

DATED 8 January 2024

(This Litigation Funding Agreement replaces and restates the Litigation Funding Agreement made between the Parties on 9th November 2022.)

**AMENDED AND RESTATED LITIGATION FUNDING  
AGREEMENT**

between

**ERSO CAPITAL PCC LIMITED ACTING ON BEHALF OF AND SOLELY IN RELATION TO  
ITS CELL, JDG EU GALIBIER CELL**

and

**WATERSIDE CLASS LIMITED**

and

**SIMMONS & SIMMONS LLP**

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SCHEDULE 1 – Form of update to Funder

SCHEDULE 2 – Form of Funding Notice

Not Used

SCHEDULE 4 – Form of Notice and Irrevocable Direction to the Solicitors

APPENDIX 1 – Litigation Plan Budget

APPENDIX 2 – Specimen Reliance Letter

APPENDIX 3 – Specimen Priorities Deed

APPENDIX 4 – Specimen ATE Policy

## AMENDED AND RESTATED LITIGATION FUNDING AGREEMENT

**DATED:** 8 January 2024

(This Litigation Funding Agreement replaces and restates the Litigation Funding Agreement made between the Parties on 9th November 2022.)

### MADE BETWEEN:

- (1) **ERSO CAPITAL PCC LIMITED** a protected cell company incorporated under the laws of the Isle of Man with registration number 018415V and having its registered office at Level 2, Samuel House, 5-11 St Georges St, Douglas, IM1 1AJ, Isle of Man acting on behalf of and solely in relation to its cell, JDG EU Galibier Cell ("**Funder**");
- (2) **WATERSIDE CLASS LIMITED** of 1 The Green, Richmond, England, TW9 1PL (company number 14400618) ("**Class Representative**"); and
- (3) **SIMMONS & SIMMONS LLP** of Citypoint, 1 Ropemaker Street, London EC2Y 9SS (the "**Solicitors**").

Hereafter, each a "**Party**" and together "**the Parties**".

### INTRODUCTION

- A. Waterside Class Limited, acting as the Class Representative, intends to bring the Action in the Competition Appeal Tribunal against the Defendants 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 whom it 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 agreed to provide litigation funding and the Parties entered into a litigation claim funding agreement dated 9 November 2022 (the "**Original LFA**").
- F. Pursuant to clause 30.2 of the Original LFA, the Parties have now agreed to amend and restate the Original LFA in the form of this Agreement.

### It is agreed as follows:

#### 1. Definitions

In this Agreement:

- 1.1 "**Action**" means a claim against the Defendants for breach of Chapter I of the Competition Act 1998, brought by the Class Representative pursuant to Section 47B of

the Competition Act 1998 in respect of the Defendants' 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);

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 fees and disbursements as specified in the Class Representative's Remuneration Agreement;

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, as set out in the Litigation Plan Budget, the Action Costs up to and including the certification of the claim by the CAT shall be capped at the Phase Costs Limit for certification.

- 1.3 “**Additional Action Costs**” means any Action Costs over and above the Litigation Plan Budget and/or any Phase Costs Limit approved by the Funder in accordance with this Agreement.
- 1.4 “**Adverse Costs**” means any Defendant’s costs, including any VAT, which the Class Representative is properly liable to pay the Defendants in the Action by way of Court Order or agreement entered into with the consent of the Funder.
- 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 indemnifying the Class Representative in respect of its potential liability for Adverse Costs on terms substantially in the form appended to this Agreement at Appendix 4 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 (the **Solicitors CFA**) 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.
- 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 Waterside Class Limited or any replacement appointed in accordance with Clause 28.
- 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 and cover being in place under the ATE Policy;
  - 1.14.2 sight of the executed CFAs in a form and substance satisfactory to the Funder, together with all supporting engagement documents;
  - 1.14.3 the Priorities Deed (see Appendix 3 to this Agreement) duly executed by all the parties to it;
  - 1.14.4 sight of the Class Representative's Remuneration Agreement in a form and substance satisfactory to the Funder;

