the Funder) that would have been payable under the Litigation Claim Funding Documents had this Agreement not been terminated, based on the amount of Drawn Funds as at the date of termination, plus Interest to the extent permitted by an order of the CAT. This Clause 12.9 shall survive any termination of this Agreement.

13. Releases, Waivers and Remedies

The rights and remedies of each Party are, except where expressly stated to the contrary, without prejudice to any other rights and remedies available to it. No neglect, delay or indulgence by any Party in enforcing any provision of this Agreement shall be construed as a waiver and no single or partial exercise of any rights or remedy of any Party will affect or restrict the further exercise or enforcement of any such remedy.

14. Severability

Each provision of this Agreement is severable and distinct from the others and if any provision is, or at any time becomes, to any extent or in any circumstances invalid, illegal or unenforceable for any reason that provision shall to that extent be deemed not to form part of this Agreement but, insofar as that provision does not affect the essential purpose of this Agreement (the provision of the Claim Funding for the purposes of the Claim), the validity, legality and enforceability of the remaining parts of this Agreement shall not be thereby affected or impaired, it being the Parties' intention that every provision of this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

15. Default

15.1 If the Law Firm terminates its engagement with the Claimant, the Funder may (in the Funder's sole discretion) waive such default, provided that:

15.1.1 the Claimant has appointed a new law firm within a period of time of which the Funder will notify the Claimant; and

15.1.2 that new law firm has accepted instructions from the Claimant in relation to the Claim in terms materially similar to those in Schedule 4 (*Irrevocable Letter of Instruction from Claimant to Law Firm*).

16. Illegality

In the event of any finding of bribery, illegality or corruption (howsoever described) by the CAT in deciding the Claim or any other Court, tribunal or administrative or government body, in respect of the Claimant’s activities in connection with the Claim, the Claimant will be in material breach of this Agreement and the Funder has the right to terminate this Agreement in accordance with Clause 12.1.8 (*Termination and Consequences*). In such circumstances, the Claimant must repay to the Funder the Claimant’s Remuneration received from the date of this Agreement.

17. Security for Costs

17.1 If a security for costs order is made against the Claimant or the Funder or is reasonably anticipated by the Claimant, or the Claimant otherwise reasonably anticipates requiring additional protection from exposure to adverse costs based on advice from Counsel that there is a material risk: (i) of a successful application for security for costs being made against the Claimant or the Funder; or (ii) additional protection is required in order for the Claimant to be authorised pursuant to Rule 78 of the CAT Rules or otherwise, the Insurance Company may post an insurance bond, or deed of indemnity or equivalent to cover that order or risk and any costs of the Insurance Company associated with the insurance bond or deed of indemnity or equivalent will be included as an Insurance Premium under this Agreement and shall give rise to a Budget Variation. Where the Insurance Company does not post an insurance bond, the Funder may, in its absolute discretion, provide funding to the Claimant in respect of the amount of the security for costs order but the Funder shall not be obliged, nor shall the Funder be liable, to fund the amount of a security for costs order.

17.2 If the Funder, in its absolute discretion, agrees to fund any security for costs or additional Adverse Costs cover for the purposes of certification, this shall give rise to a Budget Variation and form part of the Claim Funding and, when provided, will form part of the Drawn Funds. Where the security for costs is drawn upon, the Insurance Policy shall be used to first cover any such drawn amount.

18. General Information

18.1 The Claimant will, throughout the Duration of this Agreement, provide or instruct the Law Firm to provide, the Funder with the Claim Information specified in column 1 in the table below at the time specified in column 2. The Claimant will ensure that all other information delivered under this Agreement is true in all material respects to the best of its knowledge and belief (having made due and careful enquiry and having taken legal advice from the Law Firm) and does not omit anything which would make it misleading in a material respect.

| Column 1 | Column 2 |
|---|---|
| Via the Law Firm, such Claim Information as the Funder may reasonably require and so far as reasonably practicable, witness statements, statements of case and pleadings, expert reports, costs budgets, court orders, the results of searches for disclosable documents, inter-partes correspondence, Settlement offers and other information requested by the Funder. | As soon as reasonably practicable and, if applicable and the Claim Information goes directly to the prospects of achieving a Successful Outcome and/or materially affects the quantum associated with the Claim, prior to filing the Claim Information at the CAT and/or serving the Claim Information on the Defendants insofar as so doing does not prejudice the Claimant’s ability to comply with a Court deadline. |

| | |
|---|------------------------------------|
| <p>Notice to the Funder as set out in preceding paragraphs if, for the Claim, the Claimant intends to:</p> <ul style="list-style-type: none"> (a) withdraw, abandon or discontinue it; (b) appeal any judgment; (c) take enforcement action in respect of any Final Judgment; (d) terminate the Claimant's engagement with the Law Firm; or (e) make or accept a Settlement offer. | <p>Promptly on becoming aware.</p> |
| <p>Any matter which might adversely affect the Claimant's ability to perform any of the Claimant's obligations under the Litigation Funding Documents.</p> | <p>Promptly on becoming aware.</p> |

- 18.2 The Claimant will instruct the Law Firm to provide the Funder with the Claim Information.
- 18.3 The Claimant agrees to notify the Funder of, and allow the Funder and its representatives a right to attend as an observer, any consultations with Counsel arranged to discuss matters which go directly to the prospects of success in the Claim and/or materially affect the quantum associated with the Claim. The Claimant also agrees to arrange for the Claimant, the Law Firm and Counsel to meet with the Funder on the Funder's reasonable request to answer any questions raised by the Funder about the Claim.
- 18.4 The Claimant permits the Funder and its officers, directors, employees, professional advisers, auditors, partners and representatives, sub-contractors and counsel free access on reasonable notice to all documentation and information (including but not limited to all assets, books, accounts and records) relating to the Claim.

