

**LCM FUNDING UK LIMITED**

**AND**

**CONSUMERS' ASSOCIATION**

**LITIGATION FUNDING AGREEMENT**

**LITIGATION FUNDING AGREEMENT** dated 6 November 2024

**BETWEEN**

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

**AND**

**CONSUMERS' ASSOCIATION**, a private company limited by guarantee without share capital, with company number 00580128 and registered address 2 Marylebone Road, London, NW1 4DF of (the **Proposed Class Representative, "PCR"**)

(Together the "**Parties**")

**RECITALS**

- A. The PCR proposes pursuing Claims on behalf of the Class Members against the Defendants for money, compensation, damages, interest and/or other relief in the Action and is entitled to pursue the Action.
- B. Prior to entering into this Agreement, the PCR has understood the different possible options for funding the Action, including before-the-event and after-the-event ("**ATE**") insurance, conditional fee agreements ("**CFAs**"), self-funding, external funding and the cost, advantages and disadvantages of each.
- C. The PCR considers that it is in the best interests of the Class Members to progress the Action and enter into this Agreement.
- D. The Funder intends to provide the PCR with financial assistance in respect of the Action.
- E. In consideration of the Funder's financial assistance, the Parties intend that certain payments will be made to the Funder in accordance with this Agreement.

**OPERATIVE PROVISIONS**

**1. TERMS**

In this Agreement, unless the context otherwise requires:

- 1.1. "**Action**" means, as regards the Claim, as applicable:
  - 1.1.1. Proceedings before the Tribunal;
  - 1.1.2. Steps taken for, or in, a settlement negotiation or mediation under CAT Rule 94;
  - 1.1.3. Proceedings to enforce an Award and / or collect any Recovery; or,
  - 1.1.4. Any appeal if the Funder has issued an Appeal Funding Confirmation Notice pursuant to clause 11.
- 1.2. "**Action Costs**" means:

- 1.2.1. The reasonable costs and expenses incurred by the PCR in pursuit of the Action comprising, but not limited to:
- (a) The fees and disbursements charged by the Solicitors excluding any conditional element;
  - (b) The fees and disbursements charged by Counsel excluding any conditional element;
  - (c) The fees and expenses of economists, accountants, factual and expert witnesses and other professionals;
  - (d) The PCR's share of any mediation or settlement costs if so agreed to be paid with the Defendants;
  - (e) The costs of any litigation and claims administration support services, and noticing services, reasonably required for the efficient pursuit of the Action;
  - (f) Filing and all other fees and incidental fees of any applicable Tribunal;
  - (g) Any costs incurred by the PCR in relation to this Agreement, including its negotiation, preparation, administration, amendment, or waiver and / or enforcement or attempted enforcement;
  - (h) Any VAT on the above costs and expenses not lawfully recoverable by the PCR; and
  - (i) Any costs incurred by the PCR in relation to any discontinuance of the Action.
- 1.2.2. All reasonable costs and expenses (including legal fees, barrister or solicitor fees, expert or consultant fees, the PCR's reasonable expenses and time costs as set out in Schedule 1, disbursements, travel, and accommodation costs) incurred by the Funder (excluding the Funder's internal costs) in relation to:
- (a) The conduct of Due Diligence;
  - (b) The Action;
  - (c) Monitoring the progression of the Claim and the Action Costs;
  - (d) This Agreement, including its negotiation and preparation, administration, amendment, or waiver and / or enforcement or attempted enforcement;
  - (e) The costs of any Expert Determination under clause 15;
  - (f) Quantifying any Adverse Costs application and / or order; and
  - (g) Any premiums, taxes, duties, or other costs associated with any policy of ATE Insurance that are paid by the Funder including

any premium associated with the issue of an Anti-Avoidance Endorsement or a Deed of Indemnity.

1.2.3. Any other costs paid by the Funder pursuant to this Agreement.

- 1.3. “**Adverse Costs**” means the Defendants’ and/or third party costs in the Action, including any recoverable VAT which a Tribunal orders the PCR to pay.
- 1.4. “**Adverse Costs Indemnity Limit**” means £15,000,000 and is the total amount the Funder will pay in respect to Adverse Costs pursuant to this Agreement or such other sum as the Parties may from time to time agree.
- 1.5. “**Anti-Avoidance Endorsement**” means an endorsement acceptable to the Tribunal or agreed with the Defendants or any of them issued by the Insurer in favour of a Defendant to add that Defendant as a third party policyholder under a policy of ATE Insurance.
- 1.6. “**Appeal**” means each and every appeal made in respect of any Award or Order in the Action.
- 1.7. “**Appeal Funding Confirmation Notice**” means a written notice provided by the Funder to the PCR pursuant to clause 11.3.
- 1.8. “**Associate**” means an associate within the meaning of section 435 of the Insolvency Act 1986 or any subsidiary or holding company, or any other subsidiary of any holding company, of a party, and for the purposes of this definition “subsidiary” and “holding company” shall have the same meaning as in section 1159 of the Companies Act 2006.
- 1.9. “**ATE Insurance**” means the after-the-event insurance policy in respect of the Action.
- 1.10. “**Award**” means any judgment or ruling of the Tribunal made in respect of the Action.
- 1.11. “**Business Day**” means a day that is not a Saturday, Sunday, or public holiday in England.
- 1.12. “**Capital Deployed**” means at any time the whole or any of the following:
- a) Action Costs paid or payable by the Funder;
  - b) Adverse Costs paid or payable by the Funder (notwithstanding the provisions of clause 5.1 of this Agreement); and
  - c) Any security for Adverse Costs paid or payable by the Funder (notwithstanding the provisions of clause 5.4 of this Agreement) in connection with the Action, (including by way of funding the cost of ATE Insurance or a Deed of Indemnity).

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

- 1.13. “**CAT**” and “**Tribunal**” means the Competition Appeal Tribunal.

