



**LITIGATION FUNDING AGREEMENT**

between

**WOODSFORD LITIGATION FUNDING 55 LLP (1)**

and

**WOODSFORD GROUP LIMITED (2)**

and

**ASSOCIATION OF CONSUMER SUPPORT ORGANISATIONS LTD (3)**

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LITIGATION FUNDING AGREEMENT

DATED: 16 April 2025

MADE BETWEEN:

- (1) WOODSFORD LITIGATION FUNDING 55 LLP incorporated and registered in England and Wales with company number OC449036 whose registered office is 8 Bloomsbury Street, London WC1B 3SR ("Funder");
(2) WOODSFORD GROUP LIMITED incorporated and registered in England and Wales with company number 07327885 whose registered office is 8 Bloomsbury Street, London WC1B 3SR ("Guarantor"); and
(3) ASSOCIATION OF CONSUMER SUPPORT ORGANISATIONS LTD incorporated and registered in England and Wales with company number 11795612 whose registered office is Castramont, Westbourne Drive, Lancaster, Lancashire, LA1 5EE.

INTRODUCTION

- A. The Class Representative is bringing the Action against the Defendant, on behalf of the Class Members, pursuant to section 47B of the Competition Act 1998.
B. The Class Representative is lawfully entitled to pursue the Action and has no conflicts of interest that could affect its representation of the Class Members.
C. The Funder has agreed to provide litigation funding on the terms of this Agreement and the Class Representative has agreed to make certain payments to the Funder in consideration for this funding in the event of a Judgment in the Class Representative's favour or settlement.
D. The terms of this Agreement have been negotiated at arm's length.
E. The Class Representative has reviewed this Agreement and its implications have been fully explained by the Solicitors and independent costs counsel, as confirmed in clause 44.
F. [Redacted] The Parties each consider that the Adverse Costs Limit is reasonable and appropriate having regard to such potential liability. [Redacted]
G. The Class Representative does not waive privilege over the advice received by referencing it here.
H. The Class Representative is of the view, after carefully considering the terms of this Agreement and the advice received, that it is in the best interests of the Class Members to enter into this Agreement and thereafter to fully comply with its terms to ensure the Class Representative can prosecute the Action for the benefit of Class Members.

IT IS AGREED AS FOLLOWS:

1. Definitions

In this Agreement:

- 1.1 “**Action**” means opt-out collective proceedings by the Class Representative against the Defendant pursuant to section 47B of the Competition Act 1998 on behalf of Class Members for damages, interest and costs for alleged infringements of the Competition Act 1998 the details of which will be particularised in the collective proceedings claim form to be filed in the CAT, and including any cost assessment proceedings relating to such collective proceedings.
- 1.2 “**Action Costs**” means the aggregate of:
- 1.2.1 the reasonable and proper fees and expenses incurred by the Class Representative in pursuit of the Action and in accordance with this Agreement, but in any event limited to:
    - 1.2.1.1 the Solicitors’ reasonable and proper fees calculated in accordance with the Solicitors’ Legal Costs Agreement (excluding any conditional element);
    - 1.2.1.2 Senior Counsel’s reasonable and proper fees calculated in accordance with the Senior Counsel’s Legal Costs Agreement (excluding any conditional element);
    - 1.2.1.3 Junior Counsel’s reasonable and proper fees calculated in accordance with the Junior Counsel’s Legal Costs Agreement (excluding any conditional element);
    - 1.2.1.4 the Economic Expert’s reasonable and proper fees and expenses charged in accordance with the Economic Expert’s Agreement;
    - 1.2.1.5 experts’ (other than the Economic Expert) reasonable and proper fees and expenses agreed in advance in writing by the Funder;
    - 1.2.1.6 cost counsel’s fees;
    - 1.2.1.7 factual witness’s fees and expenses;
    - 1.2.1.8 litigation support services required for the efficient pursuit of the Action, including but not limited to disclosure services (including e-disclosure services), printing and copying services, courier services, e-bundling services, and transcription services;
    - 1.2.1.9 the Class Representative’s reasonable and proper fees and expenses (including any fees and costs of any advisory panel appointed by the Class Representative), and any independent legal advice sought by the Class Representative in respect of or pursuant to the terms of this Agreement;
    - 1.2.1.10 the reasonable and proper fees and costs of Versaras Consulting Limited incurred in advising the Class Representative in relation to the Action and this Agreement;
    - 1.2.1.11 the Class Representative’s share of any reasonable and proper fees and expenses incurred in relation to a mediation of the Action or other forms of alternative dispute resolution;
    - 1.2.1.12 media/public relations services;
    - 1.2.1.13 notice and administration services to allow the Class Representative to communicate and deal with Class Members effectively;

- 1.2.1.14 Unconditional ATE Insurance Costs, not exceeding the Unconditional ATE Insurance Costs Limit in amount; agreed in advance in writing by the Funder in its absolute discretion;
- 1.2.1.15 any VAT on such costs and expenses not lawfully recoverable by the Class Representative; and
- 1.2.1.16 any other fees and expenses, approved in advance in writing by the Funder,

excluding:

- 1.2.2 any Adverse Costs;
  - 1.2.3 any costs not properly incurred in the Action and/or incurred as a result of:
    - 1.2.3.1 a negligent act and/or omission, breach of professional duty, misfeasance, wilful misconduct and/or fraud by the Solicitors and/or Counsel; or
    - 1.2.3.2 a negligent act and/or omission, misfeasance, wilful misconduct, fraud and/or any breach of this Agreement by the Class Representative.
  - 1.2.4 any VAT or other sales tax lawfully recoverable by the Class Representative from HMRC or any other applicable tax authority, whether or not it has actually been recovered or charged on Action Costs.
- 1.3 “**Additional Funding**” means funding for any Action Costs over and above any of the monetary limits referred to in the definitions of the Stage 1 Costs Limit, Stage 2 Costs Limit, Stage 3 Costs Limit and Stage 4 Costs Limit and/or the Unconditional ATE Insurance Costs Limit.
- 1.4 “**Adverse Costs**” means:
- 1.4.1 the Defendant’s recoverable costs, fees and disbursements in the Action; and
  - 1.4.2 the recoverable costs, fees and disbursements of:
    - 1.4.2.1 any other party to the Action (other than the Class Representative), including interested parties;
    - 1.4.2.2 Class Members; and
    - 1.4.2.3 class representatives in a Competing Action,
- including any applicable VAT, that the Class Representative or the Funder is properly liable to pay by agreement or Order.
- 1.5 “**Adverse Costs Exit Fee**” means:
- 1.5.1 zero percent (0%) of the whole or that part of the Adverse Costs Limit in relation to which the Funder has incepted ATE Insurance within 3 calendar months of the date of filing of the first application for a CPO in the Action; and
  - 1.5.2 subject to clause 1.5.1, seven percent (7%) of the whole or that part of the Adverse Costs Limit in relation to which the Funder has incepted ATE Insurance, calculated on the date the Class Representative makes any application for an Order for payment of the Class Representative’s costs, fees and disbursements.

- 1.6 “**Adverse Costs Fee**” means:
- 1.6.1 twenty-five per cent (25%), in the period up to the date on which the first disclosure report, within the meaning of CAT Rule 60(1)(b), is filed in the Action;
  - 1.6.2 thirty per cent (30%), in the period after the date on which the first disclosure report is filed in the Action and up to and including the date falling 60 days before the date on which the trial or trial window for the Action, whichever is earlier, commences; or
  - 1.6.3 fifty per cent (50%), in the period after the date falling 60 days before the date on which the trial or trial window for the Action, whichever is earlier, commences,
- in each case of the whole or that part of the Adverse Costs Limit in relation to which the Funder has not incepted ATE Insurance, calculated on the date the Class Representative makes any application for an Order for payment of the Class Representative’s costs, fees and disbursements.
- 1.7 “**Adverse Costs Limit**” means £25,000,000 or such higher amount agreed by the Funder in writing.
- 1.8 “**Agreement**” means this agreement.
- 1.9 “**Appeal**” means each and every appeal made in respect of any Judgment or Order in the Action.
- 1.10 “**ATE Insurance**” means After-the-Event insurance incepted in respect of Adverse Costs with an insurer and on terms both of which are acceptable to the Funder on the date or dates such insurance is incepted.
- 1.11 “**Business Day**” means a day that is not a Saturday, Sunday or public holiday in England.
- 1.12 “**CAT**” means the United Kingdom Competition Appeal Tribunal.
- 1.13 “**CAT Rules**” means the Competition Appeal Tribunal Rules 2015, S.I. 2015/1648.
- 1.14 “**Class**” means:
- 1.14.1 all natural persons aged 18 or over (and/or the estates of deceased natural persons who were 18 or over at the time of death), other than Excluded Persons, who purchased at least one product from third-party sellers on Amazon’s UK based e-commerce platform at Amazon.co.uk within the Relevant Period; or
  - 1.14.2 to the extent different from the class defined at paragraph 1.15.1, the class as defined in the collective proceedings claim form with the consent of the Funder, such consent not to be unreasonably withheld; or
  - 1.14.3 the certified class and any sub-classes determined by the Court.
- 1.15 “**Class Members**” means all persons who fall within the Class.
- 1.16 “**Class Representative**” means the Association of Consumer Support Organisations Ltd or any other third party, with the prior written approval of the Funder and approved by the Court, to represent some or all of the Class Members in the Action.
- 1.17 “**Client Account**” means the Solicitors client account held on behalf of the Class Representative or any other account approved by the Court to hold Proceeds.