19. Entire Agreement and Variation

Entire Agreement

- 19.1 Each Party acknowledges and agrees for itself that:
 - 19.1.1 the Litigation Claim Funding Documents constitute the entire agreement between the Parties and supersede any prior agreement, understanding, undertaking or arrangement between the Parties relating to the subject matter of the Litigation Claim Funding Documents;
 - 19.1.2 by entering into the Litigation Claim Funding Documents, it does not rely on any statement, representation, assurance or warranty of any person (whether a Party to the Litigation Claim Funding Documents or not and whether made in writing or not) other than as expressly set out in the Litigation Claim Funding Documents; and
 - 19.1.3 the only rights or remedies available to it arising out of or in connection with any Litigation Claim Funding Documents or its subject matter shall be solely for breach of contract except as otherwise expressly provided for in the Litigation Claim Funding Documents.
- 19.2 Nothing in this Clause 19, and no other limitation in this Agreement, shall exclude or limit any liability for fraud.

Variation

- 19.3 No purported variation of this Agreement shall be effective unless it is in writing, refers to this Agreement and is duly executed by each Party.

20. Costs and Indemnities

- 20.1 In the event of a Successful Outcome, and following receipt of the Case Proceeds and subject always to the allocation of those Case Proceeds in accordance with paragraph (10) of Schedule 1 (*Key Terms*) and (if applicable) the Priorities Agreement, the Claimant agrees to promptly on demand pay to the Funder the amount of all costs and expenses (including, without limitation, legal fees) reasonably incurred by the Funder in connection with the preparation, negotiation, and completion of the Litigation Claim Funding Documents. For the avoidance of doubt, the Funder's legal and other costs incurred in relation to the preparation, negotiation and completion of the Litigation Claim Funding Documents shall form part of the Claim Funding and shall be deemed to be Drawn Funds and such costs and expenses will be treated as a Disbursement under this Agreement.

- 20.2 Where the Claimant has requested an amendment or variation to any Litigation Claim Funding Document and the Funder have agreed in writing to that amendment or variation, in the event of a Successful Outcome, following receipt of the Case Proceeds and subject always to the allocation of those Case Proceeds in accordance with paragraph (10) of Schedule 1 (*Key Terms*) and (if applicable) the Priorities Agreement, the Claimant agrees to promptly on demand pay to the Funder the amount of all costs and expenses (including legal fees) reasonably incurred by the Funder in connection with such amendment or variation, and such costs and expenses shall form part of the Claim Funding and shall be deemed to be Drawn Funds and such costs and expenses will be treated as a Disbursement under this Agreement.

For the avoidance of doubt, sums referred to in clauses 20.1 and 20.2 above are payable only from the Case Proceeds subject to any orders of the Court to the contrary.

- 20.3 The Claimant shall promptly on demand pay to the Funder an amount to cover any costs, expenses, losses and/or liabilities incurred by the Funder:

20.3.1 in connection with the Claimant's default under the terms of this Agreement or any other Litigation Claim Funding Document to which the Claimant is a party;

20.3.2 in connection with a misrepresentation by the Claimant under this Agreement or any other Litigation Claim Funding Document to which the Claimant is a party;

20.3.3 in connection with any award for Adverse Costs against the Claimant where the Insurance Policy is not sufficient to meet the award of the Adverse Costs and where this was caused as a direct result of any action or failure to take action by the Claimant or where the Claimant has provided incorrect, false or misleading information to an Insurance Company;

20.3.4 in connection with any shortfall under the Insurance Policy or where an Insurance Company refuses to make payment under the Insurance Policy, in each case only in circumstances where this was caused as a direct result of any action or failure to take action by the Claimant or where the Claimant has provided incorrect, false or misleading information to an Insurance Company;

20.3.5 in connection with any claim from an Insurance Company after it has paid out under an Insurance Policy where this was caused as a direct result of any action or failure to take action by the Claimant or where the Claimant has provided incorrect, false, or misleading information to an Insurance Company;

20.3.6 in connection with or arising out of the Claimant's unlawful or negligent conduct in the Claim; and

20.3.7 in terminating this Agreement where such termination is due to a Claimant breach of contract specified in clause 12.1.

20.4 It is agreed by the Parties that any liability on the part of the Claimant to the Funder for the Success Fee will be limited to the sum total of the amounts which the CAT approves to be paid to the Claimant in respect of the Success Fee whether pursuant to Rule 93(4) of the CAT Rules or otherwise.

20.5 This Clause 20 shall survive any termination of this Agreement.

21. Notices

21.1 Any notice or other communication given to any Party under or in connection with this Agreement shall be in writing and shall be sent by hard copy to the addresses specified at the beginning of this Agreement and to the email address below:

| Party | Email Address |
|-------------|--|
| Asertis Ltd | [REDACTED] |
| Claimant | [REDACTED] |
| Law Firm | andrew.wanambwa@lewissilkin.com |

21.2 Any notice or communication shall be deemed to have been received:

21.2.1 if the notice is received before 4pm, the day it was sent; or

21.2.2 if the notice is received after 4pm, the following Business Day.

21.3 This Clause 21.3 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

22. Payments

22.1 All payments to be made under this Agreement shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim in immediately available funds free and clear of, and without any deduction or withholding for or on account of, any current or future taxes, levies, imports, duties, charges or other deductions or withholdings levied in any jurisdiction from or through which payment is made or where the payer is located unless such deduction or withholding is required by applicable law.