- 1.14. **"CAT Rules"** means the Competition Appeal Tribunal Rules 2015, S.I. 2015/1648, as amended from time to time.
- 1.15. **"Claim"** means the claim for opt-out competition law damages in respect of an alleged breach of competition law against the Defendants arising out of the Defendants' operation of a cloud storage and back-up service known as "Apple iCloud".
- 1.16. **"Claim Information"** means any legal advice, information, communications, and documents disclosed to, provided to, generated by, or exchanged between the Parties and/or the Solicitors in relation to the Action.
- 1.17. **"Claims Administrator"** means a company that handles the noticing and processing of the Class Members' claims for their damages pursuant to CAT Rule 93(1)-(3) or CAT Rules 94-97.
- 1.18. **"Class Member"** has the meaning set out in Rule 73(2) of the CAT Rules.
- 1.19. **"Collective Settlement Approval Order"** means an order of the CAT approving a proposed collective settlement within the meaning of and under CAT Rule 94(1).
- 1.20. **"Confidential Information"** means any confidential or proprietary information disclosed by a Party or their representatives to the other Party or that Party's representatives including, but not limited to, any information relating to:
- (a) The Disclosing Party or their Associates, including the existence or terms of this Agreement, the Funder's involvement in the subject matter of this Agreement and the discussions and negotiations prior to entry into this Agreement;
  - (b) The Action, including the potential other parties, experts and witnesses involved in the Action, persons interviewed or otherwise involved in the Action, the, legal, technical, economic, and financial background, and the theories, strategies and tactics for the prosecution or defence and the details of any settlement or potential settlement;
  - (c) Financial or fee arrangements, financial statements, accounts, or other similar information or materials; and
  - (e) Other proprietary or non-public information, data, or material,
- (and regardless of whether such information is written or oral, irrespective of the form or storage medium, or specifically identified as "Confidential"), provided that Confidential Information does not include information that: (i) was or becomes generally available to the public other than as a result of a disclosure by the Recipient; (ii) was available to the Recipient on a non-confidential basis prior to its disclosure; or (iii) was developed independently of the information derived from the Confidential Information.
- 1.21. **"Costs Budgeting and Claim Monitoring Services"** means the Funder's review of the Action Costs and thereafter its continuous monitoring of the Claim and the Action Costs on the basis of Monthly Reports and other information provided to the Funder.

- 1.22. “**Counsel**” means both Philip Woolfe KC of Monckton Chambers (“**Leading Counsel**”) and/or any other King’s Counsel and Jack Williams of Monckton Chambers and/or any other Junior Counsel retained by the PCR.
- 1.23. “**CPO**” means a Collective Proceedings Order.
- 1.24. “**Deed of Indemnity**” means a deed whereby the Funder or an insurer indemnifies the Defendants in respect of part or all of its costs of the Action on terms satisfactory to the Funder in its absolute discretion.
- 1.25. “**Defendants**” means:
- 1.25.1. Apple Inc. located at One Apple Park Way, Cupertino, California, USA;
  - 1.25.2. Apple Distribution International Ltd., located at Hollyhill Industrial Estate, Hollyhill, Cork, Republic of Ireland;
  - 1.25.3. Apple Europe Limited located at 280 Bishopsgate, London, EC2M 4RB, United Kingdom;
  - 1.25.4. Apple Retail UK Limited located at C/O Tmf Group 13th Floor, One Angel Court, London, EC2R 7HJ, United Kingdom; and
  - 1.25.5. other companies or other legal entities that may reasonably be named as a defendant in the Action,
- and “**Defendant**” shall be construed accordingly.
- 1.26. “**Defendants’ Appeal**” means an appeal by the Defendants or any Defendant against an Award or Order that is in favour of the PCR (in whole or in part).
- 1.27. “**Disclosing Party**” means the party who discloses or makes available Confidential Information to the other party.
- 1.28. “**Due Diligence**” means the investigations and tasks carried out by the Funder into the circumstances and merits of the Claim, and the financial standing of the PCR and the Defendants.
- 1.29. “**Effective Date**” means 4 March 2024.
- 1.30. “**Funder’s Fee**” means the fees due to the Funder calculated in accordance with clause 10.
- 1.31. “**Funding Limit**” means £30,887,550 (including any VAT for which the PCR is liable in respect of the costs and disbursements incurred in pursuit of the Claim and Insurance Premium Tax) and is the total amount the Funder will provide pursuant to this Agreement or such other sum as the Parties may from time to time agree.
- 1.32. “**Funding Notice**” means the funding notice to be provided to the Funder in a form agreed by the PCR and the Funder.
- 1.33. “**Irrevocable Instructions**” means the irrevocable instructions letter dated 6 November 2024 provided by the PCR to the Solicitors.
- 1.34. “**PCR**” means Consumers’ Association. For the avoidance of doubt, any Class Members are excluded from this definition.
- 1.35. “**PCR’s Appeal**” means the PCR’s appeal against an Award or Order that is not in favour of the PCR (in whole or in part).

- 1.36. **“Principal Fee Earner(s)”** means Boris Bronfentrinker and Elaine Whiteford of the Solicitors.
- 1.37. **“Priorities Deed”** means the priorities deed to be entered into between the Funder, the PCR, the Solicitors, Leading Counsel and any ATE Insurance providers setting out the priority order for paying the sums due to each of them from any Recovery made.
- 1.38. **“Recipient”** means the party which receives Confidential Information from another party.
- 1.39. **“Recovery”** means all and any amounts received by or on behalf of the PCR and / or Class Members, or to which the PCR and / or Class Members is / are / or become(s) entitled (whether paid or liable to be paid by the Defendants, or otherwise) related to / or arising out of the Action, including, for the avoidance of doubt, any and all amounts related to or arising out of the Action and:
- 1.39.1. Any Award, settlement or compromise;
  - 1.39.2. Any Award, settlement, or compromise in respect of interest and / or costs;
  - 1.39.3. Any capital sum or income;
  - 1.39.4. The value of any releases or other consideration or benefits of whatever form received by the PCR and / or Class Members;
  - 1.39.5. Any interest earned on sums posted as security for Adverse Costs; and
  - 1.39.6. Any payment by the Defendants to the PCR in respect of the PCR’s costs, fees, and disbursements (including, for the avoidance of doubt, the Funder’s Fee, any ATE Insurance premiums, and the uplifts payable under any conditional fee agreements).
- 1.40. **“Representative”** means Patrick Moloney and / or any other person nominated in addition or substitution by the Funder and notified to the PCR from time to time.
- 1.41. **“Security Confirmation”** means a notice provided by the Funder to the PCR advising that the Funder agrees to satisfy an order for security for Adverse Costs.
- 1.42. **“Solicitors”** means Willkie Farr & Gallagher (UK) LLP authorised and regulated by the Solicitors Regulation Authority with registration number 565650 whose registered office is at c/o Delaware Corporate Organizers, Inc., 1201 North Market Street, P.O. Box 1347, Wilmington, DE 19801, USA (**“Willkie”**) and includes any firm appointed in substitution or replacement.
- 1.43. **“Solicitors’ Letter of Engagement”** means the letter of engagement (or similar agreements) between the Solicitors and the PCR in relation to the Action.
- 1.44. **“Time Period”** means the time from the 6 November 2024 until the Funder receives the Funder’s Fee in its bank account (as notified to the Solicitors).