- 1.14.5 sight of the Class Representative's memorandum of association, articles of association and other constitutional documents in a form and substance satisfactory to the Funder.
- 1.14.6 such further due diligence of the Action to the satisfaction of the Funder in its sole discretion is completed.
- 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 **"Conditions Satisfaction Notice"** means a notice issued in writing by the Funder to confirm that all of the Conditions Precedent have been satisfied and/or waived.
- 1.17 **"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.
- 1.18 **"Counsel"** means Senior Counsel and Junior Counsel.
- 1.19 **"Court"** means the CAT and any other Court in the United Kingdom.
- 1.20 **"CPO"** means a collective proceedings order made in accordance with Part 5 of the CAT Rules.
- 1.21 **"Deferred Solicitors CFA Fees"** means all fees, excluding Success Fees (as defined in the Solicitors CFA), payable pursuant to the Solicitors CFA other than those fees which have been funded by the Funder pursuant to the LFA.
- 1.22 **"Defendants"** means the salmon producers that the Class Representative and the Funder specifically agree are to be defendants and such other defendants that pursuant to Clause 14.2 may be added to this definition for the purpose of this Agreement.
- 1.23 **"Expert"** means person/s appointed in accordance with Clause 23.
- 1.24 **"Funder's Fee"** means the fee due to the Funder in accordance with 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 Supplemental Return"** is as defined in Clause 9.
- 1.28 **"Funder's Outlay"** means: i) 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 or the Original LFA; ii) all other external costs reasonably incurred by the Funder in connection with the Action subject to costs incurred by the Funder following the issuance of a Conditions Satisfaction Notice being subject to an aggregate cap of £150,000; and iii) any sum the Funder is ordered to pay or agrees to pay as security for costs or pays to procure any other instrument to act as security. For the avoidance of doubt, the Funder's Outlay shall include all amounts, costs or sums of the type set out in this definition that were paid, incurred or ordered pursuant to the Original LFA.
- 1.29 **"Funding Notice"** means a notice from the Solicitors for and on behalf of 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.

- 1.30 “**Judgment**” means any final judgment or award in the Action including the conclusion of any appeals.
- 1.31 “**Junior Counsel**” means Matthew Kennedy of Brick Court Chambers and/or any other junior barrister retained by the Class Representative or the Solicitors in relation to the Action.
- 1.32 “**Litigation Plan Budget**” means the project plan for the Action, as amended from time to time, and including Additional Action Costs as agreed, the Solicitor’s 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.
- 1.33 “**Order**” means any interim, interlocutory or final order or direction of the Court in the Action.
- 1.33A “**Original LFA**” has the meaning given in Recital E.
- 1.34 “**Phase of the Action**” means a phase of the Action as described in the Litigation Plan Budget.
- 1.35 “**Phase Costs Limit**” means the budgeted cost to be incurred in any Phase of the Action as described in the Litigation Plan Budget.
- 1.36 “**Priorities Deed**” means the amended and restated priorities agreement substantially in the form appended to this Agreement at Appendix 3, to be executed by the Class Representative as soon as reasonably practicable after, the date of this Agreement and cover being in place under the ATE Policy.
- 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 the value of 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 Defendants in connection with the Action including any costs recovered from the Defendants in respect of distribution of the Proceeds to the Class Members.
- 1.41 “**Senior Counsel**” means Sarah Abram KC of Brick Court Chambers, and/or any other senior barrister retained by the Class Representative or the Solicitors in relation to the Action.
- 1.42 “**Solicitors**” means Simmons & Simmons LLP authorised by the Solicitors Regulation Authority under registration number 533587 and having its office at Citypoint, 1 Ropemaker Street, London EC2Y 9SS 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 CFA”** shall mean the conditional fee agreement dated 9<sup>th</sup> November 2022, including the Simmons & Simmons Terms of Business, between the Solicitors and the Class Representative.
- 1.44 **“Solicitors Excess Fees”** means, subject to Clause 5.7, any fees incurred by the Solicitors in excess of the amounts provided for in the Litigation Plan Budget including in relation to a particular Phase Costs Limit or the Costs Limit.
- 1.45 **“Stakeholder Proceeds”** means (i) any Recovered Costs; (ii) any amount paid to the Class Representative (or directly to any party engaged or instructed by or on behalf of the Class Representative) pursuant to an Order of the Court in respect of costs, fees, disbursements or expenses incurred by the Class Representative whether from Undistributed Damages or otherwise; and (iii) any amount approved by the Court in a Collective Settlement Approval Order to be paid to the Class Representative (or directly to any party engaged or instructed by or on behalf of the Class Representative).
- 1.46 **“Success”** means the Court making an order, including a Collective Settlement Approval Order, pursuant to which the Defendants or any third party become obliged to pay any Proceeds in respect of the Action to the Class Representative.
- 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 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 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.

## **2A. Amendment and Restatement**

With effect from the date of this Agreement, the Original LFA shall be read and construed for all purposes as recorded in this Agreement.