22.2 Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

22.3 Any certificate or determination by the Law Firm in respect of the calculation of Case Proceeds to be distributed under this Agreement shall be conclusive and binding on the Claimant and the Funder, unless there is a manifest error.

22.4 Any interest under this Agreement shall accrue on a day-to-day basis, calculated according to the actual number of days elapsed and a year of 365 days.

23. Counterparts

23.1 This Agreement may be signed in any number of counterparts, each of which taken together shall be deemed to constitute one and each of which individually shall be deemed to be an original with the same effect as if the signatures on each counterpart were on the same original.

23.2 Transmission of an executed counterpart of this Agreement by e-mail attachment shall take effect as delivery of an executed counterpart of this Agreement and shall be binding.

23.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

24. Governing Law and Jurisdiction

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.

24.2 Save for a Termination Dispute pursuant to Clause 12.8 (*Termination Dispute*) or a dispute in relation to any Settlement in respect of the Claim or in relation to the Minimum Quantum, the Parties irrevocably agree that the Courts of England and Wales are to have exclusive jurisdiction in relation to this Agreement.

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

.....
Signed by [REDACTED]
For and on behalf of **ASERTIS LTD**

.....
Signed by **ROBIN HUGH AARONSON**
For and on behalf of **BULK MAIL CLAIM LIMITED**

Schedule 1 - Key Terms

| The details of each Key Term which constitute its definition for the purpose of this Agreement is set out in the corresponding column entitled "Particulars" in this table as follows: | | |
|--|------------------------------|---|
| Item | Item Name | Particulars |
| (1) | Claim | The Claimant v International Distributions Services Plc and/or any of its related companies, the directors of International Distributions Services Plc and/or any of its related companies, and others |
| (2) | Defendants | International Distributions Services Plc and/or any of its related companies, the directors of International Distributions Services Plc and/or any of their related companies and any other person or persons who may become Defendants |
| (3) | Counsel | Paul Harris KC and Ben Rayment, both of Monckton Chambers |
| (4) | Claim Trust Account | <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> |
| (5) | Funder's Bank Account | <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> |
| (6) | Budget Variation Fee | <p>The variation fee payable for each Budget Variation will be an amount equal to the greater of:</p> <p>[REDACTED]</p> <p>[REDACTED]</p> |

| (7) | Agreed Percentages (as may be amended in accordance with the terms of this Agreement) | | Law Firm's Fees (excluding any uplift / success fee) | Counsel's Fees (excluding any uplift / success fee) | Disbursements (excluding Counsel's Fees) | | | | | | | | | |
|--|--|--|---|--|---|--|--|--|---------------------|------|-----|----------------------|------|----------|
| | | Deferred Fees | █ | 0% | 0% | | | | | | | | | |
| | | Funder (on behalf of Claimant) | █ | 100% | 100% | | | | | | | | | |
| (8) | Claim Funding | Up to █ including VAT). | | | | | | | | | | | | |
| (9) | Success Fee | <p>The Success Fee is payable to the Funder when a Successful Outcome occurs. It shall be an amount equal to the aggregate of:</p> <p>(a) the Drawn Funds; <u>plus</u></p> <p>(b) a priority multiplier ("Priority Multiplier"), being an amount equal to a multiple of the Drawn Funds; <u>plus</u></p> <p>(c) a balancing multiplier ("Balancing Multiplier"),</p> <p>(the above, being the "Success Fee"),</p> <p>in each case calculated by reference to the amount of time (in calendar months) that has elapsed from the date of this Agreement until receipt of all amounts due to the Funder following a Successful Outcome, as follows, and provided that the aggregate of the Priority Multiplier and the Balancing Multiplier shall not at any time exceed 5.75x:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Month to claim resolution and receipt of all amounts due to the Funder</th> <th style="text-align: center;">From the date of this Agreement up to and including the date falling 12 months from the date of this Agreement</th> <th style="text-align: center;">Increase per 3-month period thereafter (i.e. after the date falling 12 months from the date of this Agreement up to and including date falling 15 months from the date of this Agreement, after the date falling 15 months from the date of this Agreement up to and including date falling 18 months from the date of this Agreement, etc.)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Priority Multiplier</td> <td style="text-align: center;">1.5x</td> <td style="text-align: center;">Nil</td> </tr> <tr> <td style="text-align: center;">Balancing Multiplier</td> <td style="text-align: center;">0.5x</td> <td style="text-align: center;">+0.1875x</td> </tr> </tbody> </table> | | | | Month to claim resolution and receipt of all amounts due to the Funder | From the date of this Agreement up to and including the date falling 12 months from the date of this Agreement | Increase per 3-month period thereafter (i.e. after the date falling 12 months from the date of this Agreement up to and including date falling 15 months from the date of this Agreement, after the date falling 15 months from the date of this Agreement up to and including date falling 18 months from the date of this Agreement, etc.) | Priority Multiplier | 1.5x | Nil | Balancing Multiplier | 0.5x | +0.1875x |
| Month to claim resolution and receipt of all amounts due to the Funder | From the date of this Agreement up to and including the date falling 12 months from the date of this Agreement | Increase per 3-month period thereafter (i.e. after the date falling 12 months from the date of this Agreement up to and including date falling 15 months from the date of this Agreement, after the date falling 15 months from the date of this Agreement up to and including date falling 18 months from the date of this Agreement, etc.) | | | | | | | | | | | | |
| Priority Multiplier | 1.5x | Nil | | | | | | | | | | | | |
| Balancing Multiplier | 0.5x | +0.1875x | | | | | | | | | | | | |
| (10) | Allocation of Case Proceeds in the event of a Successful Outcome | <p>Subject to Clause 11 (<i>Application of Proceeds</i>), in the event of a Successful Outcome, and subject to any orders of the Court to the contrary, the Parties agree that the Case Proceeds will be allocated in the following manner (unless otherwise provided for in the Priorities Agreement):</p> <p>(i) first, an amount equal to:</p> <p>(A) that portion of the Success Fee as is equal to the Drawn Funds will be paid to the Funder (which shall, for the avoidance of doubt, include the amount of any security for costs paid by the Funder pursuant to Clause 17 (<i>Security for Costs</i>)); and</p> | | | | | | | | | | | | |