- 1.45. **"Unpaid Action Costs"** means the balance of the Action Costs incurred during the course of the Proceedings (which for the avoidance of doubt, exclude any additional fees (whether by way of basic charges or success fee) that may become payable under any conditional fee agreement in the event that success is achieved under that agreement), for which the Funder is otherwise liable but has not paid.
- 1.46. **"VAT"** means value added tax at the rate for the time being in force (as may be varied from time to time by HM Revenue & Customs).

## 2. INTERPRETATION

In this Agreement unless the contrary intention is evident:

- 2.1 The Recitals form part of this Agreement;
- 2.2 Neuter includes masculine and feminine;
- 2.3 Singular includes plural and vice versa;
- 2.4 A month is a calendar month;
- 2.5 A reference to a person includes a body, politic or corporate, an individual or partnership and trust and vice versa;
- 2.6 A reference to legislation includes a reference to that legislation as amended, re-enacted, or replaced and includes any subordinate legislation or regulations issued under that legislation;
- 2.7 Headings do not affect construction;
- 2.8 No rule of construction applies to the disadvantage of a party because that party put forward this Agreement or any portion of it;
- 2.9 A reference to a party includes a successor to the rights or obligations of that party under this Agreement;
- 2.10 If a party to this Agreement is made up of more than one person, or a term is used in this Agreement to refer to more than one party, an obligation to those persons is joint and several, a right to those persons is held by each of them separately and any reference to that party or term is a reference to each of those persons separately;
- 2.11 Any reference to "in writing" or "written" shall include written or produced by any legible and non-transitory substitute for writing (including in electronic form) or partly in one manner and partly in another;
- 2.12 Any phrase introduced by the terms "including," "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 2.13 Any reference to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England & Wales, be deemed to include what most nearly approximates in that jurisdiction to the English legal term.

### **3. CONDITIONS PRECEDENT**

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

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

- 4.1 For the avoidance of doubt, the Funder's obligations to pay the Action Costs and any Adverse Costs after the Effective Date are subject to the provisions of this clause 4.
- 4.2 Subject to and in accordance with the terms of this Agreement, including for the avoidance of doubt satisfaction of the provisions of clause 3 above, the Funder agrees to pay the Action Costs after the Effective Date up to the amount of the Funding Limit and any Adverse Costs after the Effective Date up to the amount of the Adverse Costs Indemnity Limit in accordance with this clause 4.
- 4.3 In conducting the Action, the PCR shall take all reasonable steps to minimise and control the Action Costs.
- 4.4 Any request for payment of Action Costs and / or Adverse Costs submitted to the Funder by or on behalf of the PCR must be in the form of a Funding Notice and must be issued no more frequently than once in each calendar month. For the avoidance of doubt, any Funding Notice must be submitted within fourteen (14) Business Days of the end of each calendar month, should include all Action Costs incurred in the preceding month, must be accompanied by copies of all invoices in respect of Action Costs for which it makes a claim and must not claim an amount the subject of another Funding Notice. The Funder may also at its absolute discretion make payment of Action Costs and / or Adverse Costs that are not the subject of a Funding Notice.

- 4.5 Subject to this clause 4, the Funder must pay to the PCR the total amount of the Action Costs and / or Adverse Costs sought by the PCR in any compliant Funding Notice within thirty (30) days of the Funder's receipt of such Funding Notice and all supporting information required.
- 4.6 The PCR must only apply the moneys paid by the Funder pursuant to clause 4 in satisfaction of the Action Costs and / or Adverse Costs specified in the applicable Funding Notice.
- 4.7 In the event that the Funder disputes its obligation to make payment in respect of the full amount of any Funding Notice:
  - 4.7.1 The Funder may request within five (5) Business Days of receipt of the Funding Notice that the PCR provides further information, explanation, or evidence in relation to the Funding Notice and the PCR must provide this information, explanation, or evidence within five (5) Business Days.
  - 4.7.2 If after receipt of the information outlined in clause 4.7.1, the Funder continues to dispute its obligation to make payment in respect of the full amount of the Funding Notice, that dispute must be resolved in accordance with the procedure set out in clause 15.
  - 4.7.3 The Funder is not required to pay the amount in dispute to the PCR until such time as the dispute is resolved in accordance with clause 15. The Funder's obligations to make payment in respect of all non-disputed Action Costs and Adverse Costs are unaffected by the triggering of clause 15.