- 1.18 “**Collective Settlement Approval Order**” is as defined in the CAT Rules.
- 1.19 “**Competing Action**” means:
- 1.19.1 any claim and/or action against the Defendant;
  - 1.19.2 brought by a class representative, or proposed class representative, other than the Class Representative;
  - 1.19.3 representing, or seeking to represent, the same (or a similar) class of persons as the Class Representative in the Action; and
  - 1.19.4 seeking damages for the same (or similar) loss suffered by that class of person.
- 1.20 “**Conditions Precedent**” means:
- 1.20.1 completion of the Solicitors’ Legal Costs Agreement;
  - 1.20.2 completion of the Senior Counsel’s Legal Costs Agreement;
  - 1.20.3 completion of the Junior Counsel’s Legal Costs Agreement;
  - 1.20.4 completion of the Economic Expert’s Agreement;
  - 1.20.5 completion of a priority agreement between the Parties, the Solicitors, Counsel, Punter Southall Group Limited and any ATE insurers, on terms approved in advance in writing by the Funder;
  - 1.20.6 completion by Matthew Joseph Maxwell-Scott and Benedict Charles Welsh of a deed of adherence on terms approved in advance in writing by the Funder; and
  - 1.20.7 completion by the Solicitors and Counsel of a deed of adherence, on terms approved, in advance, in writing by the Funder;
- 1.21 “**Conditional ATE Insurance Cost**” means any amount payable under any ATE Insurance policy that is conditional on the outcome of the Action.
- 1.22 “**Confidential Information**” means the terms of this Agreement, all information and documents obtained in investigations or negotiations leading to this Agreement and all information exchanged between the Parties pursuant to the terms of this Agreement.
- 1.23 “**Costs Limit**” means the sum of the Stage 1 Costs Limit, Stage 2 Costs Limit, Stage 3 Costs Limit and Stage 4 Costs Limit , excluding, unless otherwise agreed, Adverse Costs and any provision for security for costs.
- 1.24 “**Counsel**” means Senior Counsel, Junior Counsel and/or any other barristers or legal advisers, other than the Solicitors and costs counsel, retained by the Class Representative, or by the Solicitors on behalf of the Class Representative, in relation to the Action.
- 1.25 “**Court**” means the CAT and any other court in the United Kingdom.
- 1.26 “**CPO**” means a Collective Proceedings Order, as defined in the CAT Rules, in the Action.
- 1.27 “**CPO Date**” means the first date on which the CPO is not capable of being appealed or, if it is appealed, the first date on which any appeals have been finally determined.
- 1.28 “**Defendant**” means one, some or all of:

- 1.28.1 Amazon.com, Inc;
- 1.28.2 Amazon Europe Core S.à.r.l.;
- 1.28.3 Amazon EU S.à.r.l.;
- 1.28.4 Amazon UK Services Limited;
- 1.28.5 Amazon Payments UK Ltd; and
- 1.28.6 Amazon Online UK Ltd.

subject to any agreement from time to time between the Class Representative and the Funder as to which entities should be included as defendants in the Action.

- 1.29 “**Economic Expert**” means Pinar Bagci of The Brattle Group Limited, or any other economic expert agreed in advance and in writing by the Funder.
- 1.30 “**Economic Expert’s Agreement**” means the legally binding written agreement between the Economic Expert and the Class Representative or the Solicitors (on behalf of the Class Representative) approved, in advance and in writing by the Funder, in respect of the Economic Expert’s services, fees and costs in the Action.
- 1.31 “**Excluded Persons**” means:
  - 1.31.1 officers, directors or employees of the Defendant, its subsidiaries and any entity in which it has a controlling interest;
  - 1.31.2 officers, directors or employees of the Class Representative;
  - 1.31.3 all members of the Class Representative’s and the Defendant’s respective legal teams and all experts and professional advisors instructed and retained by them and all funders or insurers involved, in connection with the Action;
  - 1.31.4 all members of the CAT panel assigned to this Action and any judge hearing any appeal in the Action; and
  - 1.31.5 any registered corporate entity or other registered entity with legal personality.
- 1.32 “**Expert**” means a person appointed in accordance with clause 28.
- 1.33 “**Funder’s Appeal Commitment**” means the amount of funding committed by the Funder for an Appeal.
- 1.34 “**Funder’s Appeal Fee**” means three times (3x) the Funder’s Appeal Commitment.
- 1.35 “**Funder’s Total Entitlement**” means the Funder’s Outlay, the Funder’s Fee, the Funder’s Appeal Fee, the Adverse Costs Fee and the Adverse Costs Exit Fee.
- 1.36 “**Funder’s Fee**” means the fee due to the Funder in accordance with clause 15 and, if applicable, clause 7.1.
- 1.37 “**Funder’s Outlay**” means:
  - 1.37.1 Action Costs:

- 1.37.1.1 paid by the Funder before the Conditions Precedent are/were satisfied and/or waived; and
- 1.37.1.2 paid by the Funder or payable pursuant to an outstanding Funding Notice given in accordance with this Agreement (which will include any Action Costs paid by the Funder for an Appeal); and
- 1.37.2 all other fees, costs and expenses reasonably incurred by the Funder in connection with the Action.
- 1.38 “**Funding Notice**” means a notice from the Class Representative requesting the Funder to fund Action Costs in such form and containing such information as the Funder may at any time reasonably require, including the information set out in clause 11.3.
- 1.39 “**HMRC**” means His Majesty's Revenue and Customs.
- 1.40 “**IPT**” means insurance premium tax and any similar replacement tax.
- 1.41 “**Judgment**” means any final judgment or award in the Action including the conclusion of any Appeal.
- 1.42 “**Junior Counsel**” means the junior barrister(s) approved, in advance and in writing, by the Funder retained by the Class Representative (or by the Solicitors on behalf of the Class Representative) in relation to the Action on the terms of the Junior Counsel’s Legal Costs Agreement.
- 1.43 “**Junior Counsel’s Legal Costs Agreement**” means the legally binding written agreement(s) between Junior Counsel and the Class Representative (or the Solicitors on behalf of the Class Representative) approved, in advance and in writing, by the Funder in respect of Junior Counsel’s services and his or her: (i) fees and (ii) third-party costs/disbursements (if any).
- 1.44 “**Main Proceeding Costs Limit**” means the sum of the Stage 1 Costs Limit, Stage 2 Costs Limit and Unconditional ATE Insurance Costs Limit.
- 1.45 “**Material or Materially**” means any fact, issue or circumstance which would reasonably be expected to be taken into account by the Funder in deciding to: (i) enter into this Agreement, and/or (ii) continue to fund pursuant to this Agreement.
- 1.46 “**Order**” means any interim, interlocutory or final Court order or direction in the Action.
- 1.47 “**Parties**” means the parties to this Agreement.
- 1.48 “**Proceeds**” means:
  - 1.48.1 all money, including an Order for damages made pursuant to section 47C(3) of the Competition Act 1998 or any agreed settlement sum, interest and costs paid or credited to, in favour of, for the benefit of, or to the order of, the Class Representative or the Class Members; and
  - 1.48.2 the value of any property, interest, asset, release, waiver or other consideration (including vouchers and/or discounts from the Defendant) received by, or held in favour of, for the benefit of, or to the order of, the Class Representative or the Class Members,

in each case in relation to, or as a result of, the Action.

- 1.49 “**Relevant Period**” means the period starting six years (or five years to the extent the claims brought in the Action are governed by Scots law) before the date of the collective proceedings claim form and ending on the date of the collective proceedings claim form.
- 1.50 “**Senior Counsel**” means Ben Lask KC of Monckton Chambers and/or any other senior barrister approved, in advance and in writing, by the Funder retained by the Class Representative (or by the Solicitors on behalf of the Class Representative) in relation to the Action on the terms of the Senior Counsel’s Legal Costs Agreement.
- 1.51 “**Senior Counsel’s Legal Costs Agreement**” means the legally binding written agreement between Senior Counsel and the Class Representative (or the Solicitors on behalf of the Class Representative) approved in advance in writing by the Funder in respect of Senior Counsel’s services and his or her: (i) fees and (ii) third-party costs/disbursements (if any).
- 1.52 “**Settlement Sum**” means the amount to be paid, conditionally or unconditionally, by the Defendant pursuant to any settlement agreement between the Defendant and the Class Representative in relation to the Action;
- 1.53 “**Solicitors**” means Stephenson Harwood LLP, a limited liability partnership incorporated and registered in England and Wales under number OC373597, authorised by the Solicitors Regulation Authority under registration number 567651 of 1 Finsbury Circus, London, EC2M 7SH and/or any other law firm approved in advance in writing by the Funder.
- 1.54 “**Solicitors’ Legal Costs Agreement**” means the legally binding written agreement between the Solicitors and the Class Representative approved, in advance and in writing, by the Funder in respect of the Solicitors’ services and their: (i) fees and (ii) third-party costs/disbursements (if any).
- 1.55 “**Stage 1**” means from 16 October 2024 to the CPO Date.
- 1.56 “**Stage 1 Costs Limit**” means £2,218,000 (inclusive of VAT) comprising no more than each of the following:
- 1.56.1 £635,000 (inclusive of VAT) for Solicitors’ fees, calculated in accordance with the Solicitors’ Legal Costs Agreement, excluding any conditional fees; and
  - 1.56.2 £550,000 (inclusive of VAT) for Counsel fees calculated in accordance with the Senior Counsel’s Legal Costs Agreement and/or the Junior Counsel’s Legal Costs Agreement, excluding any conditional fees,
  - 1.56.3 £850,000 (inclusive of VAT) for the fees and costs of the Economic Expert;
  - 1.56.4 £50,000 (inclusive of VAT) for the Class Representative’s own fees and costs in the Action, including: (i) the Class Representative’s own fees; and (ii) the costs of its advisory committee;
  - 1.56.5 £48,000 (inclusive of VAT) for fees and costs of Versaras Consulting Limited incurred in relation to the negotiation of funding terms on behalf of the Class Representative;
  - 1.56.6 £15,000 (inclusive of VAT) for public relations fees and expenses; and
  - 1.56.7 £70,000 (inclusive of VAT) for other reasonably incurred Action Costs (i.e. other than the Action Costs listed above).
- 1.57 “**Stage 2**” means from the CPO Date up to and including the final trial of all issues in dispute in the Action.