| | | |
|------|----------------------|---|
| | | <p>(B) any monies paid by an Insurance Company in respect of each Defendant's costs will be paid to each Insurance Company in accordance with the terms of the Insurance Policy,</p> <p>until all of (A) and (B) are paid in full. If there are not enough Case Proceeds to pay both amounts in full at the date that the Case Proceeds are paid out, these sums shall be paid <i>pari passu</i> and in the same proportion as the sums are to each other.</p> <p>(ii) second, the Priority Multiplier will be paid to the Funder;</p> <p>(iii) third, the Law Firm's Deferred Fees shall be paid to the Law Firm;</p> <p>(iv) fourth:</p> <p>(A) the remainder of the Success Fee (being the Balancing Multiplier) and any other amounts due to the Funder under this Agreement will be paid to the Funder;</p> <p>(B) the Contingent Insurance Premium (if applicable) will be paid to the Insurance Company;</p> <p>(C) any other amounts due to the Law Firm (i.e. any uplift on the CFA) will be paid to the Law Firm,</p> <p>until all of (A), (B) and (C) are paid in full. If there are not enough Case Proceeds to pay all of these amounts in full at the date that the Case Proceeds are paid out, these sums shall be paid <i>pari passu</i> and in the same proportion as the sums are to each other; and</p> <p>(v) fifth, any surplus Case Proceeds will be distributed pursuant to any Court orders in connection with the Claim.</p> |
| (11) | Interest Rate | 8% per annum |

Schedule 2 - Special Conditions

1. The updated and finalised Budget, such Budget to include all costs including but not limited to the costs of purchasing an Insurance Policy, and to also include a breakdown of all costs relating to the Claim.
2. A legal opinion from independent counsel instructed by the Funder that the prospects of achieving a Successful Outcome (based upon a reasonable assessment of the legal and commercial merits of the Claim) are in excess of [REDACTED] or, alternatively, reliance on the Advice and any updated version of the Advice as required under this Agreement.
3. Any and all data available in respect of the Claim and historical claims of a similar nature, all pertinent correspondence between the Claimant and the Defendants (and their respective law firms), evidence of the "success rate" of the Law Firm in bringing claims of a similar nature to the Claim before the CAT, and any other documents which the Funder (in its absolute discretion) considers may be relevant to the Claim including but not limited to any and all legal opinions that may be available to the Law Firm.
4. A review of this Agreement and the CFA by leading costs counsel instructed by the Funder (acting in the Funder's absolute discretion) to ensure the efficacy of these documents as a collective, that they comply with SRA rules and applicable law, and that this Agreement creates valid, binding and enforceable obligations. If counsel proposes any amendments, the Parties agree to incorporate such amendments into these documents.
5. Confirmation in writing that the Law Firm has agreed the procedure for accepting Settlement offers with the Claimant and explaining the parameters of such settlement ranges.
6. Completion of all due diligence in connection with the Claim.

Funding Condition 1

7. The Funder's commitment to make available Claim Funding under this Agreement shall be subject to receipt by it of the Conditions Precedent listed at clause 2.1 (*Conditions Precedent*) and paragraphs 1 to 6 (inclusive) above and the Funder's commitment to make available Claim Funding in excess of [REDACTED] (plus VAT) shall be subject to receipt by it of:
 - (a) the updated and enhanced GT Report, to include an analysis of Claimant loss data suitable for basing an analysis of quantum to be pleaded within the Proceedings and to address the issues raised by the Funder prior to the date of this Agreement in respect of the GT Report;
 - (b) an update to the Advice by independent counsel instructed by the Funder, to address the issues of causation and quantum arising from the updated and enhanced GT Report referred to at paragraph (a) above; and
 - (c) the Priorities Agreement, duly executed by the parties thereto.

Funding Condition 2

8. The Funder's commitment to pay [REDACTED] of the Law Firm's Fees in accordance with the Budget shall be subject to satisfaction of the following:
 - (a) the Law Firm being retained as the sole and exclusive solicitors to act for the Claimant under a valid CFA, pursuant to which the Law Firm agrees to defer payment of [REDACTED] of the Law Firm's Fees, with the balance of [REDACTED] to be paid by the Funder as Claim Funding subject to the terms of this Agreement), and with an uplift / success fee of [REDACTED] under the CFA to be paid from the Case Proceeds if there is a Successful Outcome;

- (b) the total value of the Claim, as verified by Counsel and appropriate expert advice to the Funder's satisfaction against the Defendant, is in excess of [REDACTED] (the "Minimum Quantum"); and
- (c) confirmation from counsel chosen and instructed by the Funder (in the Funder's absolute discretion), such confirmation to the Funder's satisfaction (acting in the Funder's absolute discretion) that the Minimum Quantum is a sustainable claim for damages against a Defendant in the Proceedings.

