

DATED: 6 NOVEMBER 2023

VANNIN CAPITAL PCC FOR AND ON BEHALF OF PROJECT PONTAC PC

and

ELIZABETH HELEN COLL

AMENDMENT AND RESTATEMENT DEED

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THIS AMENDMENT AND RESTATEMENT DEED IS MADE ON 6 NOVEMBER 2023

Between

- (1) **Vannin Capital PCC for and on behalf of Project Pontac PC** of 2nd Floor Sir Walter Raleigh House 48-50 Esplanade St Helier Jersey JE2 3QB (company number 126901) ("**Funder**"); and
- (2) **Elizabeth Helen Coll** of [REDACTED] ("**Class Representative**").
together the "**Parties**" and each a "**Party**".

BACKGROUND

- (A) The Parties entered into a litigation claim funding agreement dated 10 December 2020 pursuant to which the Funder agreed to make available to the Class Representative litigation funding in the total amount of £11,290,031 ("**Original Funding Agreement**").
- (B) The Parties agreed to amend and restate the Original Funding Agreement pursuant to clause 30.2 of the Original Funding Agreement by way of an Amendment and Restatement Deed dated 11 May 2022 (the "**First Amendment and Restatement Deed**").
- (C) The Parties now agree to a further amendment and restatement of the Original Funding Agreement (as amended and restated by the First Amendment and Restatement Deed) pursuant to clause 30.2, by way of this deed to amend and restate it in the form set out in Schedule 1 of this Deed.

NOW THIS DEED WITNESSES as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 Terms defined in the Original Funding Agreement shall have the same meaning when used in this Deed, unless defined below. In addition, the definitions below apply in this Deed.

"**Amended and Restated Funding Agreement**" means the Original Funding Agreement as amended and restated by this Deed in the form set out in Schedule 1;

"**Deed**" means this Amendment and Restatement Deed;

"**First Amendment and Restatement Deed**" has the meaning given in recital B (*Background*);

"**Original Funding Agreement**" has the meaning given in recital A (*Background*); and

"**Restatement Date**" means the date of this Deed.

- 1.2 The rules of interpretation of the Original Funding Agreement shall apply to this Deed, save that references in the Original Funding Agreement to "**this Agreement**" shall be construed as references to this Deed.

2 AMENDMENT AND RESTATEMENT

- 2.1 With effect on and from the Restatement Date, the Original Funding Agreement, as amended and restated by the First Amendment and Restatement Deed, shall be amended and restated so that it shall be read and construed for all purposes in the form set out in Schedule 1 so that the rights and obligations of the Parties to the Amended and Restated Funding Agreement shall, on and from the Restatement Date, be governed by and construed in accordance with the provisions of the Amended and Restated Funding Agreement.

3 CONTINUITY AND FURTHER ASSURANCE

3.1 Subject to the provisions of this Deed:

3.1.1 with effect from the Restatement Date, the Original Funding Agreement, as amended and restated by the First Amendment and Restatement Deed, shall be read and construed as one document with this Deed; and

3.1.2 except as expressly provided for in Clause 2, nothing in this Deed shall constitute or be construed as an amendment, waiver, consent, estoppel, release, modification, limitation or forbearance of any right or remedy of the Funder or the Class Representative under the Original Funding Agreement, nor otherwise prejudice any right or remedy of the Funder or the Class Representative under the Original Funding Agreement.

3.2 The Class Representative and the Funder shall, at the request of the other Party, do all such acts and things necessary or desirable to give effect to the provisions of this Deed.

4 INCORPORATION

4.1 The provisions of clauses 30 (Entire agreement), 31 (Third party rights), 32 (Notices), 34 (Commencement and costs), 35 (Severance), 36 (Counterparts) of the Original Funding Agreement, as amended and restated by the First Amendment and Restatement Deed, shall apply to this Deed as if set out in full and so that references in those provisions to "this Agreement" shall be construed as references to this Deed. The reference to clause 29.1 in clause 31.2 shall be construed as referring to clause 29.1 of the Amended and Restated Funding Agreement.

5 GOVERNING LAW AND JURISDICTION

5.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

5.2 Each Party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim that arises out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF the Parties have executed this Amendment and Restatement Deed as a deed and it is delivered on the date set out above.

Executed and delivered as a deed by **Vannin**)
Capital PCC, for and on behalf of **Project**)
Pontac PC, a protected cell company)
incorporated under the laws of Jersey acting by)
a director who, in accordance with the laws of)
that territory, is acting under the authority of the)
company)



Director

In the presence of:



Witness's signature:

Name (print)

Mark Hill

Occupation

VicePresident,



Address:



Executed and delivered as a deed by **Elizabeth**)
Helen Coll:)

.....

Director

In the presence of:

Witness's signature:

.....

Name (print)

.....

Occupation

.....

Address:

.....

SCHEDULE 1
AMENDED AND RESTATED FUNDING AGREEMENT

ORIGINALLY DATED 10 DECEMBER 2020 AS ORIGINALLY AMENDED
AND RESTATED ON 11 MAY 2022 AND AS SUBSEQUENTLY AMENDED AND
RESTATED ON 6 NOVEMBER 2023

**AMENDED AND RESTATED
LITIGATION FUNDING AGREEMENT**

between

VANNIN CAPITAL PCC FOR AND ON BEHALF OF PROJECT PONTAC PC

and

ELIZABETH HELEN COLL

LITIGATION FUNDING AGREEMENT

ORIGINALLY DATED 10 DECEMBER 2020, AS ORIGINALLY AMENDED AND RESTATED ON 11 MAY 2022 AND SUBSEQUENTLY AMENDED AND RESTATED ON 6 NOVEMBER 2023

MADE BETWEEN:

- (1) **Vannin Capital PCC for and on behalf of Project Pontac PC** of 2nd Floor Sir Walter Raleigh House 48-50 Esplanade St Helier Jersey JE2 3QB (company number 126901) ("**Funder**"); and
- (2) **Elizabeth Helen Coll** of [REDACTED] ("**Class Representative**").

INTRODUCTION

- (A) Elizabeth Helen Coll, acting as the Class Representative, intends to bring the Action in the Competition Appeal Tribunal 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 conflict of interest with regard to the Class Members which she shall represent.
- (C) The Class Representative has taken legal advice from the Solicitors as to the available options for funding the Action. That advice has included advice on after-the-event ("**ATE**") insurance, conditional fee agreements, self-funding, third party litigation funding and the cost, advantages and disadvantages of each.
- (D) After carefully considering the advice from the Solicitors, the Class Representative has sought the agreement of the Funder to provide funding in respect of the Class Representative's costs of pursuing the Action as set out in the Litigation Plan Budget at Appendix 1 and on the terms of this agreement (the "**Agreement**").
- (E) 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 the event of success and subject to certain criteria being fulfilled.