## **5. ADVERSE COSTS INDEMNITY**

- 5.1 The Parties acknowledge and agree that the Action may expose the PCR to a contingent liability for Adverse Costs.
- 5.2 Subject to and in accordance with the terms of this Agreement, the Funder indemnifies the PCR against the Adverse Costs that relate to the period after the Effective Date up to the Adverse Costs Indemnity Limit.
- 5.3 Notwithstanding any other provision of this Agreement, the Funder does not indemnify the PCR:
  - 5.3.1 In respect of any liability for Adverse Costs that arises out of negligent acts or omission, misfeasance or acts in breach of this Agreement by the PCR;
  - 5.3.2 In respect of any Adverse Costs in the event that the Funder terminates this Agreement pursuant to clause 17; and
  - 5.3.3 In respect of any Adverse Costs that exceed the sum of the Adverse Costs Indemnity Limit.
- 5.4 The Funder may in its absolute discretion enter into an ATE Insurance policy:
  - 5.4.1 To the extent that the premium (or any part thereof) for an ATE Insurance policy, Anti-Avoidance Endorsement, or Deed of Indemnity is paid by the Funder it is to be an Action Cost;

5.4.2 To the extent that the premium (or any part thereof) is deferred and contingent:

- (a) It is to be paid out of the Recovery; and
- (b) It is not to be an Action Cost.

## **6. SECURITY FOR COSTS**

- 6.1 The PCR must notify the Funder in writing within two (2) Business Days of the receipt of any request and / or the service of any application for security for Adverse Costs.
- 6.2 The PCR may, with the Funder's written approval, reach agreement with the Defendants on an amount to be provided as security for Adverse Costs and the form of that security for Adverse Costs.
- 6.3 In the event that the PCR reaches agreement with the Defendants pursuant to clause 6.2, the PCR must notify the Funder within two (2) Business Days that such an agreement has been reached.
- 6.4 The PCR must notify the Funder of the making of any order for security for Adverse Costs (whether by consent or otherwise) within two (2) Business Days.
- 6.5 The Funder must provide the PCR with the Security Confirmation at the earliest of:
  - 6.5.1 Within fifteen (15) days after receiving a notice under clause 6.3; or
  - 6.5.2 Five (5) or more Business Days before the date set for payment by any order for security for Adverse Costs.
- 6.6 If the Funder provides the Security Confirmation, the Funder must ensure the satisfaction of the order for security for costs on the terms and within the period specified in the order for security for costs.
- 6.7 The Funder in its absolute discretion may arrange that security for Adverse Costs be provided by way of an ATE Insurance policy, Anti-Avoidance Endorsement, or Deed of Indemnity if accepted by the Tribunal. To the extent that a premium is paid for by an ATE Insurance policy, Anti-Avoidance Endorsement, or Deed of Indemnity, it is to be an Action Cost.

## **7. PCR'S OBLIGATIONS**

The PCR must, through the Irrevocable Instructions to the Solicitors and / or on its own account:

- 7.1 Diligently prosecute the Action and pursue the Class Members' rights in connection with the Claim and / or Action.
- 7.2 Diligently collect and enforce any Award, settlement or compromise and seek to maximise the Recovery.
- 7.3 Co-operate fully and at all times throughout the Action with, and promptly provide such full, frank and honest instructions and assistance to, the Solicitors as they may require for pursuing the Claim and / or Action, including providing,

or procuring the provision of, documents in its possession or control so far as advised by the Solicitors.

- 7.4 Keep and preserve any documents relating to the Action and / or the Defendants.
- 7.5 Consider the advice given by the Solicitors and / or Counsel, including whether it would be appropriate to make or accept any offer to settle the Claim and / or Action.
- 7.6 Immediately inform the Funder and the Solicitors of any offer of settlement or compromise received or proposed to be made in relation to the Claim and / or Action.
- 7.7 Make the payments in accordance with clause 10 and the Priorities Deed.
- 7.8 Act at all times with the utmost good faith in pursuance of the Claim.
- 7.9 Unless prohibited by law or otherwise contrary to an order of the Tribunal, and so long as it does not give rise to any waiver of privilege, provide the Funder with:
  - 7.9.1 All information reasonably requested by the Funder;
  - 7.9.2 Copies of all documents reasonably requested by the Funder that are in the possession or control of the PCR and / or the Solicitors and / or obtained from, or provided to, the Defendants relating to the Claim and / or Action; and
  - 7.9.3 Sufficient notice of and the opportunity to attend (in an observer capacity only) meetings (including meetings with Counsel and experts) and to send an observer to any hearing, settlement conference or mediation relating to the Claim and / or Action.
- 7.10 Immediately inform the Funder and the Solicitors of any information, circumstance or change in circumstance that is material to:
  - 7.10.1 The operation of this Agreement;
  - 7.10.2 The prospects of success or failure of the Claim and / or the Action;
  - 7.10.3 The prospects of recovering any Recovery;
  - 7.10.4 The distribution of any Recovery; and / or
  - 7.10.5 The Warranties given by the PCR pursuant to clause 12.
- 7.11 Not, without the prior written consent of the Funder:
  - 7.11.1 Create a security interest, charge, mortgage or otherwise encumber or permit a lien over the Claim and / or Action and / or the Recovery, or any part thereof;
  - 7.11.2 Bring or permit to be brought or continue any proceeding which claims relief arising out of the same or similar facts pleaded in any Action, or

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

7.11.3 Assign any of its rights under this Agreement.

## **8. SOLICITORS**

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

## **9. PROCEEDINGS**

- 9.1 The PCR shall have complete control of the Action, albeit that the PCR will have regard to and ensure compliance with its obligations as provided for by this Agreement in pursuing the Action.
- 9.2 Nothing in this Agreement will permit the Funder to override any advice given by the Solicitors and / or Counsel or to require the PCR to conduct the Claim otherwise than in accordance with that advice.
- 9.3 The PCR shall not abandon, withdraw, or discontinue the Action otherwise than in accordance with this clause 9.
- 9.4 In the event that a decision is required as to whether to abandon, withdraw or discontinue any Action (including any part of any Action or by entering into a settlement or compromise agreement), the PCR shall instruct the Solicitors to prepare or obtain a written opinion in respect of whether the Action should be abandoned, withdrawn or discontinued and provide a copy of such an opinion to the Funder at least ten (10) Business Days before making a decision to abandon, withdraw or discontinue any Action.
- 9.5 The PCR shall not abandon, withdraw, or discontinue any Action (including any part of any Action or by entering into a settlement or compromise agreement) unless that is the advice given pursuant to clause 9.4.

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

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

approved by the Solicitors and to the extent necessary, approved by the Tribunal.