For the avoidance of doubt, if the Minimum Quantum is not achieved and/or the Funder is not satisfied (acting in its absolute discretion) with the advice from, or opinion of, counsel instructed by the Funder referred to above and/or the contents or conclusions of the updated and enhanced GT Report referred to above, the Funder will not be liable to pay any of the Law Firm's Fees and the Funder will be entitled to cease to provide Claim Funding under this Agreement. Any dispute concerning the Minimum Quantum shall be determined in accordance with the provisions of Schedule 3 (*Dispute Resolution*) but with all references to 'Termination' in that Schedule being construed as applying to Minimum Quantum.

Funding Condition 3

- 9. The Funder's commitment to pay the Deposit Insurance Premium up to an amount of [REDACTED] to accept the Insurance Policy with a limit of indemnity of approximately £10,000,000 shall be subject to satisfaction of paragraphs 7 and 8 above.

Funding Condition 4

- 10. In respect of the ongoing provision of Claim Funding (including [REDACTED] of the Law Firm's Fees) under this Agreement:
 - (a) there shall be continued and ongoing satisfaction of the Minimum Quantum;
 - (b) if, at any stage following the date of this Agreement, as a result of any disclosure made by a Defendant in the Claim or any new facts coming to light in connection with the Claim, the Claimant, Counsel and/or the Law Firm (acting on behalf of the Claimant), or counsel instructed by the Funder, form the opinion that the prospects of achieving a Successful Outcome (based upon a reasonable assessment of the legal and commercial merits of the Claim) fall below [REDACTED];
 - (c) if, at any stage following the date of this Agreement, the Claimant or the Law Firm form the view that the Award is likely to fall below [REDACTED];
 - (d) if at any stage after the date of this Agreement the Claimant, the Law Firm or the Funder forms the reasonable view that the Claim is no longer commercially viable;
 - (e) if at any stage after the date of this Agreement the Claimant or the Law Firm form the view that the prospects of the Claimant being certified as the 'Class Representative' for the purpose of bringing the Proceedings by way of a CPO before the CAT fall below [REDACTED];
 - (f) if, at any stage after the date of this Agreement, the Claimant, the Law Firm or the Funder become aware that the terms of any representation or warranty regarding the accuracy of information provided or delivered to the Funder in connection with this Agreement or any specific warranty or representation provided under Clause 3.1 or Clause 3.2 is not true and accurate in all respects;
 - (g) there shall be continuing adherence (within a tolerance of [REDACTED] of the anticipated total spend) to the Budget subject to the Funder's written agreement to any variance in excess of [REDACTED] of the Budget; and

- (h) if at any stage after the date of this Agreement, Andrew Wanambwa ceases to be a partner, member or employee of the Law Firm or otherwise (for whatever reason) ceases to have conduct of the Claim,

provided always that the Funder's commitment to continue providing Claim Funding under this Agreement shall be subject to satisfaction of paragraphs 7 to 9 (inclusive) above and the Claimant and the Law Firm will have a continuing obligation to immediately (i) notify the Funder in writing if any of the above conditions are not satisfied or complied with in all respects, or if there any issues arising under this paragraph 10, or of any other matters of which the Funder should (in its capacity as funder under this Agreement) reasonably be made aware of in connection with the Claim, the Claim and (ii) provide the Funder with all relevant information and copies of all relevant documentation in respect of such matters as reasonably requested by the Funder from time to time.

Schedule 3 - **Dispute Resolution**

1. If there is a dispute between the Parties concerning whether this Agreement has been validly terminated, a Party may give written notice to the other Party requiring such a dispute to be referred to a KC in accordance with the provisions of this Schedule 3 (a **Request for KC Determination**). Such a request must be made within 10 Business Days of the termination. For the avoidance of doubt, in the case of a dispute as to the valid termination of this Agreement arising from the operation of Clause 10.14 (*Settlement (Including Reasonable Offers)*), the determination to be made by the KC in accordance with the provisions of this Schedule 3 shall include an opinion as to the reasonableness of the proposed Settlement, which shall be binding on the Parties. For the further avoidance of doubt, such determination shall be for the purposes of determining whether the Agreement has been validly terminated, and it shall not oblige the Claimant to accept or reject any proposed Settlement offer.
2. The Request for KC Determination shall be served on the other Parties within 10 Business Days of receipt of the relevant Termination Notice and contain:
 - 2.1 a concise summary of the nature and background of the Termination Dispute and the issues arising; and
 - 2.2 copies of all documents which have an important and direct bearing on the issues arising.
3. A Party may withdraw its Termination Notice by written notice within five Business Days of receipt of a Request for KC Determination. In the event of such withdrawal the Termination Notice shall be disregarded and this Agreement shall continue in full force and effect.
4. In the event that a written notice of withdrawal is not served pursuant to paragraph 3 above, the KC shall be selected by mutual agreement between the Parties within 10 Business Days following the Request for KC Determination. If the Parties cannot reach a mutual agreement, the KC shall be chosen at the request of a Party by the Chairman for the time being of the Bar Council who shall be asked to choose a suitably qualified and experienced KC for the dispute in question.
5. Prior to engagement, the KC shall agree with the Parties, in writing, their terms of engagement, including fee rates. If the terms of engagement of the KC have not been settled within 10 Business Days of their identity having been determined (or such longer period as the Parties may agree) then, unless any Party is (in the view of the proposed KC) unreasonably refusing agreement to those terms, that KC shall be deemed never to have become the appointed KC and a new KC shall be selected by the Chairman for the time being of the Bar Council in accordance with the provisions of paragraph 4 above.
6. If the KC shall become unwilling or incapable of acting (whether by reason of death, retirement or through ill health or otherwise), the Parties shall appoint a new KC by agreement or, if the Parties have been unable to agree upon the identity of a new KC within 10 Business Days of a written request by one Party to the other to do so, a Party may apply for the appointment of a new KC by the Chairman for the time being of the Bar Council in accordance with the provisions of paragraph 4 above.
7. No individual shall be appointed as KC under this Schedule 3 in any Termination Dispute if that individual has any financial or personal interest or undisclosed affiliation in or with any Party to this Agreement or in the Claim.
8. Unless the Parties agree otherwise, the KC shall determine their own procedure, and apart from procedural matters and as otherwise set out in this Agreement, the KC shall determine only whether this Agreement has been validly terminated in accordance with the relevant provisions.
9. The procedure of the KC shall:
 - 9.1 give the Parties a reasonable opportunity to make written representations to them; and