It is agreed as follows:

1 Definitions

In this Agreement:

- 1.1 "**Action**" means a claim against the Defendant for breach of Chapter II of the Competition Act 1998, brought by the Class Representative pursuant to Section 47B of the Competition Act 1998 in respect of the Defendant's alleged failure to comply with competition law, as set out in the collective proceedings claim form to be sent to the CAT's Registrar.
- 1.2 "**Action Costs**" are set out in the Litigation Plan Budget and means the aggregate of:
 - 1.2.1 the reasonable and proper costs and expenses incurred by the Class Representative in pursuit of the Action and in accordance with this Agreement and falling within the Litigation Plan Budget and Costs Limit, but in any event limited to:

- 1.2.1.1 charges of the Solicitors and Counsel (excluding any conditional or contingent element) under the CFAs;
- 1.2.1.2 charges of accountants, valuers and other experts (calculated at rates, or in accordance with fees or amounts, pre-agreed by the Funder, such agreement not to be unreasonably withheld);
- 1.2.1.3 any up front premiums and related IPT in respect of an ATE Policy, but only if and to the extent that such premiums are actually payable by the insured (and not deferred or conditional);
- 1.2.1.4 Court filing and issue fees and all other incidental fees associated with the Court;
- 1.2.1.5 litigation support services required for the efficient pursuit of the Action (including, without limitation, consultative support/advice to the Class Representative, e-disclosure services, electronic trial bundle and transcription services, press/media services and services in respect of the notification of the Action to the Class Members and administration of damages);
- 1.2.1.6 witness expenses;
- 1.2.1.7 the Class Representative's time up to reasonable limits, and reasonable expenses;
- 1.2.1.8 the Class Representative's share of any mediation costs; and
- 1.2.1.9 any VAT on such costs and expenses not lawfully recoverable by the Class Representative;

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 a negligent act and/or omission, breach of professional duty, misfeasance and/or any breach of this Agreement by the Class Representative and/or the Solicitors and/or Counsel;
- 1.2.4 any VAT lawfully recoverable by the Class Representative, whether or not it has actually been recovered, charged on the costs and expenses in 1.2.1; and
- 1.2.5 any amounts relating to the distribution of the Proceeds to Class Members which are set out in the Litigation Plan Budget;

and provided that the Action Costs up to and including the certification of the claim by the CAT shall be capped at the sum of ██████████.

- 1.3 **"Additional Action Costs"** means any Action Costs over and above the Litigation Plan Budget and/or any Phase Costs Limit.
- 1.4 **"Adverse Costs"** means any Defendant's costs, including any VAT, which the Class Representative is properly liable to pay the Defendant in the Action by way of Court

Order or agreement entered into with the consent of the Funder (such consent not to be unreasonably withheld).

- 1.5 **"Appeal"** means an appeal made in respect of any Judgment or Order in the Action.
- 1.6 **"ATE Policy"** means the insurance policy taken out by the Class Representative in respect of her potential liability for Adverse Costs details of which are particularised in Schedule 3 to this Agreement and/or on terms and with an insurer approved by the Funder, and any further insurance policies in respect of Adverse Costs on terms approved by the Funder as may be procured by the Class Representative.
- 1.7 **"Business Day"** means a day that is not a Saturday, Sunday or public holiday in England.
- 1.8 **"CAT"** means the United Kingdom Competition Appeal Tribunal.
- 1.9 **"CAT Rules"** means the Competition Appeal Tribunal Rules 2015, S.I. 2015/1648, as amended from time to time.
- 1.10 **"CFAs"** means the legally binding written agreements between the (a) Solicitors and the Class Representative and (b) Counsel and the Solicitors on behalf of the Class Representative, approved in advance in writing by the Funder in respect of the Solicitors' and Counsel's engagement and their fees and charges, such approval not to be unreasonably withheld.
- 1.11 **"Class Member"** means all persons who fall within the definition of the certified class and any sub-classes pursuant to the Action (with such class definition to be determined by Order of the Court).
- 1.12 **"Class Representative"** unless the context otherwise requires, means Elizabeth Helen Coll or any other third party nominated to represent the Class Members in the Action.
- 1.13 **"Collective Settlement Approval Order"** means an order made pursuant to Rule 94 of the CAT Rules.
- 1.14 **"Conditions Precedent"** means:
- 1.14.1 the procurement by the Class Representative of the ATE Policy particularised in Schedule 3 to this Agreement;
 - 1.14.2 completion of the CFAs;
 - 1.14.3 completion of the Priorities Deed (see Appendix 3 to this Agreement).
- 1.15 **"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.
- 1.16 **"Costs Limit"** means the total costs in the Litigation Plan Budget (excluding, for the avoidance of doubt any amounts relating to distribution costs in relation the distribution of Proceeds to Class Members which are set out in the Litigation Plan Budget) as may be increased from time to time by the Funder in its absolute discretion, and shall exclude, unless otherwise agreed, Adverse Costs and any provision for security for costs.

- 1.17 "**Counsel**" means Senior Counsel and Junior Counsel.
- 1.18 "**Court**" means the CAT and any other Court in the United Kingdom.
- 1.19 "**CPO**" means a collective proceedings order made in accordance with Part 5 of the CAT Rules.
- 1.20 "**Defendant**" means Google LLC and such other defendant that the Funder specifically agrees pursuant to Clause 14.2 may be added to this definition for the purpose of this Agreement.
- 1.21 "**Effective Date**" means the date on which this Agreement was originally entered into, being 10 December 2020.
- 1.22 "**Expert**" means person/s appointed in accordance with Clause 23.
- 1.23 "**Funder's Fee**" means the fee due to the Funder in accordance with Clause 9.
- 1.24 "**Funder's Additional Return**" is as defined in Clause 9.
- 1.25 "**Funder's Further Return**" is as defined in Clause 9.
- 1.26 "**Funder's Initial Return**" is as defined in Clause 9.
- 1.27 "**Funder's Outlay**" means the amount of Action Costs including any Additional Action Costs paid by the Funder or payable pursuant to a Funding Notice served in accordance with this Agreement, plus all other external costs reasonably incurred by the Funder in connection with the Action including, without limitation, those costs referred to in Clause 34.2.
- 1.28 "**Funding Notice**" means a notice from the Class Representative requesting the Funder to fund Action Costs or Additional 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 7.
- 1.29 "**Judgment**" means any final judgment or award in the Action including the conclusion of any appeals.
- 1.30 "**Junior Counsel**" means Jennifer MacLeod and Aaron Khan of Brick Court Chambers and/or any other junior barrister retained by the Class Representative or the Solicitors in relation to the Action.
- 1.31 "**Litigation Plan Budget**" means the project plan for the Action, as amended from time to time, to include Additional Action Costs as agreed, including the Solicitors' estimate of the costs required to pursue the Action, and an outline timetable agreed between the Class Representative, the Solicitors and the Funder, appended to this Agreement as Appendix 1.
- 1.32 "**Order**" means any interim, interlocutory or final order or direction of the Court in the Action.
- 1.33 "**Phase of the Action**" means a phase of the Action as described in the Litigation Plan Budget.

- 1.34 **"Phase Costs Limit"** means the budgeted cost to be incurred in any Phase of the Action as described in the Litigation Plan Budget.
- 1.35 **"Prior Action Costs"** means those reasonable and proper costs and expenses incurred by the Class Representative and/or Solicitors in pursuit of the Action prior to the parties entering into this Agreement and as set out in Appendix 1.
- 1.36 **"Priorities Deed"** means the priorities agreement substantially in the form appended to this Agreement at Appendix 3, to be executed by the Class Representative on, or as soon as reasonably practicable after, the Effective Date.
- 1.37 **"Proceedings"** means each and every proceeding issued or arising out of or in connection with the Action including any pre-action correspondence, settlement negotiations or mediation and any enforcement proceedings to enforce payment of any judgment, order, award or settlement agreement.
- 1.38 **"Proceeds"** means the total amount of damages (including any non-monetary damages) paid by the Defendants or one or more of them in the Action pursuant to an Order of the Court or otherwise.
- 1.39 **"Proceeds Account"** means the Solicitors' client account or such other account as is agreed in writing by the Parties or ordered by the Court.
- 1.40 **"Recovered Costs"** means costs which are incurred by the Class Representative and recovered from the Defendant in connection with the Action.
- 1.41 **"Senior Counsel"** means Mark Hoskins KC of Brick Court Chambers and Ronit Kreisberger KC of Monckton Chambers, and/or any other senior barrister retained by the Class Representative or the Solicitors in relation to the Action.
- 1.42 **"Solicitors"** means Hausfeld & Co LLP authorised by the Solicitors Regulation Authority under registration number 513826 and having its office at 12 Gough Square, London EC4A 3DW, retained by the Class Representative in relation to the Action or any successor firm approved by the Funder from time to time if applicable.
- 1.43 **"Solicitors Excess Provision"** is as defined in Clause 7.6.
- 1.44 **"Stakeholder Proceeds"**: means (i) any Recovered Costs; (ii) any amount paid from Undistributed Damages to the Class Representative pursuant to an Order of the Court in respect of costs, fees, disbursements or expenses incurred by the Class Representative within the meaning of CAT Rule 93(4); and (iii) any amount approved by the Court in a Collective Settlement Approval Order to be paid to the Class Representative as costs, fees, disbursements or expenses within the meaning of CAT Rule 94.
- 1.45 **"Success"** means the CAT making an order, including a Collective Settlement Approval Order, pursuant to which the Defendants or any third party become obliged to pay any Proceeds to the Class Representative.
- 1.46 **"Trust Property"** is as described in Clause 9.1.3.
- 1.47 **"Undistributed Damages"** means Proceeds that have not been distributed to Class Members within any period stipulated by the Court for distribution to Class Members following Success.