- 10.2 Subject to any order of the Tribunal, the PCR shall hold the Recovery on trust for the Class Members, the Funder and, to the extent their charges have not been paid, Solicitors, Counsel, and the ATE Insurance providers.
- 10.3 To the extent not recovered from the Defendants, and to the extent required, the PCR shall seek approval from the Tribunal for the payment of the PCR's costs, fees, and disbursements (including for the avoidance of doubt the Funder's Fee, any ATE Insurance premiums, the uplifts payable under any conditional fee agreements, and VAT in accordance with 20.2, if any) in accordance with this clause 10.
- 10.4 In the event that successive recoveries of Awards are made from the Defendants or from any third party or otherwise in connection with the Action, the duties under this clause 10 shall apply anew to each successive Recovery.

*Payment of the Funder's Fee*

- 10.5 The Funder's Fee shall be calculated in accordance with the following table:

<b>Time Period</b>	<b>Funder's Fee</b>
≤ 6 months	Capital Deployed plus 3.00x Capital Deployed
6 months and 1 day < X ≤ 12 months	Capital Deployed plus 3.25x Capital Deployed
12 months and 1 day < X ≤ 18 months	Capital Deployed plus 3.50x Capital Deployed
18 months and 1 day < X ≤ 24 months	Capital Deployed plus 3.75x Capital Deployed
24 months and 1 day < X ≤ 30 months	Capital Deployed plus 4.00x Capital Deployed
30 months and 1 day < X ≤ 36 months	Capital Deployed plus 4.25x Capital Deployed
36 months and 1 day < X ≤ 42 months	Capital Deployed plus 4.50x Capital Deployed
42 months and 1 day < X ≤ 48 months	Capital Deployed plus 4.75x Capital Deployed
48 months and 1 day < X ≤ 54 months	Capital Deployed plus 5.00x Capital Deployed
54 months and 1 day < X ≤ 60 months	Capital Deployed plus 5.25x Capital Deployed
60 months and 1 day < X ≤ ∞	Capital Deployed plus 5.50x Capital Deployed

- 10.6 Any sums in respect of the PCR's costs, fees and disbursements (including, for the avoidance of doubt, the Funder's Fee, any ATE Insurance premiums, the uplifts payable under any conditional fee agreements, and VAT in accordance with clause 20.2, if any), and including any sums payable in those respects under CAT Rule 93(4), CAT Rule 94(8), or any other power to award the PCR's costs, fees and disbursements, shall be paid, in the order of priority set out in the Priorities Deed and as repeated below, within 10 (ten) Business Days of such sums being: (a) authorised for payment pursuant to any Order of the Tribunal; and (b) in the possession of the PCR; alternatively where no Order of the Tribunal is required within 10 (ten) Business Days of such sums coming into the possession of the PCR:

10.6.1 First, to pay any Unpaid Action Costs;

10.6.2 Second:

- (a) To reimburse any claims paid pursuant to any ATE Insurance and to pay any outstanding Adverse Costs;
- (b) To pay the Funder an amount equal to the Capital Deployed, less any amounts already recovered by way of costs orders from the Defendants;
- (c) To pay the Solicitors, deferred fees due under their CFA;
- (d) To pay Leading Counsel, deferred fees due under his CFA;

Until all of (a), (b), (c) and (d) are paid in full. If the sums to be paid under clause 10.6.2 are insufficient to pay (a), (b), (c) and (d), these sums shall be paid equally and in the same proportion to each other;

10.6.3 Third, to pay:

- (a) The Funder, the balance of the Funder's Fee after giving credit for the repayment of Capital Deployed pursuant to clause 10.6.2;
- (b) The Solicitors, the uplift fees due under their CFA;
- (c) Counsel, the uplift fees due under their CFA or agreement;
- (d) The ATE Insurer, any contingent premium (or any part thereof) and applicable tax payable pursuant to any ATE Insurance policy;

Until all of (a), (b), (c) and (d) are paid in full. If the sums to be paid under clause 10.6.3 are insufficient to pay (a), (b), (c) and (d), these sums shall be paid equally and in the same proportion to each other.

10.7 This clause 10 shall survive the termination of this Agreement.

10.8 In the event that the Tribunal orders payment of the Funder's Fee of an amount less than as set out in this clause 10, the PCR shall have no liability to the Funder for any shortfall.

## **11. APPEAL**

11.1 Any request by the PCR to the Funder to fund the PCR's Appeal or the defence of the Defendants' Appeal must be supported by an opinion from the Solicitors and details of any budget for such appeal.

11.2 Subject to satisfactory Due Diligence having been completed by the Funder, the Funder agrees to fund the PCR's Appeal and / or the defence of the Defendants' Appeal, in either case the level of funding to be agreed and upon such agreement, the Funding Limit and the Adverse Costs Indemnity Limit to be increased by the agreed amount.

- 11.3 Subject to clauses 11.1 and 11.2 of this Agreement, the Funder will use all reasonable endeavours to provide the Appeal Funding Confirmation Notice to the PCR confirming:
- 11.3.1 That the Funder will agree to fund the PCR's Appeal within five (5) Business Days of the date of the Award or Order; and / or
  - 11.3.2 That the Funder will agree to fund the defence to the Defendants' Appeal within seven (7) Business Days of service of the Defendants' Appeal (or application for permission to appeal); and
  - 11.3.3 That the Funder will pay any Adverse Costs of the Appeal.
- 11.4 Once the Funder has given the Appeal Funding Confirmation Notice, the appeal proceedings shall form part of the Action pursuant to the terms of this Agreement.
- 11.5 The Funder's refusal or failure to provide the Appeal Funding Confirmation Notice will not affect the Funder's accrued rights and interests under this Agreement, including the Funder's accrued rights under clause 10.