- 9.2 require that each Party supply the other with a copy of any written representations at the same time as they are made to the KC.
10. For the avoidance of doubt, the KC shall not be entitled to determine the scope of their own jurisdiction.
11. All matters concerning the process and result of the KC Determination shall be kept confidential among the Parties and the KC.
12. The KC shall make their decision as soon as is reasonably practicable and in any event within 15 Business Days of their engagement or such other period of time which the Parties and the KC, each acting reasonably, may agree.
13. The decision of the KC pursuant to this Schedule 3 shall:
 - 13.1 be made in writing; and
 - 13.2 unless otherwise agreed by the Parties, include reasons for each relevant decision.
14. Until the KC notifies the Parties of their decision, this Agreement shall continue in full force and effect and the Parties shall continue to observe and perform all their respective obligations under this Agreement. Any Party may waive the requirements of this paragraph 14 in the event that the other Party is required to perform any obligations under this Agreement before the KC notifies the Parties of their decision.
15. If the KC confirms that this Agreement has been validly terminated, this Agreement shall be deemed to have been terminated as of the effective date of the relevant Termination Notice.
16. If the KC decides that this Agreement has not been validly terminated, this Agreement shall continue in full force and effect and the Termination Notice shall be deemed to be disregarded and of no effect.
17. If the KC fails to reach their decision within the period set out in paragraph 12, a Party may request the appointment of another KC. If the Parties have been unable to agree upon the identity of a new KC within five Business Days of a written request by one Party to the other Party to do so, a Party may apply for the appointment of a new KC in accordance with paragraph 4 above. On acceptance of appointment by the new KC, the appointment of the previous KC shall end. If, prior to the acceptance of the new KC, the previous KC reaches their decision, that decision shall be binding on the Parties and the instruction of the new KC shall be withdrawn.
18. The KC shall act as expert and not as arbitrator and their determination of any matter falling within their jurisdiction shall be final and binding on the Parties unless there is fraud or manifest error.
19. Each Party shall bear its own costs in relation to the reference to the KC. The KC's fees and any costs properly incurred by them in arriving at their determination shall be borne by the Parties equally or in such other proportions as the KC shall direct.
20. The Parties shall co-operate with the KC and comply with their reasonable requests made in connection with the carrying out of their duties under this Agreement.
21. None of the Parties will call the KC as a witness, consultant, arbitrator or expert in any litigation or arbitration in relation to the Termination Dispute and the KC will not act voluntarily in any such capacity without the written agreement of all the Parties.
22. This Schedule 3 shall survive any termination of this Agreement.

Schedule 4 - **Irrevocable Letter of Instruction from Claimant to Law Firm**

[To be copied onto letter headed paper or into an email]

Dear Sirs

Claim against International Distributions Services Plc

You are hereby instructed to accept this letter as an irrevocable instruction to act in accordance with and comply with the terms of this letter.

You are to consider the contents of this letter in conjunction with the Litigation Funding Agreement dated 2023 (the **Agreement**) and You are not permitted to carry out instructions which would knowingly put Us in breach of the Agreement, or this letter.

This instruction can only be rescinded on the joint instruction of Us and Asertis Ltd (**Asertis**).

You are instructed to sign and return a copy of this letter to Us and Asertis before undertaking any further substantive work on this matter. By signing and returning copies of this letter to Us and Asertis, You confirm Your agreement to act in accordance with the terms of this letter and the Agreement.

Except where this letter expressly states otherwise, each term used in this letter which is defined in the Agreement has the same meaning as in the Agreement.

This letter is a Litigation Claim Funding Document.

In as much as is required, the definitions set out in the Agreement are repeated here save that:

We/Our/Us means [Claimant]

You/Your means [Law Firm]

1. Budget

- 1.1 Unless You have already done so, You are instructed to provide Asertis and Us with a Budget, in the form set out in Schedule 5 (*Form of Budget*) of the Agreement, and comply with any requests by Us or Asertis for clarification.
- 1.2 If the Budget is approved, save as provided for below, Fees and Disbursements incurred in excess of the Budget will not be paid by the Funder on Our behalf. You agree that you will not seek to enforce any right to be paid Standard Fees (as defined in the CFA) and Disbursements in excess of the Budget until (i) a Successful Outcome has been achieved and in accordance with the Priorities Agreement and/or (ii) an interim order for costs has been made in Our favour, in which case You may enforce to the extent of the costs ordered to be paid and any recovered costs will be applied in accordance with the Priorities Agreement.
- 1.3 If Asertis fails to approve Your Budget and instead proposes a revised Budget, You have the option to:
 - 1.3.1 accept the revised Budget;
 - 1.3.2 accept the revised Budget and seek to agree with Us that the additional spend be added to Your Deferred Fees;
 - 1.3.3 accept the revised Budget and seek to agree with Us that the additional spend be paid by Us;
 - 1.3.4 approach Asertis direct to seek to agree the Budget; or

- 1.3.5 terminate Your retainer.
- 1.4 You may request a Budget Variation if You believe that there has been or will be a Cost Overrun. Such an application must be submitted to Asertis in writing.
- 1.5 Asertis may, in its absolute discretion, approve (in writing) a Budget Variation or refuse to approve a Budget Variation.
- 1.6 In the event that Asertis does not approve a Budget Variation:
 - 1.6.1 Subject to the terms of the CFA, You will continue to act on Our behalf until Final Judgment or Settlement; and
 - 1.6.2 unless We agree to meet the Budget Variation, any additional Fees and Disbursements will form part of the Deferred Fees, but whether to carry out work or incur Disbursements in excess of the Budget will be in Your absolute discretion.