- 1.48 "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 subheadings 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 varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
- 2.9 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 Class Representative's principal obligations

- 3.1 The parties recognise that the Solicitors must at all times comply with their duties under the Solicitors Regulation Authority ("SRA") Code of Conduct 2019 to act independently and in the best interests of the Class Representative and in accordance with their professional duties. The parties also recognise that, in accordance with The Association of Litigation Funders of England & Wales Code of Conduct, nothing in this Agreement entitles the Funder to attempt to and/or to control the conduct by the Solicitors and/or the Class Representative of the Action and/or the Proceedings.
- 3.2 To pursue the Action, the Class Representative will:

- 3.2.1 comply with the CAT Rules and all Orders;
- 3.2.2 instruct the Solicitors to provide the Funder, prior to the Effective Date, with a reliance letter substantially in the same form as that annexed to this Agreement at Appendix 2;
- 3.2.3 instruct the Solicitors and Counsel to conduct the Proceedings in compliance with the CAT Rules and any judgment, Order or award made in the Proceedings;
- 3.2.4 act fairly and adequately in the interests of the Class Members at all times;
- 3.2.5 immediately make the Solicitors and the Funder aware of any issue which may compromise the Class Representative's obligations to the Class Members, in accordance with the CAT Rules;
- 3.2.6 co-operate fully and at all times throughout the Proceedings with, and promptly provide such instructions and assistance to, the Solicitors and Counsel as they may require for pursuing the Action;
- 3.2.7 act with the utmost good faith in all her dealings with the Funder, the Solicitors and Counsel;
- 3.2.8 comply with the terms of this Agreement;
- 3.2.9 prosecute the Action diligently;
- 3.2.10 comply with the reasonable advice of the Solicitors and Counsel and assist their conduct of the Action, including without limitation whether it would be appropriate to make or accept any offer to settle the Action;
- 3.2.11 use all reasonable endeavours, in accordance with the terms of this Agreement, to achieve the recovery of Proceeds as soon as reasonably possible and in the best interests of the Class Members; and
- 3.2.12 subject to Clauses 3.2.1 to 3.2.11 (inclusive):
 - 3.2.12.1 take all reasonable steps to minimise (where reasonable) and control the quantum of the Action Costs and the Additional Action Costs (if any) and keep those costs within the Litigation Plan Budget;
 - 3.2.12.2 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;
 - 3.2.12.3 take all reasonable steps to ensure that the Solicitors, Counsel and other third parties do not exceed any Phase Costs Limit and/or the Costs Limit;
 - 3.2.12.4 subject to any Order of the Court to the contrary, procure payment of any and all Proceeds and Recovered Costs into the Proceeds Account or such other account as is agreed or ordered by the Court;
 - 3.2.12.5 following judgment, or, if required at an earlier stage in the Proceedings, take all reasonable steps to obtain an Order from the

Court that the Class Representative's full costs and expenses other than Recovered Costs can be paid from Undistributed Damages;

- 3.2.12.6 take any reasonable steps to maximise the amount of the Recovered Costs, including undertaking a detailed assessment of such costs, if so advised;
 - 3.2.12.7 pursuant to or following an application to the Court for a Collective Settlement Approval Order, pursuant to CAT Rule 94 or 97, take all reasonable steps to obtain an Order from the Court that the Class Representative's full costs and expenses other than Recovered Costs can be paid from Undistributed Damages;
 - 3.2.12.8 insofar as it is within her control, to conduct the Action so as to minimise the quantum of any Adverse Costs and the likelihood of the Class Representative, the Funder or any provider(s) of the ATE Policy being liable to pay Adverse Costs, including instructing the Solicitors to take reasonable and appropriate steps to exchange costs information with the Defendant;
 - 3.2.12.9 subject also to Clause 14.1, not seek an Order that would adversely affect the Funder's rights under this Agreement; and
 - 3.2.12.10 use the funding provided under this Agreement for lawful purposes only, and only for the purposes contemplated by this Agreement.
- 3.3 For the period of this Agreement, the Class Representative will instruct the Solicitors to make prompt and full disclosure in writing to the Funder of any new facts or matters which she becomes aware of and which are material to the prospects of Success in the Action.
- 3.4 The Class Representative will, where reasonable, instruct the Solicitors, to take such action as the Funder may reasonably request to enable the Funder to have knowledge of the conduct of the Action.

4 The Funder's principal obligations

- 4.1 The Funder will:
- 4.1.1 subject to Clause 5.2, pay the Action Costs up to the Costs Limit in accordance with Clause 7;
 - 4.1.2 act in good faith in all its dealings with the Class Representative and in its dealings with the Class Representative's advisors, including the Solicitors and Counsel;
 - 4.1.3 comply diligently with this Agreement; and
 - 4.1.4 comply with The Association of Litigation Funders of England & Wales Code of Conduct (The "ALF Code of Conduct") (as amended from time to time).
- 4.2 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 or in respect of the Action.

5 The Funding

- 5.1 The Class Representative and the Funder will use all reasonable endeavours to satisfy the Conditions Precedent as soon as reasonably possible.
- 5.2 Subject to:
- 5.2.1 the satisfaction or waiver by the Funder of each of the Conditions Precedent;
and
- 5.2.2 Clause 7.7,
- the Funder shall pay the Action Costs incurred and properly claimed by Funding Notices (including any Prior Action Costs), up to the Phase Costs Limit for each Phase of the Action and (in aggregate) the Costs Limit.
- 5.3 If any of the Conditions Precedent has not been satisfied or waived within 30 days of the Effective Date, the Funder may at any time thereafter terminate this Agreement, with immediate effect, by written notice to the Class Representative.
- 5.4 Money paid pursuant to any Funding Notice shall only be used to pay the Action Costs as claimed in that Funding Notice. If any such money has not been so used for that sole purpose within 4 weeks following payment the unused amount shall immediately be repaid to the Funder, unless such amount is being held on account with the prior written agreement of the Funder.
- 5.5 The Funder shall not be responsible for overseeing or monitoring the application by the Class Representative or by the Solicitors of any amount claimed in a Funding Notice. Once the Funder has paid any amount in accordance with a Funding Notice, the Class Representative, assisted by the Solicitors, shall use best efforts to ensure no claims are made by any third party against the Funder for payment of any sum covered by the Funding Notice and expressly acknowledges that the Funder has no liability to any third party for any failure by the Class Representative or Solicitors to make such payment.
- 5.6 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. Alternatively, the Solicitors may pay such disbursements out of the money paid to them, but in each case limited to the amount due in accordance with the Funding Notice as approved by the Funder.
- 5.7 The Funder may, in its absolute discretion, from time to time agree in writing to an increase to a Phase Costs Limit and to pay Additional Action Costs. If the Class Representative requests such an increase in writing, the Funder shall have the exclusive option to provide that additional funding for a period of 15 Business Days from and excluding the date on which the request is made in writing. During that same 15 Business Days period, the Parties shall engage in good faith discussions to agree terms on which the Funder will fund Additional Action Costs and increase the Costs Limit and relevant Phase Costs Limit accordingly. If the Funder decides to provide such additional funding, it shall notify the Class Representative as soon as reasonably practicable and in any event, unless otherwise agreed in writing between the Parties, within the relevant 15 Business Days period.