## **12. WARRANTIES**

- 12.1 The PCR warrants and represents on the date of this Agreement and to the extent relevant, on every date on which it submits a Funding Notice to the Funder, having made all reasonable and diligent enquiries and to the best of its knowledge, information, and belief, that:
- 12.1.1 It has full power and authority to enter into, has authorised and / or obtained all necessary consents for the execution by it, and performance by it under, this Agreement and that its obligations pursuant to this Agreement are legal, valid, and binding upon it in accordance with its terms;
  - 12.1.2 It has disclosed to the Funder all information material to:
    - (a) The operation of this Agreement;
    - (b) The prospects of success or failure of the PCR in the Claim and / or the Action;
    - (c) The prospects of recovering the Recovery; and
    - (d) The distribution of the Recovery;
  - 12.1.3 In respect of Funding Notices, the PCR's obligation shall be to consider whether the information provided previously in respect of the matters at 12.1.2(b)-(d) remains current or requires any updating;
  - 12.1.4 All information provided by the PCR to the Funder is true, accurate and not intentionally misleading;
  - 12.1.5 It is not insolvent, in administration or unable to pay its debts when they fall due and there are no insolvency or administration proceedings threatened or outstanding against it and it has no reason to believe that it may not be able to pay amounts due to the Funder in accordance

with this Agreement. In the event that the PCR becomes insolvent, that shall not affect the Funder's obligations in respect of any and all Funding Notices submitted in accordance with this Agreement prior to the date of that insolvency; and

- 12.1.6 It has taken legal advice from the Solicitors or other legal advisors on the terms of this Agreement, or has had the opportunity to do so, prior to entering into it.
- 12.2 If during the period of this Agreement the PCR becomes aware of any material facts which may alter or affect the warranties and representations in clause 12.1 (or which should have been disclosed to the Funder had they been known by the PCR on or before the date on which such warranties and representations were made or are deemed to have been made), the PCR shall promptly disclose in writing to the Funder all relevant facts.
- 12.3 The PCR acknowledges that the Funder has relied upon the truth and accuracy of the warranties contained in clause 12.1 in entering into this Agreement and will continue to rely on the truth and accuracy of the warranties in performing its obligations pursuant to this Agreement.
- 12.4 The Funder warrants and represents that on the date of this Agreement it has available, and until the Action is concluded or this Agreement is terminated in accordance with clause 17 it will continue to maintain, adequate funds to fulfil its obligations under this Agreement, including its obligations in respect of Adverse Costs. The Funder further warrants that in the event of any material adverse change in the funds available to fulfil its obligations under this Agreement, including its obligations in respect of Adverse Costs, it will promptly notify the PCR in order that the PCR can consider whether to exercise its rights under clause 17.

### **13. CONFIDENTIALITY**

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

- 13.4.3 Made on a confidential basis with the Disclosing Party's prior written consent to the fact and contents of that confidential disclosure;
  - 13.4.4 Made on a confidential basis by the Funder for the purposes of obtaining legal or financial advice or assistance; or
  - 13.4.5 Required by the rules of any financial market on which the Funder is listed.
- 13.5 Notwithstanding the foregoing, subject to any necessary confidentiality redactions that the Funder may request be applied, it is agreed that this Agreement may be provided to the CAT and the Defendants as part of the CPO application process, both in a confidential and non-confidential version. The PCR shall use reasonable endeavours to protect any information the Funder requests is redacted for confidentiality.
- 13.6 Notwithstanding the foregoing, the Funder shall be entitled to disclose to its finance providers or potential finance providers the existence and terms of this Agreement.
- 13.7 Clause 13 survives the termination of this Agreement.

#### **14. PRIVILEGE**

- 14.1 The PCR does not by any disclosure of Claim Information to the Funder waive any legal professional privilege.
- 14.2 All privileged information disclosed to the Funder is disclosed on the basis that the Funder has, or will have, a common interest in the pursuit and success of the Claim and / or Action and the Funder will use reasonable endeavours to preserve that privilege.
- 14.3 If the PCR withholds information from the Funder other than as permitted by this Agreement on the basis of privilege, work product, or any similar doctrine of confidentiality, it must provide immediate written notice to the Funder of the same.
- 14.4 Clause 14 shall survive the termination of this Agreement.

#### **15. EXPERT DETERMINATION**

- 15.1 Subject to clauses 16 or 17 below, if a dispute arises in respect of the reasonableness of any Action Costs to be paid in accordance with clause 4, or the Funder reasonably considers that the merits of any Claim are no longer satisfactory or are no longer economically viable under clause 17.1, either Party (the "**Disputing Party**") may serve a dispute notice ("**Dispute Notice**") on the other Party.
- 15.2 The Dispute Notice must set out the nature and grounds of the dispute, the outcome sought and must require the appointment of an independent solicitor of the level of partner in a reputable commercial law firm or an independent King's Counsel specialist in competition law or costs as appropriate ("**Expert**") to undertake an independent assessment and determination.
- 15.3 If the Disputing Party does not withdraw the Dispute Notice within five (5) Business Days of deemed receipt of that notice on the other Party, then the

Parties shall, within ten (10) Business Days of service of the Dispute Notice, agree and appoint an Expert to make an independent assessment and determination of the issues identified in the Dispute Notice.

- 15.4 If the Parties are not able to agree and appoint an Expert in accordance with clause 15.3, either Party may apply to The President of the Law Society of England & Wales to appoint a suitable Expert.
- 15.5 The Expert shall determine in its absolute discretion the procedures and rules to apply in the conduct of the independent assessment and determination. The Expert's decision in relation to the Dispute Notice shall be final and binding.
- 15.6 The costs and expenses relating to the Expert's determination in accordance with clause 15.1 – 15.5 shall be paid for by the Funder.