2. Claim Trust Account

- 2.1 Case Proceeds held in the Claim Trust Account shall be held on trust by You and must be applied and distributed in accordance with the Agreement and the Priorities Agreement. You must ensure that all Case Proceeds payable to Us in connection with or under:
 - 2.1.1 the Litigation Claim Funding Documents;
 - 2.1.2 an Insurance Policy (where applicable); and
 - 2.1.3 the Claim,are paid into the Claim Trust Account.
- 2.2 You are not to distribute monies in the Claim Trust Account otherwise than as provided for in the Agreement and the Priorities Agreement unless authorised to do so jointly by Us and Asertis.

3. Payment of Invoices and Statements of Account

- 3.1 You are entitled to submit Invoices on a monthly basis to Asertis in accordance with the terms of the Agreement.
- 3.2 You are not entitled to:
 - 3.2.1 withdraw any amounts from the Claim Trust Account unless permitted or contemplated by the Agreement, or otherwise unless Asertis' prior written consent has been obtained for such withdrawal (such consent not to be unreasonably withheld or delayed); or
 - 3.2.2 grant any person any Security over the Case Proceeds and/or the Claim Trust Account itself.

4. Monthly Reports and Claim Information

- 4.1 You are to complete and deliver to Us and Asertis a Monthly Report by no later than 10 Business Days following the end of each calendar month, and ensure that the information provided to Us in that Monthly Report is true and accurate to the best of Your knowledge and belief.
- 4.2 You agree to meet with Asertis on its reasonable request to answer any questions raised by Asertis in relation to the Claim.
- 4.3 You are instructed to provide all Claim Information to Asertis as Asertis may reasonably require as soon as practicable and, if applicable, prior to filing the Claim Information at the court and/or

serving the Claim Information on the Defendants or following a request by Asertis, except where the provision of such information would contravene any law or regulation, or the requirements of any regulatory or other similar body.

4.4 If You or Counsel consider, at any time after the commencement of the Proceedings, that as a result of any disclosures made by a Defendant or any new facts coming to light in connection with the Claim, the prospects of achieving a Successful Outcome (based upon a reasonable assessment of the legal and commercial merits of the Claim) fall below [REDACTED], You are instructed to notify Us and Asertis immediately.

5. Offers to settle

5.1 You are instructed to keep the opportunities for Settlement under review and notify both Us and Asertis in writing as and when You consider it is appropriate in the circumstances to make an offer of Settlement, such notification to include details of what level of offer You consider is reasonable in respect of that offer of Settlement.

5.2 You are instructed to notify Asertis of any offers to settle received during the course of the Claim, together with Your advice as to whether the offer should be accepted.

5.3 You are instructed to answer Asertis' reasonable queries in relation to the offer and Your advice within a reasonable time frame.

5.4 You are instructed to permit Asertis, its officers, directors, employees, professional advisers, auditors, partners and representatives, sub-contractors and Counsel free access on reasonable notice to all documentation and information (including but not limited to all assets, books, accounts and records) relating to the Claim.

6. Distribution of Case Proceeds following a Successful Outcome

You are instructed, in the event of a Successful Outcome, to hold monies on trust and to calculate and distribute the monies in the Claim Trust Account, in accordance with the provisions of Clause 11 of the Agreement, specifically Clauses 11.3 to 11.6 .

7. Distribution of Case Proceeds following an Unsuccessful Outcome

You are instructed, in the event of an Unsuccessful Outcome, to hold monies on trust and to calculate and distribute the monies in the Claim Trust Account, in accordance with the provisions of Clause 11 of the Agreement, specifically Clauses 11.7 to 11.9.

8. Warranties

By signing and returning copies of this letter to Us and Asertis, You agree to be bound by the terms of the letter and (in good faith) to take all reasonable steps to ensure that We act in accordance with the Agreement.

Nothing in this letter shall serve to override Your duty to the court, or Your duty to act in Our best interests. We shall continue at all times to have complete control over the conduct of the Proceedings.

.....
[Claimant]

Date:.....2023

We acknowledge and confirm Our agreement to the terms of the letter set out above.