- 1.58 “**Stage 2 Costs Limit**” means £11,750,000 (inclusive of VAT) comprising no more than each of the following:
- 1.58.1 £2,824,000 (inclusive of VAT) for Solicitors’ fees, calculated in accordance with the Solicitors’ Legal Costs Agreement, excluding any conditional fees; and
  - 1.58.2 £3,276,000 (inclusive of VAT) for Counsel fees calculated in accordance with the Senior Counsel’s Legal Costs Agreement and/or the Junior Counsel’s Legal Costs Agreement, excluding any conditional fees,
  - 1.58.3 £3,850,000 (inclusive of VAT) for the fees and costs of the Economic Expert;
  - 1.58.4 £100,000 (inclusive of VAT) for the Class Representative’s own fees and costs in the Action, including: (i) the Class Representative’s own fees; and (ii) the costs of its advisory committee; and
  - 1.58.5 £1,700,000 (inclusive of VAT) for other reasonably incurred Action Costs (i.e. other than the Action Costs listed above).
- 1.59 “**Stage 3**” means Appeal proceedings before the Court of Appeal of England and Wales.
- 1.60 “**Stage 3 Costs Limit**” means £320,000 (inclusive of VAT) for no more than two Appeals before the Court of Appeal and comprising no more than:
- 1.60.1 £75,000 (inclusive of VAT) for Solicitors’ fees, per Appeal, calculated in accordance with the Solicitors’ Legal Costs Agreement, excluding any conditional fees; and
  - 1.60.2 £75,000 (inclusive of VAT) for Counsel fees, per Appeal, calculated in accordance with Counsel’s Appeal Costs Agreement, excluding any conditional fees; and
  - 1.60.3 £10,000 (inclusive of VAT) for other reasonably incurred Action Costs (i.e. other than the Action Costs listed above), per Appeal.
- 1.61 “**Stage 4**” means Appeal proceedings before the Supreme Court of the United Kingdom.
- 1.62 “**Stage 4 Costs Limit**” means £320,000 (inclusive of VAT) for no more than two Appeals before the Supreme Court and comprising no more than:
- 1.62.1 £75,000 (inclusive of VAT) for Solicitors’ fees, per Appeal, calculated in accordance with the Solicitors’ Legal Costs Agreement, excluding any conditional fees; and
  - 1.62.2 £75,000 (inclusive of VAT) for Counsel fees, per Appeal, calculated in accordance with Counsel’s Appeal Costs Agreement, excluding any conditional fees; and
  - 1.62.3 £10,000 (inclusive of VAT) for other reasonably incurred Action Costs (i.e. other than the Action Costs listed above), per Appeal.
- 1.63 “**Stakeholders’ Account**” means an account held by the Solicitors on trust for, and for the benefit of, the Stakeholders.
- 1.64 “**Stakeholder Entitlements**” means:
- 1.64.1 any costs within the meaning of CAT Rule 104 that are incurred by the Class Representative and recovered from the Defendant in connection with the Action; and
  - 1.64.2 any amount paid or payable to the Class Representative pursuant to an Order of the Court in respect of the costs, fees and/or disbursements incurred by the Class

Representative within the meaning of CAT Rule 53(2)(n), 93, 94 and/or any other provision with similar meaning; and

- 1.64.3 any amount otherwise made available, paid or payable, by or under an Order of the Court, for Stakeholders.
- 1.65 “**Stakeholders**” means the Funder, the Solicitors, Counsel, any provider of ATE Insurance and any other person that those parties agree has an interest in the Stakeholder Entitlements.
- 1.66 “**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 under section 47B or 47C of the Competition Act 1998 or a settlement under section 49A or 49B of the Competition Act 1998.
- 1.67 “**Unconditional ATE Insurance Costs**” means the cost of effecting ATE Insurance, including insurance premiums (and IPT thereon) and any unconditional sums payable to an ATE insurer in respect of anti-avoidance endorsements and/or deeds of indemnity, but excluding Conditional ATE Insurance Costs.
- 1.68 “**Unconditional ATE Insurance Costs Limit**” means £4,200,000 (including IPT).
- 1.69 “**VAT**” means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement and any additional replacement tax.

## 2. Interpretation

- 2.1 References to clauses are to the clauses of this Agreement and clause headings or sub-headings shall not affect the interpretation of this Agreement.
- 2.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.3 A reference to a natural person shall include that party's personal representatives and successors and a reference to the Funder shall include its permitted assigns.
- 2.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.5 Unless the context otherwise requires:
- 2.5.1 words in the singular shall include the plural and, in the plural, shall include the singular; and
- 2.5.2 a reference to one gender shall include a reference to the other genders.
- 2.6 A reference to a statute or statutory provision:
- 2.6.1 is a reference to it as amended, extended or re-enacted from time to time; and
- 2.6.2 shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 2.7 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 2.8 A reference to the Agreement or to any other agreement or document referred to in the Agreement is a reference to this Agreement or such other document or agreement as amended,

varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.

2.9 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination of this agreement, including clause 28, shall remain in full force and effect.

2.10 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

### 3. **The Conditions Precedent**

Each party will use all reasonable endeavours to satisfy the Conditions Precedent as soon as reasonably practicable.

### 4. **The Class Representative's obligations**

4.1 The Class Representative will:

4.1.1 fairly and adequately act in the interests of the Class Members;

4.1.2 use the funding provided under this Agreement for lawful purposes only, and only for the purposes contemplated by this Agreement;

4.1.3 execute all documents and do all things necessary to facilitate certification of the Action as eligible for inclusion in collective proceedings under Rules 78 and 79 of the CAT Rules;

4.1.4 immediately inform the Solicitors of any issue that may compromise its compliance with its obligations, in accordance with the CAT Rules, to the Class Members;

4.1.5 act with the utmost good faith in all its dealings with the Funder, the Solicitors and Counsel and act reasonably in pursuit of the Action, with reasonableness judged by reference to the objective standard of a prudent uninsured, unfunded (i.e. as if they are paying the cost of the litigation without the assistance of third parties), litigant;

4.1.6 comply with its obligations in this Agreement;

4.1.7 comply with the reasonable advice of the Solicitors and Counsel, and assist their professional conduct of the Action, subject to the Class Representative's right to take independent advice where it considers, following discussion with the Solicitors, such advice to be in the best interests of the Class;

4.1.8 in the event of receipt (or prospective receipt) of Proceeds, apply (including under clause 14.2 or 14.3) for an Order for payment of the Class Representative's costs, fees and disbursements;

4.1.9 pay Stakeholder Entitlements into the Stakeholders' Account within 5 Business Days of receipt or such any such longer period as may be agreed in writing;

4.1.10 prosecute the Action diligently to its conclusion;

4.1.11 use all reasonable endeavours, in accordance with the terms of this Agreement, to recover Proceeds as soon as reasonably possible;

4.1.12 take all reasonable steps to incur only reasonable and proportionate costs and minimise

and control the quantum of the Action Costs;

- 4.1.13 take all reasonable steps to achieve the authorisation of the Class Representative and the certification of the Action pursuant to Rules 78 and 79 of the CAT Rules respectively;
- 4.1.14 take all reasonable steps to assist in and enable the enforcement and recovery of any Judgment or settlement in the Action;
- 4.1.15 take all reasonable steps to ensure that the Solicitors comply with the Solicitors' Legal Costs Agreement;
- 4.1.16 take all reasonable steps to ensure that the Solicitors, Counsel and other third parties do not exceed their estimated and agreed costs, expenses and fees and/or any of the monetary limits referred to in the definitions of the Stage 1 Costs Limit, Stage 2 Costs Limit, Stage 3 Costs Limit and Stage 4 Costs Limit, and the Costs Limit;
- 4.1.17 subject to any Order of the Court to the contrary, seek payment of any and all Proceeds into the Client Account;
- 4.1.18 in and following any application to the Court for a Collective Settlement Approval Order, pursuant to CAT Rule 94 or 97, seek to satisfy the Court that the terms of the settlement insofar as they relate to costs, fees and disbursements are in accordance with this Agreement, unless otherwise agreed by the Funder, and are just and reasonable;
- 4.1.19 take all reasonable steps to ensure that the Action is conducted so as to minimise the quantum of any Adverse Costs and the likelihood of the Class Representative, the Funder or any ATE insurers being liable to pay Adverse Costs;
- 4.1.20 notify the Funder immediately upon the Class Representative and/or the Solicitors becoming aware of any circumstances that could reasonably lead to the Adverse Costs Limit being insufficient;
- 4.1.21 make an application for costs budgeting following the CPO, unless the Solicitors or Counsel advise that the prospects of such an application succeeding are less than 50%;
- 4.1.22 subject also to clause 20.1, not seek an Order that would adversely affect the Funder's rights under this Agreement;
- 4.1.23 to notify the Funder of all offers and proposed offers to settle the Action without unreasonable delay;
- 4.1.24 when engaging third parties to provide services, whether through the Solicitors or otherwise, use its best endeavours to secure the third party's agreement to a fixed limit on the amount of fees and costs the third party can charge pursuant to the engagement, and an obligation on the third party to continue to provide those services even if the fixed limit has been reached;
- 4.1.25 not engage third parties to perform services unless there is funding available for the fees and expenses associated with the service pursuant to this Agreement;
- 4.1.26 not engage Solicitors, Counsel and the Economic Expert until and unless the Funder has approved the terms in advance and in writing;
- 4.1.27 to not terminate the engagement of the Solicitors, Counsel and/or the Economic Expert without the prior written agreement of the Funder; and

4.1.28 provide to the Funder copies of any draft contracts the Class Representative proposes to enter into with third parties, other than Solicitors, Counsel and Economic Experts (which are covered by clauses 4.1.26 and 4.1.27 above) where the third party's proposed fees and expenses are within the meaning of Action Costs, and not enter into such contracts without the Funder's prior written approval, such approval not to be unreasonably withheld.

4.2 The Class Representative will not create any lien, charge or encumbrance over the claims brought in the Action, the Action or any Proceeds, or assign it or them in whole or in part.

## 5. **The Funder's obligations**

5.1 The Funder will:

5.1.1 act in good faith in all its dealings with the Class Representative and its advisors, including the Solicitors and Counsel;

5.1.2 take reasonable steps to assist the Class Representative to achieve the authorisation of the Class Representative and the certification of the Action as eligible for inclusion in collective proceedings under Rules 78 and 79 of the CAT Rules respectively;

5.1.3 take reasonable steps to assist the Class Representative in demonstrating that the Class Representative would be able, as required, to pay Adverse Costs (if any); and

5.1.4 comply with its obligations in this Agreement.

5.2 The Funder shall not be liable or responsible to the Class Representative for any advice, view, comment or instruction, including any instruction or notice given or not given in the performance of this Agreement, in respect of the Action or every ground on which the Action can be maintained and/or any claim on which the Action is grounded.