## **16. DISPUTE RESOLUTION**

- 16.1 The Parties must use their best endeavours and act in good faith to resolve any dispute between them in relation to this Agreement.
- 16.2 Prior to implementing the dispute resolution procedure set out in clause 15.3, written notice of the dispute must be given by the Disputing Party to the other Party and the Parties may convene a meeting between the Representative and / or a nominee of the Representative and the PCR and / or a solicitor from the Solicitors and endeavour to resolve the dispute between them within fourteen (14) Business Days of notice of the dispute first being given.
- 16.3 Any dispute arising out of or in connection with this Agreement (excluding any dispute in respect of which a Party exercises its rights under clause 15 but including any question regarding its existence, validity, interpretation, performance, breach, or termination), shall be resolved by a sole arbitrator under the rules of the London Court of International Arbitration (“**LCIA**”).
- 16.4 The seat of arbitration will be London and the language of the arbitration will be English.
- 16.5 The arbitrator will be appointed by agreement of the Parties provided that, if they cannot reach agreement within ten (10) Business Days of first notification of the relevant dispute, then the Parties will apply to have the arbitrator appointed by the LCIA. Any attempt by either Party to seek relief or remedies in any other forum, save for pursuant to clause 16.6, shall constitute a breach of this Agreement and entitle the other Party to damages, equitable relief and full indemnification against all costs and expenses incurred in connection therewith.
- 16.6 Nothing in this Agreement shall prevent either party from seeking any provisional or preliminary or interim relief (including, but not limited to, injunctions, attachments or other such orders in aid of arbitration) from any court of competent jurisdiction, and any such application to a court for provisional /

preliminary relief shall not be deemed incompatible with the above agreement to arbitrate or a waiver of the right to arbitrate.

- 16.7 The arbitration award shall be final and binding on the Parties. The Parties undertake to carry out any award without delay and waive their right to any form of recourse based on grounds insofar as such waiver can validly be made.

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

- 17.1 If the Funder reasonably considers that the merits of any Claim are no longer satisfactory or that any Claim is no longer economically viable the Funder may give the PCR not less than forty (40) Business Days written notice of its intention to terminate this Agreement, subject to the right of the PCR to seek Expert Determination, of the Funder's Determination, under clause 15.

- 17.2 If the Funder breaches any term of this Agreement:

17.2.1 The PCR may give the Funder notice in writing:

- (a) Specifying the breach;
- (b) Specifying what is required to remedy the breach; and
- (c) Allowing the Funder a period of at least fourteen (14) Business Days to remedy the breach.

17.2.2 The PCR may terminate this Agreement:

- (a) If the breach is capable of remedy and is not remedied within fourteen (14) Business Days with such termination taking effect immediately upon the expiry of that period; or
- (b) If the breach is not capable of remedy, with such termination taking immediate effect.

- 17.3 If the PCR defaults in the performance of any of their obligations under this Agreement:

17.3.1 The Funder may give notice in writing to the PCR (Notice of Breach):

- (a) Specifying the breach;
- (b) Specifying what is required to remedy the breach or stating that the breach is not capable of remedy; and
- (c) If the breach is capable of remedy, allowing the PCR a period of at least fourteen (14) Business Days to remedy the breach.

17.3.2 The Funder may terminate this Agreement:

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

- 17.4 If this Agreement is terminated pursuant to clause 17.1 or 17.2:
- 17.4.1 Save with respect to any costs including Adverse Costs incurred by the PCR up to and occasioned by the discontinuance of the Action, and any costs including Adverse Costs that have been incurred as at the date of the termination, the Funder's obligation to pay Action Costs and/or Adverse Costs arising after the date of termination, ceases immediately on the date of termination; and
  - 17.4.2 The Funder's right to be paid the Funder's Fee from any Recovery pursuant to clause 10 shall continue as if this Agreement had continued in force save that if in the event of termination pursuant to clause 17.1 or 17.2 and the PCR obtains an offer of alternative funding for the Claim and / or the Action then the Funder shall in good faith negotiate such variation and / or reduction of the Funder's Fee and / or the Priorities Agreement as may reasonably be required to facilitate the funding of the Claim and/or the Action by the alternative funder.
  - 17.4.3 This clause 17.4 shall survive termination of this Agreement.
- 17.5 If this Agreement is terminated pursuant to clause 17.3.
- 17.5.1 Save with respect to any costs including Adverse Costs incurred by the PCR up to and occasioned by discontinuance of the Action, and any costs including Adverse Costs that have been incurred as at the date of the termination, the Funder's obligation to pay Action Costs and / or Adverse Costs arising after the date of termination, ceases immediately on the date of termination;
  - 17.5.2 The Funder's right to be paid the Funder's Fee from any Recovery pursuant to clause 10 shall continue as if this Agreement had continued in force; and
  - 17.5.3 This clause 17.5 shall survive termination of this Agreement.
- 17.6 If the PCR contravenes clause 9.5, then the PCR acknowledges and agrees that:
- 17.6.1 Such an abandonment, withdrawal, or discontinuance (including of any part of any Claim or Action or settlement of the same) constitutes a material breach of this Agreement;
  - 17.6.2 The Funder shall be entitled to terminate this Agreement by written notice with immediate effect;
  - 17.6.3 The PCR must, within ten (10) Business Days of the abandonment, withdrawal, or discontinuance, repay to the Funder all Action Costs and any other payments including Adverse Costs made by the Funder pursuant to this Agreement in respect of the Action that has been abandoned, withdrawn or discontinued subject to the CAT's powers to appoint a replacement Class Representative under CAT Rule 87. If the CAT approves the appointment of a replacement Class Representative the Funder shall not require the PCR to repay to the Funder all Action Costs and any other payments made by the Funder pursuant to this Agreement;

17.6.4 The Funder's right pursuant to clause 10 to be paid the Funders Fee from any Recovery shall apply to any settlement entered into in breach of clause 9.5, subject to any order of the Tribunal; and

17.6.5 This clause 17.6 shall survive termination of this Agreement.

17.7 The PCR's right to terminate under clause 17 shall apply irrespective of the amount of the Capital Deployed under this Agreement and whether or not the Funding Limit has been reached.

## **18. INTEREST**

18.1 If a party fails to make any payment due to the other party under this Agreement within ten (10) Business Days of the due date for payment, then the other party may charge the defaulting party interest on the overdue amount at the rate of 2% per annum above the National Westminster Bank PLC's base lending rate from time to time.

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

## **19. LIABILITY**

19.1 Other than as expressly agreed in this Agreement, the Funder shall have no obligation to fund any fees, expenses, or other sums and all such fees, expenses or other sums shall be the sole responsibility of the PCR.