- 5.8 If the Funder elects not to fund Additional Action Costs (whether for an Appeal, pursuant to Clause 6.1 below, or otherwise), the Class Representative may seek to obtain funding from a third party. If the third party offers to fund the Additional Action costs on terms that are more favourable to that third party than the terms already agreed with the Funder in this Agreement, before accepting funding from the third party on the basis of those terms, the Class Representative shall send those terms in writing to the Funder. The Funder shall have 15 Business Days from receipt of the third party's terms to agree to fund the Additional Action Costs on those terms. If the Funder declines to agree to fund Additional Action Costs on the basis of those terms, the Representative Claim may obtain funding from the third party. If a new third party funder provides such funding, any distribution of Stakeholder Proceeds shall be on a pari passu basis with the Funder unless agreed otherwise.
- 5.9 Additional Action Costs shall, as soon as the Funder agrees in writing to pay them, and save as expressly agreed otherwise in writing, be treated for all purposes under this Agreement and in respect of any security, in the same manner as Action Costs and the Costs Limit and relevant Phase Costs Limit will automatically be increased by that agreed amount at the time the Funder agrees to pay any Additional Action Costs.
- 5.10 Upon final determination of any application for a CPO in the Class Representative's favour, the parties shall enter into good faith discussions as to whether revisions are required to the Litigation Plan Budget.

6 Appeals

- 6.1 Notwithstanding any other provision of this Agreement, the Funder shall have no obligation to fund any Appeal by the Class Representative, but the Funder shall have the exclusive option to do so for the period of 15 Business Days from and excluding the date on which a request for funding is made in writing. If the funder elects to provide funding, those costs shall be deemed to be Additional Action Costs and the Costs Limit and relevant Phase Costs Limit shall be increased accordingly.
- 6.2 The Funder shall fund the defence of any Appeal made by the Defendant only if an agreement is first reached between:
- 6.2.1 the Funder and the Class Representative to increase the Costs Limit and relevant Phase Costs Limit to conduct the same; and
- 6.2.2 the Class Representative (acting reasonably) and the Solicitors and Counsel (acting reasonably) to any variation to the CFAs in which case the costs of the same shall be deemed to be Additional Action Costs and the Costs Limit and relevant Phase Costs Limit shall be increased accordingly.

7 Funding Notice

- 7.1 Subject to Clause 5 and the following Clauses of this Clause 7, the Funder shall pay the amount claimed in a Funding Notice within 20 Business Days of receipt of the Funding Notice. Unless otherwise specified on a Funding Notice and agreed by the Funder, payments by the Funder shall be made to the following account:

██

██

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 7.2 The Class Representative may deliver by email to 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.
- 7.3 A Funding Notice shall take the form set out in Schedule 2 and shall:
 - 7.3.1 be accompanied by:
 - 7.3.1.1 the report referred to in Clause 13.3, for the period to which the Funding Notice relates;
 - 7.3.1.2 copies of invoices, time records, itemised charges and narratives;
 - 7.3.1.3 a comparison between Action Costs that have been the subject of Funding Notices for each Phase and the relevant Phase Costs Limit; and
 - 7.3.1.4 an updated written estimate of the Adverse Costs if the Action were to be unsuccessful (if the estimate has changed),
 - 7.3.2 set out the amount, nature, source and calculation of the costs or expenses for which the Class Representative claims payment, including the hourly rates for each of the Solicitors' fee earners and Counsel; and
 - 7.3.3 be accurate and not claim any cost or expense which is not an Action Cost or the subject of another Funding Notice; and
 - 7.3.4 be signed by the Solicitors; and
 - 7.3.5 contain such other information as the Funder reasonably and proportionately requires from time to time; and
 - 7.3.6 only seek payment of Action Costs for each Phase that fall within the Phase Costs Limit.
- 7.4 The Funder may require the Class Representative to substantiate any amount claimed in a Funding Notice, including by production of original invoices, time records, attendance notes and similar items.
- 7.5 In the event of any overpayment by the Funder under this Agreement, such overpayment shall be repaid as soon as reasonably practicable after the overpayment is identified.

- 7.6 Other than in respect of sums provided for in the Litigation Plan Budget, the Class Representative acknowledges that no Funding Notices shall be presented to the Funder in respect of the Solicitors' fees, until the amounts provisioned for the Solicitors' fees in the Litigation Plan Budget have been exceeded by [REDACTED] (the "**Solicitors Excess Provision**"). [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 7.7 If the Funder wishes to dispute a Funding Notice or any element thereof, it shall notify the Solicitors (as agent for the Class Representative) within 10 Business Days of receipt of the Funding Notice and the parties shall discuss the dispute within 5 Business Days of receipt of the Funder's notice of dispute, or within such longer period as the parties may agree, and use reasonable endeavours to resolve the dispute. If 5 Business Days have elapsed since any such discussion, or if the discussion has not taken place within 12 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 23.
- 7.8 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 7.7 has determined that that amount is payable.

8 Adverse Costs and Security for Costs

- 8.1 If the Class Representative becomes liable to pay Adverse Costs, the Class Representative will:
- 8.1.1 give the Funder prompt written notice of the claim and instruct the Solicitors to provide the Funder with full details of the Adverse Costs sought by the Defendant;
 - 8.1.2 comply with the advice of the Solicitors and Counsel and act reasonably in relation to the Adverse Costs sought by the Defendant; and
 - 8.1.3 comply with the terms of the ATE Policy.
- 8.2 The Class Representative shall maintain the ATE Policy as long as necessary to meet any liability for Adverse Costs, and shall keep under review, throughout the conduct of the Action, the adequacy of the level of cover for Adverse Costs. If the estimated Adverse Costs increase above the limit of indemnity in the ATE Policy, the Class Representative shall inform the Funder; and, at the Funder's request, take out such additional ATE insurance cover, if available, and if the Funder's request is reasonable in view of the need to meet any anticipated liability for Adverse Costs. The costs of such additional insurance taken out at the request of the Funder shall be met by the Funder. However, the Funder is under no obligation to request an increase or to fund the costs of an increase if it does not request it and, in those circumstances, shall not meet the costs of the same unless it expressly agrees to do so. Any costs of additional insurance met by the Funder pursuant to this Clause 8.2 shall be an Additional Action Cost and the Costs Limit shall be increased accordingly. If the Funder does not meet those costs, then the Class Representative shall be entitled, in accordance with the provisions set out in clause 5.8 to seek alternative sources of funding for such additional ATE insurance cover.

- 8.3 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 her to provide security for costs in the Action and thereafter provide the Funder, also within 2 Business Days of receipt, with copies of all documents and correspondence concerning such application or threatened application, including any relevant Order.
- 8.4 Unless otherwise agreed with the Funder, the Class Representative shall take all reasonable steps to resist the security for costs application or threatened application and reduce any amount of security for costs requested or ordered to be provided, subject to and acting in accordance with the advice of the Solicitors and Counsel. If the Class Representative is advised by Solicitors and Counsel to resist such an application or threatened application and the Funder agrees that the application should be resisted, the Funder shall agree in good faith to an appropriate variation to the Litigation Plan Budget to fund the costs of resisting the application or threatened application (including any Adverse Costs of the Application, if so ordered) within 14 days of the application being served or threatened.