## 6. **The funding**

6.1 Subject to the satisfaction or waiver of the Conditions Precedent (which the Funder (only) may waive in whole or part at any time) and clause 11.8, the Funder shall:

6.1.1 pay Action Costs relating to Stage 1, properly claimed by Funding Notices, up to and in accordance with the Stage 1 Costs Limit (including any monetary limits referred to in that definition for any particular Action Cost);

6.1.2 pay Action Costs relating to Stage 2, properly claimed by Funding Notices, up to and in accordance with the Stage 2 Costs Limit (including any monetary limits referred to in that definition for any particular Action Cost);

6.1.3 if the Funder exercises its option to fund Stage 3, pay Action Costs relating to Stage 3, properly claimed by Funding Notices, up to and in accordance with the Stage 3 Costs Limit (including any monetary limits referred to in that definition for any particular Action Cost);

6.1.4 if the Funder exercises its option to fund Stage 4, pay Action Costs relating to Stage 4, properly claimed by Funding Notices, up to and in accordance with the Stage 4 Costs Limit (including any monetary limits referred to in that definition for any particular Action Cost); and

6.1.5 if the Funder exercises its option to fund any further Appeal(s), pay Action Costs relating to those further Appeal(s), properly claimed by Funding Notices, in accordance with any terms agreed pursuant to clause 9.2.3,

in each case in accordance with clause 11; and

- 6.1.6 pay Adverse Costs (if any) up to the Adverse Costs Limit in accordance with clause 12.
- 6.2 If the Stage 1 Costs Limit for Solicitors' fees is not reached by the time the Action proceeds to Stage 2, provided the Funder is given prior written notice thereof, the difference between the Stage 1 Costs Limit and the amount of Solicitors' fees paid by the Funder in respect of Stage 1 may be added to the Stage 2 Costs Limit for Solicitors' fees.
- 6.3 If the Stage 1 Costs Limit for Counsel's fees is not reached by the time the Action proceeds to Stage 2, provided the Funder is given prior written notice thereof, the difference between the Stage 1 Costs Limit and the amount of Counsel fees paid by the Funder for Stage 1 may be added to Stage 2 Costs Limit for Counsel's fees.
- 6.4 Money paid pursuant to any Funding Notice shall (i) be paid into the Client Account (unless otherwise approved by the Class Representative and/or the Solicitors); and (ii) only be used to pay the Action Costs claimed in that Funding Notice. If any such money has not been so used within 4 weeks following payment the unused amount shall immediately be repaid to the Funder.
- 6.5 Subject to clause 6.6, the Funder shall not be responsible for the application by the Class Representative or by the Solicitors on behalf of the Class Representative of any amount claimed in a Funding Notice. Once the Funder has paid any amount in accordance with a Funding Notice the Class Representative shall indemnify the Funder in respect of any claims made by any third party against the Funder for payment of any sum covered by the Funding Notice.
- 6.6 The Funder may, in its absolute discretion, pay the amount claimed in a Funding Notice in whole or in part direct to the Solicitors, Counsel or any other third party to whom that amount falls due and remains unpaid. If the third-party liability has been invoiced by the Solicitors as a disbursement, the Funder will notify the Solicitors of any such direct payment without delay.

## 7. **Additional funding**

- 7.1 The Funder may, in its absolute discretion, agree to commit Additional Funding in tranches of £200,000 (including VAT).
- 7.2 For each tranche of Additional Funding the Funder agrees to fund:
  - 7.2.1 each multiplier figure in column B of the tables in clause 15 will increase by 0.1x; and
  - 7.2.2 only to the extent enforceable and permitted by applicable law, each percentage figure in column B of the tables in clause 15 will increase by 0.75%.
- 7.3 The relevant Stage 1 Costs Limit, Stage 2 Costs Limit, Stage 3 Costs Limit and/or Stage 4 Costs Limit (specifically the limit of funding available for the Action Costs agreed by the Funder within the total relevant stage costs limit) will automatically be increased at the time any Additional Funding is agreed by that agreed amount.
- 7.4 The Class Representative shall provide all the information, data and documents necessary and required by the Funder, including detailed revised written estimates of the Action Costs, to assess a request for Additional Funding, together with a written explanation of the reasons for the need for the Additional Funding.

## 8. Cost overruns

8.1 If the Class Representative believes it requires Additional Funding for Action Costs other than:

- 8.1.1 Solicitors' fees;
- 8.1.2 Counsel's fees; and/or
- 8.1.3 the Economic Expert's fees and costs,

the Class Representative will notify the Funder as soon as it believes this is the case.

8.2 On being given notice pursuant to clause 8.1, the Funder may agree to provide Additional Funding pursuant to clause 7.1.

8.3 If the Funder agrees to provide Additional Funding pursuant to clauses 7.1 and 8.2, and if the:

- 8.3.1 Stage 1 Costs Limit;
- 8.3.2 Stage 2 Costs Limit;
- 8.3.3 Stage 3 Costs Limit; and
- 8.3.4 Stage 4 Costs Limit,

for Solicitors' fees (as set out in clauses 1.56.1, 1.58.1, 1.60.1 and 1.62.1) have not been reached, the Funder may, in its absolute discretion, reduce the:

- 8.3.5 Stage 1 Costs Limit;
- 8.3.6 Stage 2 Costs Limit;
- 8.3.7 Stage 3 Costs Limit; and/or
- 8.3.8 Stage 4 Costs Limit,

for Solicitors' fees (starting with the Stage 1 Costs Limit for Solicitors' fees, then moving through to Stage 2 Costs Limit, Stage 3 Costs Limit and Stage 4 Costs Limit, each for Solicitors' fees, in that order) by the difference between:

- 8.3.9 (i) the relevant stage costs limit for Solicitors' fees, and (ii) the amount of funding available for Solicitors' fees in that stage; and
- 8.3.10 the amount requested pursuant to clause 8.1,

provided that the maximum reduction to the Stage 1 Costs Limit, Stage 2 Costs Limit, Stage 3 Costs Limit and/or Stage 4 Costs Limit, each for Solicitors' fees, is the difference between the relevant stage costs limit for Solicitors' fees and the amount of funding already used for Solicitors fees in the relevant stage(s).<sup>1</sup>

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<sup>1</sup> **Example:** The Stage 1 Costs Limit for: (i) Solicitors fees is £100 and (ii) for public relations fees and expenses was £100. At the time the Funder has funded £25 in Solicitors' fees in Stage 1, and the Class Representative determines that it needs an additional £50 for the public relations fees and expenses during Stage 1. The Class Representative gives notice pursuant to clause 8.1 of this Agreement. The Funder may agree to reduce the Stage 1 Costs Limit for Solicitors fees to £50 (£100 - £50 = £50) and increase the Stage 1 Costs Limit for public relations fees and expenses to £150 (£100 + £50 = £150).

9. Appeals

- 9.1 If the Class Representative proposes to make or defend an Appeal, the Class Representative shall, as soon as possible and in any event within any relevant time limit, provide the Funder with written advice from the Solicitors and/or Counsel on the merits of the Appeal, including a budget and timeline, and an explanation of the effect of the Appeal on the Action, including in respect of costs, adverse costs and timing.
- 9.2 The Funder shall have no obligation to fund any Appeal, but the Funder shall have the exclusive option to fund:
  - 9.2.1 Stage 3 in accordance with this Agreement;
  - 9.2.2 Stage 4 in accordance with this Agreement; and/or
  - 9.2.3 any other Appeal, if the Funder and the Class Representative (both acting reasonably) have first agreed funding terms for the Appeal.
- 9.3 The Funder's option to fund Stage 3 may be exercised in two parts, the first relating to one Appeal before the Court of Appeal and the second relating to a second Appeal before the Court of Appeal. In each case, the Funder's option may be exercised by notice, to the Class Representative or the Solicitors, given within 10 Business Days of receipt by the Funder of the details, relating to the relevant appeal, referred to in clause 9.1.
- 9.4 The Funder's option to fund Stage 4 may be exercised in two parts, the first relating to one Appeal before the Supreme Court and the second relating to a second Appeal before the Supreme Court. In each case, the Funder's option may be exercised by notice, to the Class Representative or the Solicitors, given within 10 Business Days of receipt by the Funder of the details, relating to the relevant appeal, referred to in clause 9.1.
- 9.5 The Funder's option to fund any other Appeal may be exercised by notice, to the Class Representative or the Solicitors, given within 15 Business Days of receipt by the Funder of the details, relating to the relevant appeal, referred to in clause 9.1. If the Funder exercises its option pursuant to this clause 9.5, then the Costs Limit will increase by the amount of funding made available for that other Appeal.
- 9.6 If the Funder exercises an option pursuant to clauses 9.3 to 9.5 (inclusive) the Funder will be entitled to payment of any Funder's Outlay incurred in relation to the Appeal and the Funder's Appeal Fee, and both will constitute part of the Funder's Total Entitlement.
- 9.7 If the Funder exercises an option pursuant to clauses 9.3 to 9.5 (inclusive), it will not increase the Main Proceeding Costs Limit.




11. **Funding Notices**

- 11.1 Subject to clause 6 and the following clauses of this clause 11, the Funder shall pay the amount claimed in a Funding Notice within 30 days of receipt.
- 11.2 The Class Representative may give the Funder a Funding Notice, not more frequently than once per calendar month, for the Action Costs incurred in the period to which the Funding Notice relates.
- 11.3 A Funding Notice shall:
- 11.3.1 be accompanied by a written report from the Solicitors on the:
    - 11.3.1.1 progress of the Action in the preceding period to which the Funding Notice relates, detailing any adverse developments, not previously identified to the Funder, and any other Material matters, including in relation to liability, causation, quantum, enforcement, strategy and timing; and
    - 11.3.1.2 anticipated future steps, timing and strategy in the Action;
  - 11.3.2 be accompanied by true copies of invoices, time records, billing guides, itemised fees and narratives. The invoices from Counsel will set out: (i) time spent on a task; (ii) a narrative for the work undertaken; (iii) the fees for the task; (iv) and any discount applied;
  - 11.3.3 set out in detail the amount, nature, source and calculation of the fees and costs for which the Class Representative claims payment, including the hourly rates for each of the Solicitors' fee earners and any discount that has been applied;
  - 11.3.4 be accurate and not claim any fees or costs that are not Action Costs or the subject of another Funding Notice;
  - 11.3.5 be signed by the Class Representative and the Solicitors;
  - 11.3.6 provide an estimate of the amount of the Class Representative's potential liability for Adverse Costs at the time of the Funding Notice; and
  - 11.3.7 contain such other information or in such other format as the Funder reasonably requires from time to time.
- 11.4 The Funder may require the Class Representative to substantiate any amount claimed in a Funding Notice, including by production of original invoices, time records and attendance notes.
- 11.5 Any amount paid by the Funder pursuant to a Funding Notice, including to the Client Account (or any other trust account held by the Solicitors for the benefit of the Class Representative), shall be used only to discharge the costs identified in the Funding Notice (or, if only part of a Funding Notice is paid, only to discharge the costs in the Funding Notice that are identified by the Funder as having been paid).
- 11.6 Any overpayment by the Funder shall be repaid as soon as reasonably possible.

- 11.7 If the Funder notifies the Class Representative in writing at any time, and whether before or after payment of the amount claimed, that it disputes a Funding Notice or any element thereof, the Parties shall meet within 5 Business Days of receipt of the Funder's notice, or within such longer period as the Parties may agree, and endeavour to resolve the dispute. If 5 Business Days have elapsed since any such meeting, or if the meeting has not taken place within 10 Business Days of receipt of the Funder's notice, and the dispute remains unresolved, the dispute shall be resolved by an Expert in accordance with clause 28.
- 11.8 If the Parties are in dispute about a Funding Notice or any element thereof, the Funder shall not be liable to pay the amount in dispute unless, and only to the extent that, the Expert appointed pursuant to clause 11.7 has determined that that amount is payable.