## **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 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 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 date of this Agreement, 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, direction 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 its 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 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 increase the likelihood of obtaining and to obtain an Order from the Court which maximises recovery of the Class Representative's full costs and expenses, including an Order that the Class Representative's full costs and expenses, other than Recovered Costs, can be paid from Undistributed Damages or otherwise;
  - 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 by Solicitors and/or Counsel;
  - 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 increase the likelihood of obtaining and to obtain an Order from the Court which maximises recovery of the Class Representative's full costs and expenses including an Order that the Class Representative's full costs and expenses, other than Recovered Costs, can be paid from Undistributed Damages or otherwise;
  - 3.2.12.8 take all reasonable steps 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 or having to provide security for costs, including instructing the Solicitors to take reasonable and appropriate steps to exchange costs information with the Defendants;
  - 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.
- 3.2.13 Disclose all matters which may be relevant in relation to any ATE Policy, take all such other actions (and instruct the Solicitors to take all such other actions)

within its control as may be necessary to ensure that the ATE Policy remains in full force and effect and at all times comply with the terms of the ATE Policy.

- 3.3 For the period of this Agreement, the Solicitors shall and the Class Representative shall instruct the Solicitors to make prompt and full disclosure in writing to the Funder of any new facts or matters which it 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 5.3, pay the Action Costs in accordance with the Litigation Plan Budget up to the Costs Limit in accordance with Clause 7; and
  - 4.1.2 comply diligently with this Agreement.
- 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.
- 4.3 Any liabilities of the Funder under this Agreement are the liabilities solely of the cellular assets of the Funder that are attributable to the JDG EU Galibier Cell.

#### **5. The Funding**

- 5.1 This Agreement shall commence on the date on which it is duly executed by all of the parties to it.
- 5.2 The Funder shall not be liable to provide any funding for Action Costs pursuant to this Agreement until the Class Representative has complied with or delivered to the Funder the Conditions Precedent in form and substance satisfactory to the Funder and the Funder has confirmed that the Conditions Precedent have been satisfied or waived by issuance of a Conditions Satisfaction Notice. Thereafter, the Funder shall not be liable to provide any funding pursuant to this Agreement until it has received a Funding Notice in accordance with Clause 5.3 and Clause 7.
- 5.3 Subject to:
  - 5.3.1 the delivery of a Conditions Satisfaction Notice by the Funder of each of the Conditions Precedent; and
  - 5.3.2 Clause 7.7,

the Funder shall pay the Action Costs incurred and properly claimed by Funding Notices up to the Phase Costs Limit for each Phase of the Action and (in aggregate) the Costs Limit.
- 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 Any Solicitors Excess Fees incurred by the Solicitors shall be Deferred Solicitors CFA Fees, save that before any further Solicitors Excess Fees are incurred, the Class Representative shall, subject to Clauses 5.3 and 7, be permitted to utilise any unused portion of any earlier Phase Cost Limits provided always that the relevant earlier Phase of the Action is complete. The Class Representative may request in writing that the Funder pay Additional Action Costs in respect of any costs which are not Solicitors Excess Fees by requesting an increase to a Phase Cost Limit and/or the Cost Limit. If the Class Representative requests such an increase in writing, the Funder shall have the exclusive option to decide whether to provide that additional funding for a period of 25 Business Days from and excluding the date on which the request is made in writing. If the Funder decides, in its sole discretion, 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 25 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 (save for in relation to Solicitors Excess Fees) from a third party. If the third party offers to fund the Additional Action costs on terms more favourable to the third party than the terms of this Agreement, the Class Representative shall give the Funder the opportunity to fund Additional Action Costs on those terms. The Funder shall confirm whether it agrees to fund such Additional Action Costs within 20 Business Days, failing which the Class Representative may obtain funding from the third party if the third party accedes to the Priorities Deed in accordance with Clause 29.3.
- 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.
- 5.11 Except where Clause 5.8 applies, the Class Representative shall not for the duration of this Agreement seek or obtain funding for the Action from any third party funder.

## **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 decide whether to do so for the period of 10 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 a 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]

[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 of the Action 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 requires from time to time; and
  - 7.3.6 only seek payment of Action Costs for each Phase of the Action that fall within the Phase Costs Limit and within the overall Cost 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, the Class Representative (or the Solicitors on the Class Representative's behalf) shall notify the Funder immediately upon becoming aware of any such overpayment and such overpayment shall be repaid as soon as reasonably practicable after the overpayment is identified.
- 7.6 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 10 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 10 Business Days have elapsed since any such discussion, or if the discussion has not taken place within 15 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.
- 7.7 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 7.6 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, including following the addition of any parties or causes of action pursuant to Clause 14.2, 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 take out such additional ATE insurance cover or other instrument as may be required by the Funder or the Court to meet any

anticipated liability for Adverse Costs or defeat any application for security for costs. However, the Funder is under no obligation to request and 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 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 it to provide security for costs in the Action or for a non-party costs order against the Funder or any other party 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 and shall instruct the Solicitors and Counsel to:
  - 8.4.1 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;
  - 8.4.2 if advised by Solicitors and/or 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. Any such variation agreed by the Funder shall be deemed to be Action Costs and the Costs Limit shall be increased accordingly.
  - 8.4.3 take all steps reasonably required by the Funder in relation to any non-party costs application or threatened application.