9 Success in the Action

- 9.1 In the event of Success, the Class Representative, assisted by her Solicitors, shall:
- 9.1.1 in addition to compliance with the provisions of clause 3.2.12.5, use all reasonable endeavours to procure that the Court makes an Order that Undistributed Damages may be paid to the Class Representative in respect of her costs, fees, disbursements and expenses, within the meaning of CAT Rule 93(4), incurred by the Class Representative in connection with the Action including but not limited to the Funder's Fee;
 - 9.1.2 apply any Stakeholder Proceeds, and instruct the Solicitors to hold any Stakeholder Proceeds on trust, in accordance with the Priorities Deed;
 - 9.1.3 without prejudice to the trust over the Stakeholder Proceeds referenced at clause 9.1.2 above, hold the Proceeds (other than the Stakeholder Proceeds), as Trust Property on trust absolutely for the benefit of the Class Members to the extent of their interests as the Class Members;
 - 9.1.4 direct the Defendant to pay all Proceeds to the Proceeds Account and, if the Class Representative receives any Proceeds directly from the Defendant despite such direction, pay such Proceeds into the Proceeds Account within 3 business days of receipt;
 - 9.1.5 apply, or instruct her Solicitors to apply, the Stakeholder Proceeds in accordance with the Priorities Deed; and
 - 9.1.6 pay or procure payment of the Funder's Fee from Stakeholder Proceeds, save that subject to Clause 9.1.1 and 3.2.12.5 this obligation shall be reduced to the extent that the aggregate amounts ordered by the Court to be paid to the Class Representative in respect of this obligation falls below the Funder's Fee.
- 9.2 The Funder's Fee shall be payable as set out in the Priorities Deed and calculated as follows:

- 9.2.1 a sum equivalent to the greater of: (i) two times the Funder's Outlay; or (ii) 30% (thirty percent) internal rate of return on the Funder's Outlay (the "**Funder's Initial Return**");
- 9.2.2 a further sum equivalent to two times the Funder's Outlay; (the "**Funder's Further Return**"); and
- 9.2.3 a further sum equivalent to either (i) 0.5 times the Funder's Outlay in the event that Stakeholder Proceeds are determined and available to be distributed in accordance with Clause 3 of the Priorities Deed prior to 10 March 2026 or (ii) one times the Funder's Outlay in the event that any Stakeholder Proceeds are determined and available to be distributed in accordance with Clause 3 of the Priorities Deed on or after 11 March 2026 ("**Funder's Additional Return**").
- 9.3 In the event that the Defendant is multiple entities, one or more of which settle separately to the others, then the Class Representative and the Funder shall use reasonable endeavours to agree on a structure for purposes of determining the distribution of Proceeds with respect to any bilateral or multilateral settlement.
- 9.4 The Class Representative shall give to her Solicitors irrevocable written notice of the trust and directions regarding Proceeds and Stakeholder Proceeds in the form set out in Schedule 4 and provide a copy to the Funder duly acknowledged by her Solicitors within 7 days of this Agreement.

10 Value Added Tax

- 10.1 The Class Representative shall use all reasonable endeavours to recover any VAT payable by her, and forming part of the Action Costs, where she is able to do so, and shall file any VAT return or claim form to effect such recovery within the relevant time limits.
- 10.2 Any VAT paid by the Funder pursuant to a Funding Notice but subsequently recovered by the Class Representative shall be declared to the Funder and, at the Funder's option, either repaid to the Funder or offset against future Funding Notices.

11 Interim recoveries

- 11.1 If the Class Representative makes interim recoveries of Action Costs from the Defendant or from any third party, the Class Representative shall, following discussion with the Solicitors, reallocate such interim recoveries of Action Costs as the Funder considers appropriate to the Litigation Plan Budget so as to increase the Phase Costs Limit of any subsequent Phase(s) of the Action(s). Any interim recoveries of Action Costs not applied in this way shall be applied in accordance with the Priorities Deed.

12 Interest

- 12.1 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 4% per annum above the Bank of England's base lending rate from time to time.
- 12.2 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.

13 Provision of information to the Funder

- 13.1 Subject to any Order of the Court or any CAT Rules to the contrary and insofar as it does not breach any confidentiality obligations, the Class Representative shall upon request provide to the Funder, and/or instruct the Solicitors to provide to the Funder (on a common interest privilege basis), 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, and reasonably and proportionately required by the Funder including, if reasonably requested and insofar as is practical, all documents and/or correspondence received from and sent to the Defendant.
- 13.2 The Class Representative shall, and shall use best endeavours to procure that the Solicitors shall, discuss the Action with the Funder on the Funder's reasonable request; provide the Funder with as much notice as possible of all court hearings and/or ADR procedures; and not unreasonably refuse any request by the Funder to attend such events.
- 13.3 The Class Representative shall instruct the Solicitors to, within 15 Business Days after the end of 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, an update of the anticipated future steps, timing, strategy and any material change in the Action in the format provided in Schedule 1 to this Agreement.
- 13.4 The Funder acknowledges that the provision of information, data and/or documents pursuant to this Clause 13 will not constitute a waiver of litigation, legal or common interest professional privilege or other privilege or protection by the Class Representative and any such information provided is subject to Clause 19 below.
- 13.5 The Class Representative acknowledges that the Funder shall be permitted to share all information data and/or documents provided pursuant to this Clause 13 with any co-funders, on the same basis as the information is provided to the Funder hereunder and subject to common interest privilege.

14 Control and conduct

- 14.1 The Class Representative shall have overall and day-to-day control and conduct of, and responsibility for, the Action subject to Clause 3.2.10 above.
- 14.2 The Class Representative shall have the right in the Action to:
- 14.2.1 join an additional party; and
- 14.2.2 add a new cause of action to the claim
- but the Funder shall not be responsible or liable for any costs, which shall not constitute Action Costs, relating to that additional party or 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 14.2 shall be reasonable if the Funder would, by giving its agreement, materially increase its liability or potential liability for Action Costs or Adverse Costs.
- 14.3 The Funder shall be notified in writing as soon as reasonably practicable (and, except in the case of urgency, prior to issue) of any interlocutory application contemplated by the Class Representative in the Action.

- 14.4 The Funder shall be notified in writing as soon as reasonably possible of any interlocutory application issued by the Defendant in the Action.
- 14.5 The Funder shall be informed of any Court hearings. The Class Representative shall not unreasonably refuse a request by the Funder to attend a hearing and shall supply the Funder with copies of all applications and, upon request, supporting evidence and evidence in opposition.
- 14.6 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 to significantly increase the estimated costs of the Action, 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.

15 Settlement and discontinuance

- 15.1 The Class Representative shall not make, accept 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:
 - 15.1.1 providing the Funder with prior notification of the intention to take such a step;
 - 15.1.2 having received advice from the Solicitors or Counsel that it is reasonable to take such a step;
 - 15.1.3 providing a copy, or summary of such advice (if any) to the Funder; and
 - 15.1.4 having provided reasonable notice to the Funder.
- 15.2 The Class Representative agrees that in the event that she 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, she shall keep the Funder informed and shall provide the Funder with a copy of any written advice, subject to Clause 3.1.
- 15.3 Where the Class Representative receives advice from the Solicitors or Counsel that it is reasonable to make or accept an offer of partial or full settlement of the Action, but fails to follow that advice, such failure shall be treated as a material and irremediable breach of this Agreement.
- 15.4 Where, with the support of reasonable legal advice from Solicitors or Counsel, the Class Representative withdraws from the Action, abandons the Action, and/or the Action is discontinued whether following withdrawal or otherwise, the Funder will meet its obligations under Clause 5.2 in respect of Action Costs up to and including the date of the Defendant agreeing to or the Court permitting such withdrawal or discontinuance, whereupon this Agreement shall terminate, save that the Funder shall enter into good faith discussions with the Class Representative in respect of any further anticipated costs.
- 15.5 The Funder shall be notified by the Class Representative as soon as reasonably possible of any meetings relating to settlement or discontinuance with the Defendant or any other party to the Action.