## 12. Adverse Costs

- 12.1 The Funder shall use best endeavours, up to the date three months after the date of the first application for a CPO, to obtain ATE Insurance, and will keep the Class Representative informed of the amount of ATE Insurance in place at all times.
- 12.2 Any ATE Insurance premiums (and IPT thereon) that:
- 12.2.1 are not deferred and conditional on the outcome of the Action shall be Action Costs; or
  - 12.2.2 are deferred and conditional on the outcome of the Action shall be payable from Stakeholder Entitlements.
- 12.3 In respect of the whole or part (as applicable) of the Adverse Costs Limit in relation to which the Funder:
- 12.3.1 has not effected ATE Insurance, the Funder shall be entitled to the Adverse Costs Fee, payable from Stakeholder Entitlements; or
  - 12.3.2 has effected ATE Insurance, the Funder shall be entitled to the Adverse Costs Exit Fee, payable from Stakeholder Entitlements (to compensate the Funder for the period during which it assumed the potential liability for Adverse Costs without having ATE Insurance)<sup>2</sup>.
- 12.4 If the Funder is required to pay Adverse Costs pursuant to clause 6.1.6, the Class Representative will:
- 12.4.1 give the Funder written notice and contemporaneously provide the Funder with full details of the Adverse Costs sought by the Defendant;
  - 12.4.2 take into account any comments made by the Funder, in addition to its obligations to fairly and adequately act in the interests of the Class Members; and
  - 12.4.3 comply with the advice of the Solicitors and Counsel and act reasonably in relation to the Adverse Costs sought by the Defendant.
- 12.5 Nothing in this Agreement shall limit the Class Representative's general obligation at law to mitigate any loss it may incur as a result of an event that may give rise to the Funder having to pay Adverse Costs, and the Funder shall have no liability to pay Adverse Costs to the extent

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<sup>2</sup> For example, if the Funder's potential liability for adverse costs under clause 6.1.6 is £25m and the Funder obtains ATE insurance cover for that potential liability of £15m, i.e. 60% of the potential liability, the Funder would be entitled to 60% of the Adverse Costs Exit Fee and 40% of the Adverse Costs Fee.

that an Adverse Costs liability results from the Class Representative's wilful misconduct or fraud.

**13. Security for Costs**

13.1 The Class Representative shall notify the Funder, in writing, within 2 Business Days of notice being given to the Class Representative, or the Solicitors, of any application or threatened application for it to provide security for costs in the Action and thereafter provide the Funder, also within 2 Business Days of receipt, with true copies of all documents and correspondence concerning such application or threatened application, including any relevant Order.

13.2 If the Class Representative receives an application for security for costs or threatened application the Class Representative shall use reasonable endeavours to:

13.2.1 demonstrate to the Defendant and/or the Court that the Class Representative will be able to pay the Defendant's Adverse Costs;

13.2.2 resist the security for costs application or threatened application; and

13.2.3 minimise the amount of any security for costs (if any) to be provided.

13.3 If:

13.3.1 the Defendant reasonably requests an amount of security for costs; or

13.3.2 an Order is made for security for costs,

in each case for amount above the Adverse Costs Limit, subject to the Class Representative's compliance with its obligations pursuant to this clause 13, the Funder will, within 10 Business Days of receiving all documents in accordance with clause 13.1, notify the Class Representative in writing whether the Funder is willing to fund such amount by way of Additional Funding, increasing the Adverse Costs Limit or otherwise. If the Funder is so willing, the Funder shall use reasonable endeavours to ensure that the request or Order for security for costs is satisfied.

**14. Stakeholder Entitlements**

14.1 In its application for a CPO and in any opt-out notice and/or settlement notice and/or any other appropriate notice communicated to the Class, the Class Representative will communicate its intention to apply for an Order that, subject to clause 21.4, its costs, fees and disbursements incurred in connection with the Action, including the Funder's Total Entitlement, will be paid from any Proceeds prior to the distribution of any Proceeds to Class Members.

14.2 Subject to clause 21.4, if:

14.2.1 the Class Representative makes an application for a Collective Settlement Approval Order; and/or

14.2.2 any Proceeds are to be paid pursuant to a Judgment or other Order,

the Class Representative will, unless otherwise agreed by all Stakeholders, simultaneously, and as part of the same application, apply for an Order that its costs, fees and disbursements incurred in connection with the Action, including the Funder's Total Entitlement, any Conditional ATE Insurance Costs (including IPT) due and any conditional fees due to the Solicitors and Counsel, will be paid from any Proceeds prior to the distribution of any Proceeds to Class Members.

14.3 Subject to clause 21.4, if at any time there are Undistributed Damages and any part of the Class Representative's costs, fees and disbursements incurred in connection with the Action, including the Funder's Total Entitlement, any Conditional ATE Insurance Costs (including IPT) due and any conditional fees due to the Solicitors and Counsel, have not yet been paid, the Class Representative shall apply for an Order that those unpaid costs, fees and disbursements are paid from such Undistributed Damages.

14.4 The Class Representative shall pay any Stakeholder Entitlements into the Stakeholders' Account within 10 Business Days of their receipt.

15. **Funder's Fee**

Payment of Funder's Fee other than from Undistributed Damages

15.1 If the Class Representative makes any application (including under clause 14.2) for an Order for payment of the Class Representative's costs, fees and disbursements (within the meaning of and including under CAT Rule 93(4) or CAT Rule 94) other than from Undistributed Damages, the Funder's Fee shall be the greater of:

15.1.1 a multiple of the Main Proceeding Costs Limit; or

15.1.2 only to the extent enforceable and permitted by applicable law, a percentage of the Proceeds,

calculated in accordance with the table in this clause 15.1, clause 15.4 and clause 7:

<b>A. Date on which the Class Representative makes an application for an Order for payment of the Class Representative's costs, fees and disbursements other than from Undistributed Damages</b>	<b>B. Funder's Fee</b>
Before the date six calendar months after the CPO Date.	The greater of: a. one point seven five times (1.75x) the Main Proceeding Costs Limit; or b. only to the extent enforceable and permitted by applicable law, 15% of Proceeds.
On or after the date six calendar months after the CPO Date and before the date two calendar months before the first day of the trial or trial window, whichever is earlier, of the Action.	The greater of: a. two point seven five times (2.75x) the Main Proceeding Costs Limit; or b. only to the extent enforceable and permitted by applicable law, 25% of Proceeds.
On or after the date two calendar months before the first day of the trial or trial window, whichever is earlier, of the Action.	The greater of: a. three point seven five times (3.75x) the Main Proceeding Costs Limit; or b. only to the extent enforceable and permitted by applicable law, 27.5% of Proceeds.

Payment of Funder's Fee from Undistributed Damages

15.2 If the Class Representative makes an application (including under clause 14.3) for an Order for payment of the Class Representative’s costs, fees and disbursements (within the meaning of and including under CAT Rule 93(4) or CAT Rule 94) from Undistributed Damages, the Funder’s Fee shall be the greater of:

15.2.1 a multiple of the Main Proceeding Costs Limit; or

15.2.2 only to the extent enforceable and permitted by applicable law, a percentage of the Proceeds,

calculated in accordance with the table in this clause 15.2, clause 15.4 and clause 7:

<b>A. Date on which the Class Representative makes an application for an Order for payment of the Class Representative’s costs, fees and disbursements from Undistributed Damages</b>	<b>B. Funder’s Fee</b>
Before the date six calendar months after the CPO Date.	The greater of: a. two point one nine times (2.19x) the Main Proceeding Costs Limit; or b. only to the extent enforceable and permitted by applicable law, 19% of Proceeds.
On or after the date six calendar months after the CPO Date and before the date two calendar months before the first day of the trial or trial window, whichever is earlier, of the Action.	The greater of: a. three point four four times (3.44x) the Main Proceeding Costs Limit; or b. only to the extent enforceable and permitted by applicable law, 31% of Proceeds.
On or after the date two calendar months before the first day of the trial or trial window, whichever is earlier, of the Action.	The greater of: a. four point six nine times (4.69x) the Main Proceeding Costs Limit; or b. only to the extent enforceable and permitted by applicable law, 34% of Proceeds.

Part-payment of Funder’s Fee other than from Undistributed Damages and part-payment of Funder’s Fee from Undistributed Damages

15.3 If the Court approves payment to the Class Representative of:

15.3.1 a proportion (but not the entirety) of the Funder’s Fee other than from Undistributed Damages; and

15.3.2 the remaining proportion of the Funder’s Fee from Undistributed Damages,

the proportion of Funder’s Fee paid under clause 15.3.1 shall be calculated by reference to clause 15.1 and the proportion of the Funder’s Fee paid or payable under clause 15.3.2 shall be calculated by reference to clause 15.2.

Increase in Funder’s Fee in the event of delay

15.4 The applicable multiple of the Main Proceeding Costs Limit in the tables in clauses 15.1 and 15.2 shall increase by one-twelfth (1/12<sup>th</sup>) of one times (1x) on the date four years and one month after the date of the first application for a CPO in the Action and by a further one-twelfth (1/12<sup>th</sup>) of one times (1x) on the last day of each month thereafter.

**16. Value Added Tax**

16.1 The Class Representative shall use all reasonable endeavours to recover from HMRC or any other applicable tax authority any VAT or other sales tax payable by it, and forming part of the Action Costs, as input tax and shall file any VAT return or claim form to effect such recovery within the relevant time limits.

16.2 The Class Representative shall, if requested from time to time, provide the Funder with a true copy of any VAT return or other material correspondence or documents within 5 Business Days of them being sent, received, lodged or filed.

16.3 Any VAT or other sales tax recovered by the Class Representative from HMRC or any other applicable tax authority or for which it receives a tax credit or offset shall be treated as Proceeds.

**17. Interest**

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

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

**18. Provision of Information to the Funder**

18.1 Subject to any Order or any CAT Rules to the contrary and provided that the Class Representative shall not be required to provide information if to do so would waive any privilege relating to that information, the Class Representative shall, on request, provide to the Funder, and/or procure that the Solicitors provide to the Funder, access to all information, data and/or documents, relevant to the Action and/or this Agreement, in the possession, custody or control of the Class Representative and/or the Solicitors, as reasonably required by the Funder, including insofar as is practical:

18.1.1 correspondence, including e-mails, relevant to the Action, to and/or from the Class Representative, the Solicitors, the Defendant, the Court, or any other party; and

18.1.2 attendance notes, notes of meetings, advices, opinions and/or research notes relevant to the Action.

18.2 The Class Representative shall, and shall use best endeavours to procure that the Solicitors shall, meet the Funder to discuss the Action on the Funder's reasonable request, invite the Funder to attend all court hearings, mediations and/or alternative dispute resolution procedures and to provide them with as much notice as possible of any such events.