19.2 Subject only to clause 19.1, the liability of the Funder in relation to the subject matter of this Agreement is limited to the aggregate amount of the Action Costs. The Funder excludes all liability for any damages that may constitute compensatory damages, lost profit, out-of-pocket expenses, costs, losses, charges, expenses, punitive damages or otherwise.

19.3 Neither Party shall be liable to the other under this Agreement for any special, indirect, or consequential losses or damage, whether or not such losses were within the contemplation of the Parties at the date of this Agreement.

19.4 Nothing in this Agreement shall limit either Party's liability for death or personal injury arising from the negligence of that Party or its Associates, fraud, or fraudulent misrepresentation, or for any loss which cannot be excluded or limited by applicable law.

## **20. VAT**

20.1 In respect of any VAT in respect of the costs and disbursements incurred in pursuit of the Claim, if legally permitted to do so, the PCR will claim such VAT as input VAT in its normal VAT filings with HM Revenue & Customs. The PCR will provide the Funder a copy of any VAT filings submitted to HM Revenue & Customs that seek a refund or credit of the VAT that has been paid by the Funder, within five (5) days of having made the filing. The PCR also agrees to repay to the Funder any VAT refund received from HM Revenue & Customs in

respect of the costs and disbursements incurred in pursuit of the Claim within five (5) days upon receipt of the cleared funds.

- 20.2 All amounts set out, or expressed in this Agreement to be payable to the Funder which (in whole or in part) constitute the consideration for a supply or supplies for VAT purposes, shall be deemed to be exclusive of any VAT which is chargeable on such supply or supplies, and accordingly, subject to clause 20.3 below. The Parties' understanding is that there is not a VAT-able supply of services in connection with the provision of litigation funding or the Funder's Fee. If VAT is or becomes chargeable on any supply made by the Funder to the PCR under this Agreement, the PCR shall pay to the Funder (in addition to and at the same time as paying any other consideration for such supply) an amount equal to such VAT (and the Funder shall promptly provide an appropriate VAT invoice to the PCR). The Parties agree that once all payments have been made under clause 10 of this Agreement, the PCR is under no further obligations towards the Funder in respect of VAT.
- 20.3 Where this Agreement requires the PCR to reimburse or indemnify the Funder for any cost or expense, the PCR shall reimburse or indemnify (as the case may be) the Funder for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that the Funder reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority or if VAT has been recovered by the PCR from a relevant tax authority as provided for by clause 20.1.

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

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

## **22. ASSIGNMENT**

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

material to the Funder and do all things necessary to assign the Related Claim to the Funder.

**23. NOTICE**

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

23.2 Notice can only be given to a Party:

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

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

Party:	Address:	Marked for the attention of:
Funder	[REDACTED]	[REDACTED]
PCR	[REDACTED]	[REDACTED]
Solicitors	[REDACTED]	[REDACTED]

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

Party:	Marked for the attention of:	Email address:
Funder	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
PCR	[REDACTED]	[REDACTED] [REDACTED]
Solicitors	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]

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

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

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

23.4.2 Sent by registered post, 24 hours from the date of posting; or

23.4.3 Sent by email, when sent,

provided that if deemed receipt occurs before 9.00 am on a Business Day the notice shall be deemed to have been received at 9.00 am on that day, and if deemed receipt occurs after 5.00 pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9.00 am on the next Business Day.

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

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

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

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

## **24. GOVERNING LAW**

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

## **25. GENERAL**

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

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

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

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

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

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

- 25.6.1 Must be in writing;
- 25.6.2 Does not constitute a waiver with respect to any other breach of this Agreement; and
- 25.6.3 Does not constitute an estoppel with respect to any previous or successive waivers that are made or granted.

**26. COUNTERPARTS**

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

## SCHEDULE 1

### THE PCR'S REASONABLE EXPENSES AND TIME COSTS

1. The Funder has agreed to reimburse the PCR for its time costs and expenses in connection with the Claim as set out in this Schedule 1.
2. The PCR is entitled to reimbursement of the time costs.
  - a. The PCR will be reimbursed at the following rates for the period 1 July 2024 – 30 June 2025:
    - i. [REDACTED] plus any applicable VAT per hour for costs of the PCR's public relations and communications team;
    - ii. [REDACTED] plus any applicable VAT per hour for costs incurred by the PCR's in-house legal team; and
    - iii. [REDACTED] plus any applicable VAT per hour for costs incurred by members of the PCR's management and/or governance team.
3. The rates in 2.a above will be subject to an annual increase of no more than 5%, such rate increase to be notified to the Funder at least 15 (fifteen) Business Days in advance of the increase taking effect. Those time costs are subject to: (i) an overall cap of [REDACTED] plus any applicable VAT; and (ii) the following category specific caps:
  - a. the costs incurred by the PCR's in-house legal team and members of the PCR's management and/or governance team ("**Case Team Costs**"): [REDACTED] plus any applicable VAT per annum;
  - b. the costs of attendance at a hearing by any and all employees of the PCR ("**Hearing Costs**"): [REDACTED] plus any applicable VAT for the life of the Action;
  - c. the costs of the PCR's public relations and communications team and any other costs not captured in paragraph 3.a and 3.b in the sum of:
    - i. [REDACTED] plus any applicable VAT for the period up to the date on which the Tribunal makes a CPO in favour of the PCR in respect of the Action; and
    - ii. [REDACTED], and any sum remaining from 3.c.i above, plus any applicable VAT for the period thereafter; and

For the purposes of the calculation of the caps, a year is a calendar year commencing on 1 July and the cap in this Schedule 1 clause 3.a is reduced pro rata for any year in which the Action is on foot for less than a year.

4. As regards the PCR's expenses, the PCR shall obtain the Funder's written consent prior to incurring any single disbursement greater than £200.00.
5. The PCR shall invoice the Funder in respect of time costs and expenses and the Funder shall pay such invoices in accordance with clause 4 of this Agreement, save that [REDACTED] of

Case Team Costs and Hearing Costs shall be payable only in the event that the Tribunal makes a CPO in favour of the PCR in respect of the Action.

*[Signature pages removed]*