16 Diligence

The Class Representative will, in the context of and in accordance with the Class Representative's obligation to act in the best interests of the Class Members, at all times:

- 16.1 diligently prosecute the Action to its conclusion and seek to enforce and recover any Judgment or settlement in the Action, where it is in the best interests of the Class Members to do so. This obligation shall apply irrespective of whether the Costs Limit is reached or this Agreement is terminated or otherwise, save in circumstances where the Funder has not agreed to an increase to a Phase Costs Limit following a request by the Class Representative pursuant to Clause 5.7 of this Agreement and no alternative funding to prosecute the Action is available; and
- 16.2 devote sufficient and appropriate time and reasonably available resources (in accordance with the Litigation Plan Budget) to the prosecution of the Action and the enforcement and recovery of any Judgment or settlement in the Action.

17 Ongoing disclosure of information

The Class Representative shall, and shall instruct the Solicitors to, 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 Fee.

18 Privilege and agency

- 18.1 The Solicitors, on behalf of the Class Representative, appoint the Funder as the Class Representative's agent prior to this Agreement being entered into, for the 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 Funder's appointment as agent for that purpose is hereby confirmed and continued under this Agreement. The express and only terms of that agency were and are that the Funder agreed to take all reasonable steps in respect of those documents and that information to:
 - 18.1.1 maintain their confidentiality;
 - 18.1.2 protect and not to waive any privilege attaching to them;
 - 18.1.3 keep them secure and safe; and
 - 18.1.4 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.
- 18.2 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 preserve and maintain any privilege that applies.
- 18.3 The Funder shall, for the purposes of Clause 18.1 and 18.2, include the Funder's consultants, legal advisors, auditors, agents, co-funders and sub-funders.

19 Confidentiality

- 19.1 Save as provided in this Clause 19, 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.
- 19.2 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.
- 19.3 Each party agrees not to disclose any Confidential Information to a third party unless:
- 19.3.1 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
- 19.3.2 the disclosure is made on a confidential basis on terms identical to this Agreement and the third party is a parent or associated company or an actual or potential, direct or indirect, shareholder or investor of or in the Funder, its parent or an associated company; or
- 19.3.3 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
- 19.3.4 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;
- 19.3.5 the information is in the public domain; or
- 19.3.6 the parties otherwise agree.
- 19.4 The parties shall take all reasonable steps to protect and not to waive any privilege attached to the Confidential Information.

20 Warranties

The Class Representative represents, warrants and undertakes that:

- 20.1 the Class Representative has satisfied all Conditions Precedent prior to entering into this Agreement;
- 20.2 to the best of the Class Representative's knowledge, information and belief, the Class Representative has disclosed all material facts and circumstances in relation to this Agreement which might reasonably have been expected to affect the decision of the Funder to enter into this Agreement or the terms on which the Funder would have been willing to do so;
- 20.3 the Class Representative has disclosed any and all facts or circumstances within her knowledge which materially adversely affect:
- 20.3.1 the conduct, progress or continuation of the Proceedings; or

- 20.3.2 the Class Representative's prospects of successfully enforcing any judgment in the Proceedings; or
- 20.3.3 the prospects of Success in the Proceedings;
- 20.4 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;
- 20.5 the Class Representative will not bring, permit to be brought, support or continue any action which claims relief arising out of the same or similar facts to, nor which could result in a reduction in the amount recoverable in, the Action; and
- 20.6 to the best of her knowledge and belief:
 - 20.6.1 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, nor breach any applicable law;
 - 20.6.2 the Class Representative is entitled to issue the Action;
 - 20.6.3 no person other than the Class Representative, Class Members, the Solicitors, Counsel, the provider(s) of the ATE Policy (if any) or the Funder (by virtue of this Agreement) has any proprietary interest in the Action, or the Proceeds, which are and will remain free of any lien, charge or encumbrance and have not been and will not be assigned in whole or in part;
 - 20.6.4 she has identified (and, where possible, provided to the Solicitors) any information, document, tape, disk, record and other relevant items in her possession, which is or could reasonably be material to the Action;
 - 20.6.5 the Class Representative has at all times complied with the obligations and duties of ongoing disclosure and to act in good faith.
- 20.7 The Class Representative acknowledges that the Funder has relied upon the truth and accuracy of the warranties contained in this Clause 20 and the completeness and accuracy of the information provided by her, or by the Solicitors or others on her 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.
- 20.8 The warranties set out in this Clause 20 are given and take effect on the Effective Date and are deemed to be repeated on each day during the term of this Agreement and on the signing of each Funding Notice.

21 The Solicitors and other professionals instructed in the Action

- 21.1 The Class Representative will retain the Solicitors, on the terms of the Solicitors' CFA, as the solicitors to act for the Class Representative on her behalf in the Action.
- 21.2 The Class Representative has responsibility for providing all instructions to the Solicitors, Counsel and others retained to assist and advise in the Action.

- 21.3 The Funder makes no representation as to the enforceability of the CFAs and has no obligation to ensure the correct fee is paid to the Solicitors.
- 21.4 All invoices issued:
- 21.4.1 by the Solicitors shall be addressed to and directed to the Class Representative;
- 21.4.2 by Counsel and others retained to assist in the Action shall be addressed to and directed to the Class Representative or Solicitors where agreed that they shall be treated as disbursements and included in the invoice delivered by the Solicitors to the Class Representative;
- notwithstanding that such invoices may constitute Action Costs.
- 21.5 The Class Representative shall ensure that any material oral opinion or advice, provided by the Solicitors or Counsel in respect of the Action, is promptly confirmed in writing by them and provided to the Funder.
- 21.6 Any written opinion or advice provided by the Solicitors or Counsel to the Class Representative in respect of the Action, before or after the Effective Date may be relied on by the Funder.
- 21.7 The Class Representative shall instruct the Solicitors at all times to: (i) proceed in compliance with this Agreement, and (ii) as soon as reasonably practicable notify the Funder in the event that a step has been or will be taken in breach of this Agreement.
- 21.8 The Solicitors will provide to the Funder, at least 10 Business Days prior to the commencement of each calendar quarter, an estimate of the Action Costs which are likely to be incurred in relation to the Proceedings in the upcoming quarter.
- 21.9 Nothing in this Agreement shall be construed as (i) interfering with the relationship between the Class Representative and the Solicitor and Counsel, or (ii) requiring the Solicitor or Counsel to breach their professional duties.

22 Assignment to the Funder of potential causes of action

- 22.1 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 whose costs have been paid in whole or in part by the Funder under this Funding Agreement.
- 22.2 The Class Representative shall sign and execute all documents, transfers and assignments, and provide all documents, information and material to the Funder and do all things necessary to assign any such cause of action to the Funder.
- 22.3 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 22.1.

- 22.4 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.

23 Dispute resolution

- 23.1 The parties shall use their best endeavours, acting in good faith, to resolve any complaint or dispute under this Agreement.
- 23.2 If the parties cannot resolve any dispute between them within 20 Business Days of either party giving 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").
- 23.3 If the parties are unable to agree on an Expert and/or the terms of his or her appointment within 10 Business Days of either party serving details of a suggested expert on the other, either party shall then be entitled to request the Chairman of the Bar Council to appoint an Expert and to agree with the Expert the terms of his or her appointment.
- 23.4 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 by a maximum of six weeks of the matter being referred to the Expert (unless otherwise agreed by the parties).
- 23.5 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this Clause 23 then:
- 23.5.1 either party may apply to the Chairman of the Bar Council to discharge the Expert and to appoint a replacement Expert; and
- 23.5.2 this Clause 23 applies in relation to the new Expert as if he or she were the first Expert appointed.
- 23.6 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.
- 23.7 To the extent not provided for by this Clause 23, the Expert may in his or her reasonable discretion determine such other procedures to assist with the conduct of the determination as he or she considers just or appropriate, including (to the extent he or she considers necessary) instructing professional advisers to assist him or her in reaching a determination.
- 23.8 Each party shall with reasonable promptness supply each other with all information and give each other access to all documentation as the other party reasonably requires to make a submission under this Clause 23 unless to do so would breach any Order of the Court or any CAT Rules.
- 23.9 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 or her jurisdiction to determine the matters and issues referred to him or her, or his or her terms of reference. The Expert's written decision on the matters referred to him or her shall be final and binding on the parties in the absence of manifest error or fraud.