18.3 The Class Representative shall procure that the Solicitors shall, each calendar month or as otherwise agreed with the Funder in writing, provide the Funder with a written report on the progress of the Action in the preceding calendar month, highlighting any developments, not previously identified to the Funder, that are adverse to the likelihood of success, an update of

the anticipated future steps, timing, strategy and any Material changes in the Action and any other information as the Funder reasonably requires from time to time.

19. **Ongoing Disclosure of Information**

The Class Representative shall, and shall procure that the Solicitors shall, disclose to the Funder all and any information of which they become aware at any time, as soon as reasonably practicable after they become aware, which is, or could reasonably be considered to be, Material to the prospects of success in the Action or of the Funder being paid the Funder's Total Entitlement.

20. **Control and conduct**

20.1 The Class Representative shall have overall and day-to-day control and conduct of, and responsibility for, the Action.

20.2 The Class Representative shall have the right in the Action to:

20.2.1 join an additional party; and

20.2.2 add a new cause of action,

but the Funder shall not be responsible or liable for any Action Costs or Adverse Costs relating to an additional party or new cause of action unless the Funder agrees otherwise in writing, such agreement not to be unreasonably withheld. For the avoidance of doubt, the Funder withholding its agreement under this clause 20.2 shall be reasonable if the Funder would, by giving its agreement, increase its liability or potential liability for Action Costs or Adverse Costs. In the absence of such agreement, the Class Representative shall indemnify the Funder in respect of any liability arising from the joinder of that additional party or cause of action.

20.3 The Class Representative may instruct another firm of solicitors (in addition to or instead of the Solicitors) in the Action, but the Funder shall not be liable for any fees or costs relating to that instruction, which shall not constitute Action Costs unless otherwise agreed by the Funder in advance in writing.

20.4 The Funder shall be notified in writing as soon as possible (and, except in the case of urgency, prior to issue) of any interlocutory application contemplated by the Class Representative in the Action.

20.5 The Funder shall be notified in writing as soon as reasonably possible of any interlocutory application issued by the Defendant in the Action.

20.6 The Funder shall be invited to attend any Court hearings, calls and meetings held to consider any interlocutory application. The Funder shall be supplied with copies of all applications and, on request, supporting evidence and evidence in opposition.

20.7 The Funder shall be invited to attend any calls and meetings with any third parties (such as other law firms or funders) that are involved, or are proposing to be involved, in any Competing Action.

20.8 The Funder shall be notified in writing as soon as reasonably possible of any step proposed to be taken by the Class Representative in the Action if that step is likely materially to increase the estimated Action Costs, the amount of time previously estimated by the Solicitors that it may take to progress to trial in the Action, or the length of the trial in the Action.

21. **Settlement and Discontinuance**

21.1 The Class Representative shall not make, accept, withdraw or reject an offer of partial or full settlement in the Action, or discontinue or make any Material concession in the Action, whether through the Solicitors or Counsel or otherwise, without:

21.1.1 giving the Funder prior notification of the intention to take such a step;

21.1.2 having received written advice from the Solicitors or Counsel that it is reasonable to take such a step (such advice to address the rationale and terms of the proposed settlement, and to include an analysis of the advantages and disadvantages of the proposed settlement to Class Members);

21.1.3 providing a copy of such advice to the Funder; and

21.1.4 having sought the Funder's opinion.

21.2 The Class Representative agrees that if it is advised by the Solicitors and/or Counsel to settle or discontinue, or make any Material concession in respect of, the Action or any part of it, it shall keep the Funder closely informed at all times and shall provide the Funder with the advice in writing and shall take all reasonable steps to seek the Funder's agreement to the proposed course of action.

21.3 The Funder shall be notified by the Class Representative in writing as soon as reasonably possible of any communications and/or meetings regarding settlement or discontinuance with any of the parties to the Action or any other party, including any insurer of any of the other parties to the Action. The Class Representative hereby consents to the Funder being present at, and shall invite the Funder at the earliest opportunity to, any such meetings.

21.4 Subject to clause 21.5, to ensure sufficient distribution to the Class, to encourage the Defendant to settle the Action (or part of the Action) and to maintain and ensure the economic viability of the Action, the Class Representative will include in any settlement agreement compromising the Action (or part of the Action) reached with the Defendant provisions that:

21.4.1 the Defendant will pay all Proceeds into the Client Account and in sterling;

21.4.2 at least one third of the Settlement Sum, but no more than 50% of the Settlement Sum, will be ringfenced and guaranteed to be paid to Class Members (or, if it is not possible to distribute all of this amount to Class Members, to a charity approved by the Court);

21.4.3 the lower of:

21.4.3.1 the same amount of the Settlement Sum ringfenced pursuant to clause 21.4.2; and

21.4.3.2 the costs, fees and/or disbursements (within the meaning of CAT Rules 53(2)(n), 93, 94 or any other provision with similar meaning) then due (including the Funder's Total Entitlement, any Conditional ATE Insurance Costs (including IPT) and any conditional fees due to the Solicitors and Counsel),

will be paid to the Stakeholders (in respect of such costs fees and disbursements) prior to distribution of any part of the Settlement Sum to the Class Members;

21.4.4 an amount appropriate to cover the costs of distributing the Settlement Sum to the Class (and/or an appropriate contribution to such costs); and

21.4.5 the balance of the Settlement Sum will be made available:

21.4.5.1 first, for distribution to Class Members (in case the amount under clause 21.4.2 is distributed to the Class in its entirety and further funds are required to compensate Class Members);

21.4.5.2 second, if not collected by Class Members, for any outstanding costs, fees and/or disbursements (within the meaning of CAT Rules 53(2)(n), 93, 94 and/or any other provision with similar meaning) which remain due; and

21.4.5.3 third, if any balance remains, to revert to the settling Defendant.

21.5 If the Defendant will not agree to the conditions set out at clause 21.4 as part of the settlement (for example, the Defendant will only agree to pay non-monetary Proceeds – e.g. discounts or vouchers made available through the a Defendant’s online sales platform), clause 21.4 will not apply, and the Class Representative will agree with the Defendant that a condition of any settlement with the Defendant is that the Defendant will pay an amount in sterling equal to the costs, fees and disbursements incurred by the Class Representative in connection with the Action, including the Funder’s Total Entitlement and any Conditional ATE Insurance Costs (including IPT), into the Client Account.

21.6 Clauses 21.4 and 21.5 will apply to every settlement negotiation between the Class Representative and the Defendant.

## 22. **Diligence**

The Class Representative will, in the context of and in accordance with the Class Representative’s obligations to fairly and adequately act in the interests of the Class Members:

22.1 devote sufficient and appropriate time to the prosecution of the Action and the enforcement and recovery of any: (i) costs and/or damages the Defendant is ordered by the Court to pay in the Action or (ii) settlement in the Action; and

22.2 in respect of the Solicitors, Counsel, the Economic Expert or other third parties retained to assist in the Action:

22.2.1 monitor their work and performance as a reasonably prudent client; and

22.2.2 take all reasonable steps to ensure that they carry out their proper and lawful instructions in the Action in a professional and cost-effective manner, promptly and with due expedience.

## 23. **Privilege and Agency**

23.1 The Class Representative hereby appoints the Funder as its agent for the limited purpose of holding, reviewing, and commenting on the documents and information provided, including any privileged documents and information, and deciding whether to fund the proposed Action/the Action. The express and only terms of that agency are that the Funder agrees to take all reasonable steps in respect of those documents and that information to:

23.1.1 maintain their confidentiality;

23.1.2 protect and not to waive any privilege attaching to them;

23.1.3 keep them secure and safe; and

23.1.4 use them only in connection with the Funder’s business as a litigation funder in

connection with the Action to enable the parties to decide whether the Funder should be involved in funding the Action Costs.

- 23.2 The Parties do not waive any legal professional privilege, litigation privilege, common interest privilege or other privilege or protection attaching to any documents and information shared among them. The Parties have a common interest in the pursuit and success of the Action and will at all times take all reasonable steps to maintain any privilege that applies.
- 23.3 The Funder shall, for the purposes of clause 23.1 and 23.2, include the Funder's consultants, legal advisors, auditors, agents, co-funders, sub-funders and ATE insurers.

#### 24. **Confidentiality**

- 24.1 Subject to clause 24.2, each party shall keep confidential all Confidential Information obtained in investigations or negotiations leading to this Agreement and also the terms of this Agreement and all information exchanged between the Parties pursuant to the terms of this Agreement.
- 24.2 The Class Representative may disclose a non-confidential version of this Agreement (meaning the same version, including any redactions, that is provided to the Defendant in the Action) to any Class Members who request a copy of this Agreement.
- 24.3 Each party acknowledges that the Funder has received and holds Confidential Information in accordance with this Agreement solely as a result of its interest in the Action and its outcome.
- 24.4 Each party agrees not to disclose any Confidential Information to a third party unless:
  - 24.4.1 such disclosure is strictly necessary to the performance of this Agreement or to the prosecution of the Action or in the ordinary course of the Funder's business; or
  - 24.4.2 the third party is a parent or associated company or an actual or potential shareholder or investor of or in the Funder or the Action; or
  - 24.4.3 the disclosure is made on a confidential basis and the other Parties to this Agreement consent in writing to the disclosure before the disclosure is made; or
  - 24.4.4 the Parties consent to such disclosure and/or clause 24.2 applies; or
  - 24.4.5 the disclosure is required by law (including by an order of a court of competent jurisdiction) or by the regulations of any government or government agency having jurisdiction over the party concerned; or
  - 24.4.6 the information is in the public domain.
- 24.5 The Parties shall take all reasonable steps to protect and not to waive any privilege attached to the Confidential Information.