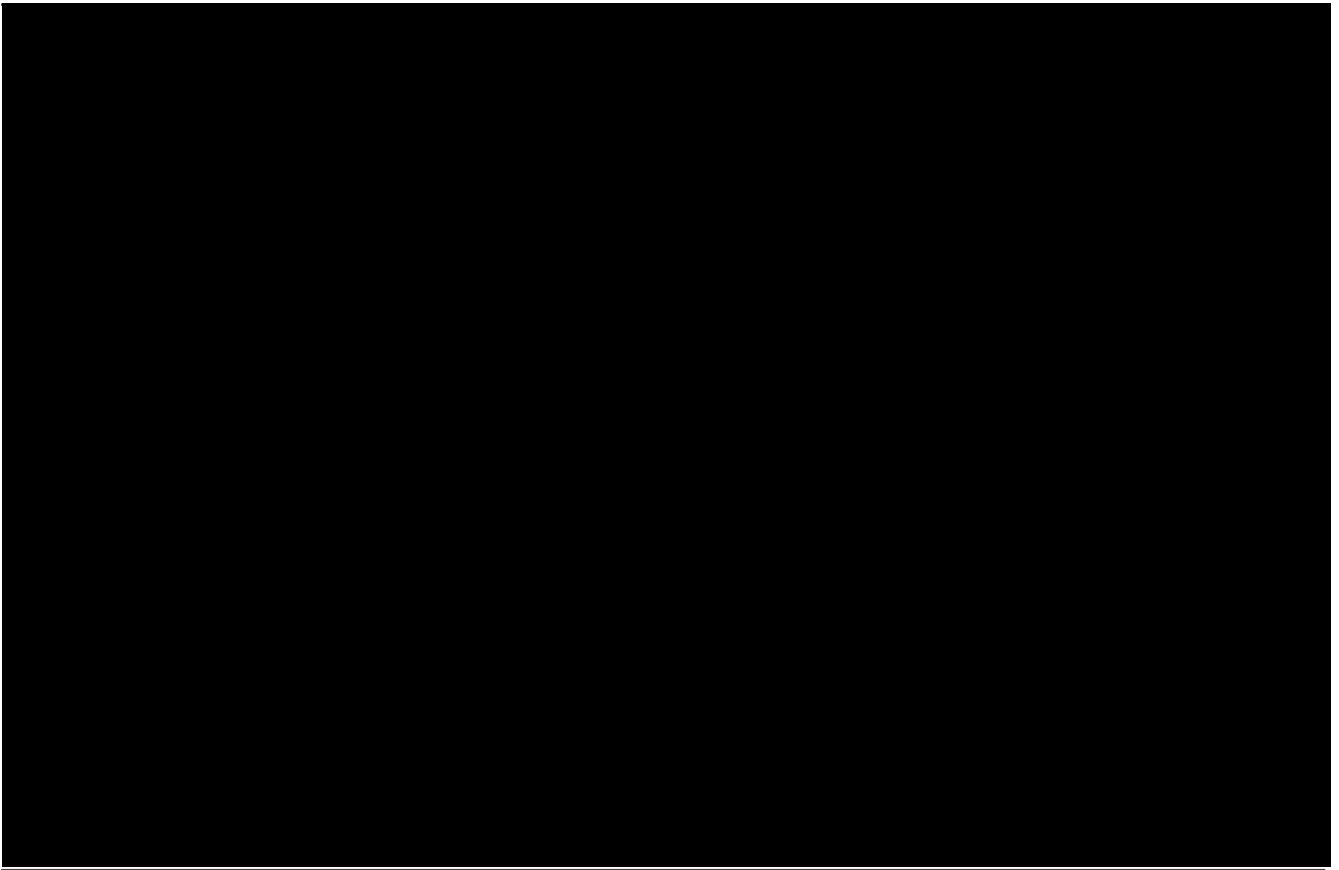
.....
Signed for and on behalf of
[Law Firm]

Date:.....2023

.....
Signed for and on behalf of
[Law Firm]

Date:.....2023

Schedule 5 - Form of Budget



Schedule 6 - Form of Monthly Progress and Budget Report

Monthly Report - [] 202[]

1. Key aspects to case, has there been:

| | |
|--|--|
| Any material change in the estimate of costs? | |
| Any material development in the litigation? | |
| Any change in the Firm's appraisal of prospects of success as at date of the execution of the Funding Agreement? | |
| Any change in Counsel's appraisal of prospects of success as at date of the execution of the Funding Agreement? | |
| Any settlement discussions or offers made? | |

2. Conditions Precedent / Compliance

| | |
|---|--|
| Please confirm ongoing compliance with Conditions Precedent and/or Funding Conditions in the Funding Agreement, or likelihood of future compliance. | |
|---|--|

3. Key Events

| | |
|--|--|
| What key events have occurred since the last report? | |
|--|--|

4. Prospects of Successful Outcome

| | |
|---|-----------|
| Do you [remain satisfied of[[consider that] the prospects of achieving a Successful [Outcome?] [Outcome remain in excess of [redacted] ?] If different from previous report, please explain why. | [Yes][No] |
|---|-----------|

5. Claim duration

| | |
|---|--|
| What is your estimate of the date of the final hearing? If different from previous reports, please explain why. | |
|---|--|

6. Budget

| | |
|---|--|
| Do you envisage any changes to the Budget outside of pre-agreed parameters? | |
|---|--|

7. Insurance

| | |
|---|--|
| Do you anticipate the current level of cover under the Insurance Policy to be sufficient to the end of trial? | |
|---|--|

Signed:

Date:

Name:

Position:

Schedule 7 - Form of Conditional Fee Agreement

EXECUTION PAGES TO AMENDMENT AND RESTATEMENT AGREEMENT

THE FUNDER

EXECUTED AND DELIVERED as a Deed by)
ASERTIS LTD acting by a duly authorised director)
in the presence of:)

..... [Redacted Signature]

Witness signature [Redacted Signature]

Witness name [Redacted Name]

Witness address [Redacted Address]

Witness occupation [Redacted Occupation]

THE CLAIMANT

EXECUTED AND DELIVERED as a Deed by)
BULK MAIL CLAIM LIMITED)
acting by a duly authorised director)
in the presence of:)

..... *Robin Larouson*

Witness signature [Redacted Signature]

Witness name [Redacted Name]

Witness address [Redacted Address]

Witness occupation [Redacted Occupation]