- 23.10 Each party shall bear its own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by him or her in arriving at his or her determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the parties in such proportions as the Expert shall direct.
- 23.11 All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert.

24 Termination by the Funder

- 24.1 Subject to Clause 8.4, to the extent not previously terminated pursuant to this Clause 24, the Funder's obligation to fund the Action (including but not limited to the Funder's obligations arising under Clauses 5.2 and 7.1 of this Agreement) shall terminate when the Costs Limit is reached or the Action is concluded, whichever is earlier.
- 24.2 Without affecting any other right or remedy available to it, but subject to Clause 28.2, the Funder may terminate this Agreement with immediate effect by giving written notice to the Class Representative if:
- 24.2.1 the Class Representative commits a material and irremediable breach of any other term of this Agreement;
 - 24.2.2 commits a material and remediable breach of this Agreement which is identified in writing by the Funder to the Class Representative and that breach has not been remedied by the Class Representative within 15 Business Days of notice by the Funder, or such or such longer period as may be reasonably necessary for the breach to be remedied;
 - 24.2.3 the Class Representative is unable to pay her debts as they fall due or is the subject of a bankruptcy petition or order;
 - 24.2.4 the Class Representative (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing her own affairs; and/or
 - 24.2.5 the Solicitors (i) are unable to pay their debts as they fall due; or (ii) are the subject of any insolvency proceedings; or (iii) are the subject of any proceedings brought by the Solicitors Regulation Authority; or (iv) fail to maintain adequate professional indemnity insurance; or (v) receive notice that they are no longer representing the Class Representative in circumstances where a suitable replacement fails to be appointed.
- 24.3 The Funder may terminate this Agreement, at any time, by giving the Class Representative 15 Business Days prior written notice that the Funder reasonably:
- 24.3.1 ceases to be satisfied about the merits of the Action, such a view to be reached based on independent legal and, where appropriate, expert advice that has been provided to the Funder; and/or
 - 24.3.2 believes that the Action is no longer commercially viable, such a view to be reached based on independent legal and, where appropriate, expert advice that has been provided to the Funder.

- 24.4 During any notice period arising out of a termination of this Agreement pursuant to clause 24.3 the Class Representative will take all reasonable steps to minimise and control the quantum of the Action Costs and the Additional Action Costs (if any) and keep those costs within the Litigation Plan Budget.
- 24.5 The Funder's right to terminate under this Clause 24 shall apply irrespective of the amount of funding already drawn or utilized under this Agreement and whether or not the Costs Limit has been reached.

25 Termination by the Class Representative

- 25.1 The Class Representative may terminate this Agreement, by notice in writing, if there has been a material breach of this Agreement by the Funder and such breach has not been remedied by the Funder within 30 Business Days or such longer period as may be reasonably necessary for the breach to be remedied.
- 25.2 The Class Representative's right to terminate under Clause 25.1 shall apply irrespective of the amount of funding already drawn or utilised under this Agreement and whether or not the Costs Limit has been reached.

26 Effect of termination

- 26.1 The termination of this Agreement shall not affect the Funder's obligation to pay for Action Costs incurred before termination save in the case of the termination pursuant to Clause 24.1.
- 26.2 The Funder shall not be liable for any Action Costs incurred after termination of this Agreement.
- 26.3 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 Fee provided that the payment of the Funder's Outlay and Funder's Fee in the circumstances set out in Clauses 26.4 - 26.6 shall be as set out in those Clauses.
- 26.4 Following termination of this Agreement under Clause 24.1 or 24.2, the Funder will remain entitled, in the event of Success, to the Funder's Outlay and the Funder's Fee as calculated in accordance with Clause 9 that would have been due had termination not occurred.
- 26.5 Following the termination of this Agreement under Clause 24.3, the Funder will remain entitled, in the event of Success, to the Funder's Outlay and a reduced amount in respect of 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 multiplying the outcome by the Funder's Fee that would have been due had termination not occurred.
- 26.6 Following the termination of this Agreement under Clause 25.1, the Funder shall be entitled to the return of the Funder's Outlay, paid from the Stakeholder Proceeds.

27 Legal relationship

- 27.1 This Agreement is not intended to create a partnership, joint venture, agency (save in accordance with Clause 18) or employment contract.

28 Assignment

- 28.1 This Agreement may be assigned by the Funder with the consent of the Class Representative which shall not be unreasonably withheld or delayed and may not be assigned by the Class Representative without the prior written consent of the Funder.
- 28.2 If the Class Representative is unwilling or unable to continue acting as Class Representative, she may resign her position by giving 20 Business Days' written notice to the Funder (save for where this is not practicable or the Funder agrees to a shorter period). If the Class Representative gives notice under this Clause 28.2, the Funder may require the Class Representative to assign within such notice period her rights and obligations under this Agreement, the Priorities Deed and any other agreements relating to the Action to which she is a party to a replacement Class Representative, the selection of whom will be made following consultation between the Funder and the Solicitors.
- 28.3 If the Class Representative is the subject of a bankruptcy petition or order, or commits a material and irremediable breach envisaged in Clause 24.2.1, the Funder may require the Class Representative to assign her rights and obligations under this Agreement the Priorities Deed and any other agreements relating to the Action to which she is a party to a replacement Class Representative, the selection of whom will be made following consultation between the Funder and the Solicitors.
- 28.4 If the Court's permission is required to effect the steps envisaged by Clause 28.2 or 28.3, the Class Representative will seek the Court's permission accordingly.

29 Co-funding

- 29.1 The Funder shall have the right, acting reasonably, to involve a co-funder in the Action, provided that the exercise of this right shall not:
- 29.1.1 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;
 - 29.1.2 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
 - 29.1.3 grant to any person any more extensive rights than those required to be granted to the Funder under this Agreement.
- 29.2 If the Funder (acting reasonably) chooses to notify the Class Representative in writing of the existence and identity of any co-funder, any co-funder shall:
- 29.2.1 have the benefit of and shall be entitled to enforce against the Class Representative the warranties in Clause 20, as if they had been given directly to the co-funder at the same time as this Agreement was entered into; and
 - 29.2.2 have the right to obtain, and be provided with, all information to which the Funder is entitled, but subject to first providing equivalent undertakings to the Class Representative as set out under Clauses 18 and 19.
- 29.3 If the Funder does not fund any Additional Action Costs (including additional ATE insurance cover) requested by the Class Representative, the Class Representative may seek funding from an alternative source, including from a third party. However, if the

Class Representative wishes to agree with any such third party that the third party's return on its funding will be payable from the Stakeholder Proceeds, any existing Priorities Deed executed in satisfaction of the condition precedent in Clause 1.14.3 shall only be amended by prior agreement in writing, such agreement not to be unreasonably withheld, of all of the parties that have an existing interest under such clause or deed.

29.4 The Funder will provide the Class Representative with all necessary information required by Solicitors and Counsel to satisfy any necessary client due-diligence, anti-money laundering or other compliance requirements.

30 Entire agreement

30.1 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 (or any of them) 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 ALF 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.