#### 25. **Warranties**

The Class Representative represents, warrants and undertakes that:

- 25.1 the Class Representative has satisfied all legal obligations required to be satisfied prior to entering into this Agreement;
- 25.2 all information provided by the Class Representative to the Funder prior to the commencement of this Agreement is true, accurate and complete in all respects to the best of the Class Representative's knowledge and belief;

- 25.3 the Class Representative will not bring, support or continue any action that claims relief arising out of the same or similar facts to, or that could result in a reduction in the amount recoverable in, the Action;
  - 25.4 to the best of its knowledge and belief:
    - 25.4.1 the execution and performance of this Agreement by the Class Representative and the transactions contemplated by this Agreement will not infringe the rights of any third party or breach any applicable law;
    - 25.4.2 the Class Representative is entitled to issue the proceedings against the Defendant in respect of the Action; and
    - 25.4.3 the Class Representative has at all times complied with the obligations and duties of ongoing disclosure and to act in good faith.
  - 25.5 The Class Representative acknowledges that the Funder has relied on the truth and accuracy of the warranties contained in this clause 25 and the completeness and accuracy of the information provided by it, or by the Solicitors or others on its instructions, to the Funder in entering into this Agreement and that the Funder will continue to rely on the truth and accuracy of the warranties in performing its obligations pursuant to this Agreement.
  - 25.6 The warranties set out in this clause 25 are given and take effect on the date of execution of this Agreement and are deemed to be repeated on each day during the term of this Agreement and on the signing of each Funding Notice.
26. **The Solicitors and other professionals instructed in the Action**
- 26.1 The Class Representative will retain the Solicitors, on the terms of the Solicitors' Legal Costs Agreement, to act as the solicitors for the Class Representative on its behalf in the Action.
  - 26.2 The Class Representative (or the Solicitors on behalf of the Class Representative) will retain Senior Counsel and Junior Counsel, on the terms of the Senior Counsel Legal Costs Agreement and Junior Counsel Legal Costs Agreement respectively, to act as the barristers for the Class Representative in the Action.
  - 26.3 The Class Representative shall provide all instructions to the Solicitors, Counsel and others retained to assist in the Action.
  - 26.4 The Funder makes no representation as to the enforceability of the Solicitors' Legal Costs Agreement, Senior Counsel's Legal Costs Agreement or Junior Counsel's Legal Costs Agreement and has no obligation to ensure that the correct fees are paid to the Solicitors or Counsel.
  - 26.5 All invoices issued:
    - 26.5.1 by the Solicitors shall be rendered to the Class Representative;
    - 26.5.2 by Counsel and others retained to assist in the Action shall be rendered to the Class Representative or the Solicitors where agreed that they shall be included in the invoice delivered by the Solicitors to the Class Representative,notwithstanding that such invoices may constitute Action Costs.
  - 26.6 The Class Representative shall ensure that any Material oral opinion or advice provided by the Solicitors or Counsel is promptly confirmed in writing by them and provided to the Funder.

26.7 Any written opinion or advice provided by the Solicitors or Counsel to the Class Representative in respect of the Action, before or after the date of this Agreement may be relied on by the Funder. The Solicitors or Counsel assume a duty of care to the Funder to that extent but only if and to the extent that such duty does not conflict with the duties owed by the Solicitors or Counsel to the Class Representative and/or the Class Members.

26.8 The Class Representative shall instruct the Solicitors at all times to proceed in compliance with this Agreement and immediately notify the Funder in the event that a step has been or will be taken in breach of this Agreement.

27. **Subrogation and Assignment to the Funder of Potential Causes of Action**

27.1 If the Funder makes a payment under this Agreement, the Funder is subrogated to any and all of the Class Representative's rights in connection with such payment. The Class Representative also agrees to use its best endeavours to assist the Funder in exercising its subrogated rights.

27.2 The Funder may, at any time during or after the termination of this Agreement, give written notice to the Class Representative requiring the Class Representative to assign to the Funder any cause of action the Class Representative may have against the Solicitors, Counsel or any other third parties employed, retained or instructed by the Class Representative or the Solicitors in the Action and who has been paid in whole or in part by the Funder under this Agreement.

27.3 The Class Representative shall sign and execute all documents, provide all documents, information and material to the Funder and do all other things necessary to assign any such cause of action to the Funder.

27.4 The Class Representative shall provide the Funder with all necessary assistance, documents, information and material to enable it to prosecute any cause of action referred to in clause 27.2.

27.5 The costs of preparing and executing such an assignment or transfer and the prosecution of any cause or causes of action thereby assigned or transferred shall be borne entirely by the Funder.

28. **Dispute Resolution**

28.1 The Parties shall use their best endeavours, acting in good faith, to resolve any complaint or dispute under or in connection with this Agreement.

28.2 If the Parties cannot resolve any dispute between them within 15 Business Days of either party given notice of the dispute to the other party, either party may seek a binding opinion on such dispute from a King's Counsel with appropriate expertise ("**Expert**").

28.3 If the Parties are unable to agree on an Expert and/or the terms of his/her appointment within seven days of either party serving details of a suggested expert on the other, either party shall be entitled to request the Chairman of the Bar Council to appoint an Expert and to agree with the Expert the terms of his appointment.

28.4 The Expert is required to prepare a written decision and give notice (including a copy) of the decision to the Parties within a reasonable period and in any event within six weeks of the matter being referred to the Expert.

28.5 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause 28 then:

28.5.1 either party may apply to the Chairman of the Bar Council to discharge the Expert and

to appoint a replacement Expert; and

- 28.5.2 this clause 28 applies in relation to the new Expert as if he were the first Expert appointed.
- 28.6 The Parties are entitled to make submissions to the Expert including oral submissions and will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 28.7 To the extent not provided for by this clause 28, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate, including (to the extent he considers necessary) instructing professional advisers to assist him in reaching a determination.
- 28.8 Each party shall with reasonable promptness supply the other with all information and give the other access to all documentation as the other party reasonably requires to make a submission under this clause 28, unless to do so would breach any Order or CAT Rules.
- 28.9 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the dispute in question, which may include any issue involving the interpretation of any provision of this Agreement, his jurisdiction to determine the matters and issues referred to him or his terms of reference. The Expert's written decision on the matters referred to him shall be final and binding on the Parties in the absence of manifest error or fraud.
- 28.10 Subject to clause 28.11, the Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the Parties in such proportions as the Expert shall direct.
- 28.11 All matters concerning the process and result of the determination by the Expert shall be kept confidential among the Parties and the Expert.
- 28.12 The Class Representative is entitled to instruct the Solicitors in relation to any complaint or dispute pursuant to this clause 28 and the Solicitors reasonable costs shall be paid by the Class Representative until and unless the dispute is determined in favour of the Class Representative, in which case, they will be paid by the Funder.

29. **Termination by the Funder**

- 29.1 To the extent not previously terminated pursuant to this clause 29, the Funder's obligation to fund the Action (including but not limited to the Funder's obligations arising under clause 6.1 other than clause 6.1.6) shall terminate when the Main Proceeding Costs Limit (if there are no Appeals) or the Costs Limit (if there are Appeals) is reached or the Action is concluded, whichever is earlier.
- 29.2 Without affecting any other right or remedy available to it, the Funder may terminate this Agreement with immediate effect by giving written notice to the Class Representative or the Solicitor if the Class Representative has committed a Material and irremediable breach of any other term of this Agreement.
- 29.3 Without affecting any other right or remedy available to it, the Funder may terminate this Agreement at any time by giving the Class Representative or the Solicitor 15 Business Days prior written notice if:
- 29.3.1 the merits of the Action are materially worse than when this Agreement was entered into;
- 29.3.2 the Action is materially less commercially viable to pursue than when this Agreement

was entered into; and/or

29.3.3 there has been a Material and remediable breach of this Agreement by the Class Representative, identified in writing by the Funder to the Class Representative or the Solicitor, and that breach has not been remedied within the 15 Business Day period, or such longer period as may be reasonably necessary for the breach to be remedied.

29.4 Before exercising its right to terminate pursuant to clause 29.2 or 29.3, the Funder shall provide the Class Representative with a reasonable opportunity to address the Funder's concerns. The Class Representative may also refer any dispute about whether the Funder is entitled to terminate for determination under clause 28. This Agreement will be treated as having been terminated unless and until any such dispute has been decided in favour of the Class Representative, in which case this Agreement will be treated as never having been terminated (such that the Funder will remain obliged to fund, in accordance with the terms of this agreement, Action Costs incurred from the date of purported termination to the date on which the dispute is determined in the Class Representative's favour).

29.5 The Funder's rights to terminate under this clause 29 shall apply irrespective of the amount of funding already drawn or utilised under this Agreement and whether or not any costs limit (e.g. the Stage 1 Costs Limit or the limit for funding for any Action Cost during Stage 1) has been reached.

29.6 If the Funder exercises a right of termination under this clause 29, and the Class Representative disputes the termination and/or the Funder's right to terminate, the Class Representative may raise a dispute under clause 28.

### 30. **Termination by the Class Representative**

30.1 The Class Representative may terminate this Agreement if there has been a material breach of this Agreement by the Funder, identified in writing by the Class Representative to the Funder, and that breach has not been remedied within 15 Business Days, or such longer period as may be reasonably necessary for the breach to be remedied.

30.2 The Class Representative's right to terminate under clause 30.1 shall apply irrespective of the amount of funding already drawn or utilised under this Agreement and whether or not any costs limit has been reached (e.g. the Stage 1 Costs Limit or the limit for funding for any Action Cost during Stage 1).

### 31. **Effect of Termination**

31.1 The termination of this Agreement or the Funder's obligation to fund under this Agreement shall not affect the Funder's obligation to pay:

31.1.1 Action Costs incurred before the date of termination; and

31.1.2 Adverse Costs incurred up to 30 days after the date of termination,

unless the termination is due to a material un-remedied breach by the Class Representative, in which case the Funder shall not be liable for any Action Costs or Adverse Costs incurred after the date on which the Funder notifies the Class Representative of the breach pursuant to clause 29.3.3.

31.2 The Funder shall not be liable for any Action Costs incurred after termination or Adverse Costs incurred more than 30 days after the termination of this Agreement, except insofar as such Adverse Costs were incurred as a result of the Action being discontinued within 30 days of, and as a consequence of, such termination.

- 31.3 Subject to clauses 31.4 and 31.5, the termination of this Agreement shall not affect any of the Funder's rights under this Agreement, including in particular its right to information and to be paid any amounts due to it including the Funder's Total Entitlement.
- 31.4 Following termination of this Agreement under any clause other than clause 29.3.1, 29.3.2 or 30, then, subject to the terms of this Agreement, Funder will remain entitled to payment of the Funder's Total Entitlement from Stakeholder Entitlements.
- 31.5 Following the termination of this Agreement under clause 29.3.1, 29.3.2 or 30, and subject to the terms of this Agreement, the Funder will remain entitled to:
- 31.5.1 the reimbursement of Funder's Outlay from Stakeholder Entitlements; and
- 31.5.2 from Stakeholder Entitlements, a reduced amount in respect of the Adverse Costs Fee (if any), the Adverse Costs Exit Fee (if any), Funder's Appeal Fee (if any) and the Funder's Fee which will be calculated by dividing the Funder's Outlay at the date that such termination takes effect by the Costs Limit and applying the resulting percentage to the: Adverse Costs Fee (if any), the Adverse Costs Exit Fee (if any), Funder's Appeal Fee (if any) and the Funder's Fee (e.g.  $(\text{Funder's Outlay} \div \text{Costs Limit}) \times \text{Funder's Fee}$ ), but capped at the amount the Funder's Fee would have been had termination not occurred.
- 31.6 Adverse Costs are "incurred" for the purposes of this clause 31 on the date when the receiving party (such as the Defendant) incurs the relevant costs (whether or not the Order or agreement pursuant to which such Adverse Costs are payable by the Class Representative or Funder is made before or after that date).

## 32. **Legal relationship**

This Agreement is not intended to create a partnership, joint venture, agency (save in accordance with clause 23) or employment contract.

## 33. **Novation and Assignment**

- 33.1 The Funder may assign its rights under this Agreement to any third party.
- 33.2 The Funder and/or the Guarantor may novate their obligations and/or rights under this Agreement:
- 33.2.1 to a third party which is equally or more capable than the Funder and Guarantor (in combination) of discharging the Funder's and Guarantor's financial obligations pursuant to this Agreement; or
- 33.2.2 with the consent of the Class Representative, which shall not be unreasonably withheld or delayed.
- 33.3 The Class Representative's rights and obligations under this Agreement may not be assigned or novated to a third party without the prior written consent of the Funder.
- 33.4 If the Class Representative becomes insolvent or is the subject of a winding-up petition or insolvency order, the Funder may require the Class Representative to assign or novate its rights and obligations under this Agreement and any other agreements relating to the Action to which it is a party to a replacement class representative.
- 33.5 If the Court's permission is required to effect the steps envisaged by clause 33.4 the Class Representative will seek the Court's permission accordingly.

34. **Co-funding and sub-funding**

- 34.1 The Funder shall have the right, in its absolute discretion, to involve a sub-funder in the Action, provided that the exercise of this right shall not:
- 34.1.1 release the Funder from any of its obligations under this Agreement or substitute any other party for the Funder as a party to this Agreement;
  - 34.1.2 require any payments to be made by the Class Representative other than or in excess of those required to be made under this Agreement; or
  - 34.1.3 grant to any person any more extensive rights than those required to be granted to the Funder under this Agreement.
- 34.2 The Funder is not obliged to notify the Class Representative of the existence and/or identity of any sub-funder.
- 34.3 If the Funder (in its absolute discretion) chooses to notify the Class Representative in writing of the existence and identity of any sub-funder, any such sub-funder shall have the benefit of and shall be entitled to enforce against the Class Representative the warranties in clause 25, as if they had been given directly to the sub funder at the same time as this Agreement was entered into.
- 34.4 Any such sub-funder or co-funder may be provided with all information to which the Funder is entitled, but subject to clauses 23 and 24.

35. **Entire Agreement**

- 35.1 This Agreement and the documents referred to herein constitute the entire agreement and understanding of the Parties relating to its subject matter and supersedes any previous agreement or understanding between the Parties in relation to such subject matter. In relation to disputes whose resolution is to be achieved through litigation procedures in the courts of England and Wales, the Funder will comply with The Association of Litigation Funders of England & Wales Code of Conduct (as amended from time to time) provided that, if there is an inconsistency between any of the provisions of this Agreement and the provisions of the Code of Conduct, the provisions of this Agreement will prevail.
- 35.2 This Agreement can only be amended by the written agreement of all the Parties.

36. **Third Party Rights**

- 36.1 Section 2(1) Contracts (Rights of Third Parties) Act 1999 shall not apply.
- 36.2 Save for any sub-funder or co-funder in relation to clause 34, a party who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999.

37. **Notices**

- 37.1 Any notice or other document to be served under this Agreement shall be delivered or sent by pre-paid first-class post or by email to the party to be served at its address appearing in this Agreement, as amended from time to time, or at such other address as it may have notified to the other Parties in accordance with this clause 37.
- 37.2 Any notice or document shall be deemed to have been served:
- 37.2.1 if delivered, at the time of delivery; or

- 37.2.2 if posted, at 10:00 a.m. on the Business Day after it was put into the post; or
- 37.2.3 if sent by email, at the expiration of two hours after the time of dispatch, if dispatched before 3:00 p.m. on any Business Day, and in any other case at 10:00 a.m. on the Business Day after the date of dispatch.

37.3 Any notice sent pursuant to clause 37.1 which is not sent by email shall also be sent by email at the same time.

37.4 In proving service of a notice or document it shall be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a prepaid first class recorded delivery letter or that the email was properly addressed and dispatched.

38. **Waiver**

38.1 A waiver by a party in respect of a breach of this Agreement:

38.1.1 must be in writing;

38.1.2 does not constitute a waiver with respect to any other breach; and

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

38.2 A failure by a party at any time to enforce this Agreement is not a waiver by that party of that breach.

39. **Costs**

39.1 Each party shall pay its own costs of:

39.1.1 the negotiation, preparation and execution of this Agreement; and

39.1.2 any amendment or consent to, or waiver or release of, this Agreement,

but the Funder agrees to pay the costs of the Class Representative in seeking independent legal advice on this Agreement, such costs to be Action Costs.

40. **Guarantee**

The Guarantor guarantees the performance by the Funder of the Funder's obligations under clauses 6.1, 11.1, 31.1 and 39 this Agreement.

41. **Severance**

41.1 If any provision of this Agreement, including any part-provision, shall be held to be illegal, invalid or unenforceable the legality, validity or enforceability of the remaining provisions (and part-provisions) of this Agreement shall not be affected.

41.2 Any illegal, invalid or unenforceable provision in this Agreement shall be severable and all other provisions (and part-provisions) will remain valid and unaffected.

41.3 If any provision, including any part-provision, of this Agreement shall be held to be illegal, invalid or unenforceable in one jurisdiction that shall not affect the legality, validity or enforceability of the whole of this Agreement in any other jurisdiction.

41.4 Without prejudice to the generality of clauses 41.1 to 41.3 inclusive, the Parties acknowledge and agree that, if necessary to ensure the enforceability, legality or validity of this Agreement, any provision of this Agreement which begins with the words “*only to the extent enforceable and permitted by applicable law*” shall be severable: (a) without modifying or adding to other terms of this Agreement; (b) with the consequence that the remaining terms continue to be supported by adequate consideration; and (c) without changing the nature of the contract, such that it is not the sort of contract that the Parties entered into at all.

#### 42. **Governing Law and Jurisdiction**

42.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

42.2 Without prejudice to each party’s rights to refer a dispute to an expert pursuant to clause 28, the Parties irrevocably submit to the exclusive jurisdiction of the English courts for all purposes.

#### 43. **Claims against advisors and limit of liability**

43.1 The Class Representative’s liability to the Funder in respect of any claims, liabilities, damages, losses, costs or expenses of any kind whether incurred as direct or consequential losses arising out of or connected with the Action or this Agreement (including for any breach of this Agreement) shall be limited to the greater of: (i) £20,000 and (ii) two times the net asset value of the Class Representative at the end of the financial year in which the breach first occurred, save:

43.1.1 that where the Class Representative’s liability to the Funder was caused by any act or omission of a third party legal or expert advisor, then:

43.1.1.1 the Class Representative’s liability shall be limited to: (i) the amount that the Class Representative recovers from the third party advisor in respect of the Class Representative’s liability to the Funder; plus (ii) the greater of (a) £15,000 and (b) one point five times the net asset value of the Class Representative at the end of the financial year in which the breach first occurred;

43.1.1.2 the Class Representative is only required to pursue a claim against the third party advisor in respect of the Class Representative’s liability to the Funder if the Funder requests that it does so. The Funder may also, at its election, pursue a subrogated claim against the third party advisor; and

43.1.1.3 where the Class Representative pursues a claim at the request of the Funder, or the Funder pursues a subrogated claim, then the Funder shall pay (on the Class Representative’s behalf) any costs, adverse costs and/or any other liabilities incurred and/or payable by the Class Representative and/or the Funder in the claim against the third party advisor.

43.1.2 for fraud, wilful misconduct or for any loss which cannot be limited by applicable law (in which case the Class Representative’s liability to the Funder will not be so limited).

44. **Explanation of Agreement**

The Class Representative hereby confirms that it has read the terms of this Agreement and that the effect of this Agreement has been explained to the Class Representative by the Solicitors and independent costs counsel including the following matters:

- 44.1 the effect of the obligations of, and warranties provided by, the Class Representative;
- 44.2 the Class Representative's duty to provide information to the Funder and to conduct the Action expeditiously;
- 44.3 the extent of the funding to be provided by the Funder, including the costs limits;
- 44.4 the extent to which the Funder will be liable for Adverse Costs (if any) and the Adverse Costs Limit;
- 44.5 the way in which the amount of the Funder's Fee varies depending on (a) whether it is paid from Undistributed Damages or other than from Undistributed Damages; and (b) the Main Proceeding Costs Limit and Proceeds; and (c) the duration of the Action (as stipulated in clause 15);
- 44.6 the termination and dispute resolution provisions;
- 44.7 the effect of the judgment of the Supreme Court in *R (on the application of PACCAR Inc and others) (Appellants) v Competition Appeal Tribunal and others (Respondents)* [2023] UKSC 28 insofar as it relates to this Agreement;
- 44.8 the other methods of financing the costs of the Action;
- 44.9 the advantages and disadvantages of external funding;
- 44.10 the agreement set out at clause 14.2, which is subject to clause 21.4, concerning the Class Representative applying for an Order that its costs, fees and disbursements incurred in connection with the Action, will be paid from any Proceeds prior to the distribution of any Proceeds to the Class Members, and the reason why this has been sought by the Funder and why it is reasonable and appropriate to agree this;
- 44.11 the manner in which the Class Representative may settle the Action, as set out at clauses 21.4 and 21.5, the reasons why this has been sought by the Funder and why it is reasonable and appropriate to agree to this;
- 44.12 the reason any amounts payable to the Funder under this Agreement, including the Funder's Total Entitlement, have been agreed at the level they have is because of the level of the risks assumed by the Funder, including the risks of the Action being unsuccessful, or the Funder otherwise receiving little or no return on its investment, especially given the relative novelty of the collective action regime under which the Action is brought, the time value of the significant capital the Funder has committed to fund and the significant value of the Adverse Costs indemnity given by the Funder.

**Confirmation of Explanation in clause 44**


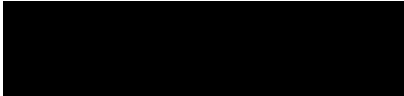

We confirm that we have received, independent legal advice on this Agreement prior to it being signed, and in particular in relation to the matters referred to in clause 44.



Signed by Matthew Maxwell-Scott for and on behalf of the Class Representative

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

<b>EXECUTED</b> by <b>WOODSFORD LITIGATION FUNDING 55 LLP</b> acting by  Charlie Morris, a director of a Member	 Director of Member
<b>EXECUTED</b> by <b>WOODSFORD GROUP LIMITED</b> acting by Jonathan Barnes, a director	 Director
<b>EXECUTED</b> by <b>ASSOCIATION OF CONSUMER SUPPORT ORGANISATIONS LTD</b> acting by: Matthew Maxwell-Scott, Director	 Director