30.2 This Agreement can only be amended by the written agreement of all the parties.

31 Third party rights

31.1 Section 2(1) Contracts (Rights of Third Parties) Act 1999 shall not apply.

31.2 Save for any co-funder in relation to Clause 29.1, a party who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999.

32 Notices

32.1 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 32.

32.2 Any notice or document shall be deemed to have been served,

32.2.1 if delivered, at the time of delivery; or

32.2.2 if posted, at 10.00 a.m. on the Business Day after it was put into the post; or

32.2.3 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.

32.3 Any notice sent pursuant to Clauses 32.1 which is not sent by email shall also be sent by email at the same time.

32.4 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.

33 Waiver

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

- 33.1 must be in writing;
- 33.2 does not constitute a waiver with respect to any other breach; and
- 33.3 does not constitute an estoppel with respect to any previous or successive waivers that are made or granted, and the failure by a party at any time to enforce this Agreement is not a waiver by that party of that breach.

34 Commencement and costs

- 34.1 The Funder shall pay its own costs of:
 - 34.1.1 the negotiation, preparation and execution of this Agreement; and
 - 34.1.2 any amendment or consent to, or waiver or release of, this Agreement.
- 34.2 Any costs incurred by the Class Representative in respect of the matters identified in Clause 34.1 shall form part of the Action Costs.

35 Severance

- 35.1 If any provision of this Agreement shall be held to be illegal, invalid or unenforceable the legality, validity or enforceability of the remaining provisions of this Agreement shall not be affected.
- 35.2 Any illegal, invalid or unenforceable provision in this Agreement shall be severable and all other provisions will remain valid and unaffected.
- 35.3 If any 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.

36 Counterparts

- 36.1 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 36.2 The executed signature page of a counterpart of this Agreement by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this Agreement. If this method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the others with the "wet ink" hard copy originals of their counterpart.

37 Governing law and jurisdiction

- 37.1 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. Without prejudice to the parties' rights to refer a dispute to an expert pursuant to Clause 23, the parties irrevocably submit to the exclusive jurisdiction of the English courts for all purposes.

37.2 The Class Representative irrevocably appoints the Solicitors as her agent to receive on her behalf in England or Wales service of any proceedings arising out of or in connection with this Agreement. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Class Representative) and shall be valid until such time as the Funder has received prior written notice from the Class Representative that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Class Representative shall forthwith appoint a substitute acceptable to the Funder and deliver to the Funder the new agent's name, address within England and Wales, failing which the Funder may select a substitute agent to receive on the Class Representative's behalf service of any proceedings arising out of or in connection with this Agreement.

38 Explanation of Agreement

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

- 38.1 the effect of the obligations of, and warranties provided by, the Class Representative;
- 38.2 the Class Representative's duty to provide information to the Funder and to conduct the Action expeditiously;
- 38.3 the Class Representative's potential liability for Adverse Costs and the arrangements in place in respect of the same;
- 38.4 the payment priorities in the event of the receipt of Stakeholder Proceeds as set out in the Priorities Deed;
- 38.5 the proportion of the Stakeholder Proceeds payable to the Funder;
- 38.6 the termination and dispute resolution provisions;
- 38.7 other methods of financing the costs of the Action, including ATE insurance and external finance; and
- 38.8 the advantages and disadvantages of third-party litigation funding.

Confirmation of explanation in Clause 38

We confirm that we have explained this Agreement to the Class Representative prior to it being signed, and in particular the matters referred to in Clause 38.

.....
Signed by Hausfeld & Co LLP
Lesley Hannah

This Agreement was originally entered into on the Effective Date and has been amended and restated on the date stated at the beginning of this Agreement.

Signed

Vannin Capital PCC for and on behalf of Project Pontac PC :

Name:

Position:

Signed

Elizabeth Helen Coll:

Schedule 1

(Form of update to Funder)

Update to Funder

[Case reference TBC]

Dated [] 2020

(Terms are as defined in the litigation funding agreement dated [...] 2020.)

1 Progress of the Action in the preceding calendar month

[Details]

2 Anticipated future steps, timing and strategy

[Details]

3 Any material changes in the Action

[None.][Details]

Signed by

.....
[Name], for and on behalf of Hausfeld & Co LLP

Schedule 2

(Form of Funding Notice)

Funding Notice

[Case reference TBC]

Dated [] 2020

For the period from [] 2020 to []

2020 (Terms are as defined in the litigation funding agreement

dated [...].)

1 Any developments, not previously identified to the Funder that are adverse to the likelihood of Success

[None.][Details]

2 Report on the progress of the Action in the preceding calendar month and an update of the anticipated future steps, timing, strategy and any material changes

[Report]

3 Budget

[The Budget is unchanged.] [An updated estimate of Adverse Costs is as follows:]

4 Claim

The following Action Costs specific to this matter, for which payment is claimed, are consistent with the Budget, accurate and not the subject of another Funding Notice:

	Payee	Invoice date	Total amount (£)
Solicitors' fees			
Law Firm's disbursements			
Counsel's fees			
Expert's fees			
VAT (fees and disbursements)			
ATE Premium			
Court/Tribunal fees			

Other fees			
Grand total claimed by this funding notice			[XXXX]

Copies of invoices with summary details of the time charges and the narrative for each item are attached.

5 Account details

The grand total in the table above should be credited to the following account as set out at clause 7.1:

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

6 Irrevocability

This Funding Notice is irrevocable.

Signed by

.....
Elizabeth Helen Coll, Class Representative

.....
[Name], for and on behalf of Hausfeld & Co LLP

Schedule 3

(ATE Insurance)

The ATE insurance policy dated _____ between the Class Representative and:

- 1 **LITICA LTD** a company registered in England and Wales under company number 11864319 with its registered office at 87-91 Newman Street, London W1T 3EY;
- 2 **INTERNATIONAL GENERAL INSURANCE COMPANY (UK) LTD** administrated by Litica Ltd a company registered in England and Wales under company number 06870207 with its registered office at Forum House 15-18, Lime Street, London, EC3M 7AN;
- 3 **LAKEHOUSE RISK SERVICES LTD** a company registered in England and Wales with company number 10052270 with its registered office at Forum House 15 – 18 Lime Street, London EC3M 7AN; and
- 4 **VALE INSURANCE PARTNERS EUROPE B.V.** of Claude Debussylaan 10, 1082 MD Amsterdam, The Netherlands (registration number 860204960) on behalf of **PARTNERRE IRELAND DAC** incorporated in Ireland (registration number 395191).

Schedule 4

(Form of Notice and Irrevocable Direction to the Solicitors)

Elizabeth Helen Coll

████████████████████
████████████████████
████████████████████

Hausfeld & Co LLP
12 Gough Square
London
EC4A 3DW
United Kingdom

(the "**Solicitors**")

Dear Hausfeld

Litigation Funding Agreement dated 11 May 2022 between Vannin Capital PCC for and on behalf of Project Pontac PC and Elizabeth Helen Coll (the "Class Representative") as amended and restated on 6 November 2023 (the "Litigation Funding Agreement")

Capitalised terms which are used but not defined in this letter have the meanings ascribed to such terms in the Litigation Funding Agreement.

Pursuant to Clause 9.1 of the Litigation Funding Agreement referred to above, the Class Representative hereby gives irrevocable instructions to the Solicitors to hold the Proceeds on trust.

The Class Representative hereby irrevocably directs that all Stakeholder Proceeds received pursuant to the Action shall be distributed in accordance with the Priorities Deed as amended and restated on 6 November 2023.

Please acknowledge receipt of this letter by return.

Yours faithfully

.....
Elizabeth Helen Coll

We acknowledge receipt and the contents of this letter

.....
Hausfeld & Co LLP

Date:

Appendix 1

Appendix 2

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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[Redacted]

[Redacted]

Appendix 3