## **9. Success in the Action**

- 9.1 In the event of Success, the Class Representative, assisted by the 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 which maximises recovery of the Class Representative's costs, fees, disbursements and expenses in connection with the Action including but not limited to the Funder's Fee, whether from Undistributed Damages or otherwise;
  - 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 or as the Court otherwise orders;
  - 9.1.4 direct the Defendants to pay all Proceeds to the Proceeds Account and, if the Class Representative receives any Proceeds directly from the Defendants despite such direction, pay such Proceeds into the Proceeds Account within 3 business days of receipt;

- 9.1.5 apply, or instruct the 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) the amount which results in the internal rate of return with respect to Funder's Outlay being 30% (thirty percent) when calculated using the Microsoft Excel XIRR function (the "**Funder's Initial Return**"); and
  - 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 one times the Funder's Outlay (the "**Funder's Supplemental Return**").
- 9.3 If one or more of the Defendants settle separately to the others, then the Class Representative and the Funder shall use reasonable endeavours to agree on a structure for the purposes of determining the distribution of Proceeds with respect to any bilateral or multilateral settlement.
- 9.4 The Class Representative shall give to its 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 its 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 it, and forming part of the Action Costs, where the Class Representative 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 Defendants or from any third party, the Class Representative shall, following discussion with the Solicitors, instruct the Solicitors to hold the funds on account and reallocate such interim recoveries of Action Costs as the Funder agrees, in its absolute discretion, 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 treated as Recovered Costs and 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 Solicitor and the Class Representative shall upon request provide to the Funder, and/or the Class Representative shall 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 including all documents and/or correspondence in relation to the Action received from and sent to the Defendants, the Court or any other party and attendance notes, notes of meetings, advices, opinions and/or research notes relevant to the Action.
- 13.2 The Solicitors and the Class Representative 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 Solicitors shall and the Class Representative shall instruct the Solicitors to, within 5 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, costs and any material change in the Action in the format provided in Schedule 1 to this Agreement together with any other information which the Funder may reasonably request.
- 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 or financiers, 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 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 in accordance with Clause 5.7.

- 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 a 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, evidence in opposition and any written advice received by the Class Representative regarding the merits of the application.
- 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;
  - 15.1.4 consulting with the Funder; and
  - 15.1.5 having provided reasonable notice to the Funder.
- 15.2 The Class Representative agrees that in the event that 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, the Class Representative 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 under Clause 24.3.1.
- 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 5.3 in respect of Action Costs up to and including the date of the Defendants 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 or the Solicitors on the Class Representative's behalf as soon as reasonably possible of any meetings relating to settlement or discontinuance with the Defendants 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 Solicitors shall and the Class Representative 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 an insurer or a parent or associated company or an actual or potential, direct or indirect, shareholder or investor or financier 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 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 and the Action 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;
- 20.2 the Class Representative has disclosed and has irrevocably instructed the Solicitors to disclose any and all facts or circumstances within its knowledge which materially adversely affect:
- 20.2.1 the conduct, progress or continuation of the Proceedings; or
  - 20.2.2 the Class Representative's prospects of successfully enforcing any judgment in the Proceedings; or
  - 20.2.3 the prospects of Success in the Proceedings;



- 20.3 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;
- 20.4 it has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement and any other documents to which it is or will be a party and the transactions contemplated by those documents.
- 20.5 the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations;
- 20.6 the entry into and performance by it of, and the transactions contemplated by, this Agreement and any other documents to which it is or will be a party and the transactions contemplated by those documents, do not and will not conflict with any law or regulation applicable to it or its constitutional documents;
- 20.7 it will not conduct any business other than the pursuit of the Action and the Proceedings and the distribution of any Proceeds following Success;
- 20.8 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
- 20.9 to the best of its knowledge and belief:
  - 20.9.1 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;
  - 20.9.2 the Class Representative is entitled to issue the Action;
  - 20.9.3 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 remain free of any lien, charge or encumbrance and have not been and will not be assigned by the Class Representative in whole or in part;
  - 20.9.4 the Class Representative has identified (and, where possible, provided to the Solicitors) any information, document, tape, disk, record and other relevant items in its possession, which is or could reasonably be material to the Action;
  - 20.9.5 the Class Representative has at all times complied with the obligations and duties of ongoing disclosure and to act in good faith.
- 20.10 The Class Representative has disclosed and shall disclose to the Funder and the ATE Policy insurer all matters which may be relevant in relation to the ATE Policy and take all such other actions within its control as may be necessary to ensure that the ATE Policy remains in full force and effect.
- 20.11 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 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.

- 20.12 The warranties set out in this Clause 20 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.

## **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 its behalf in the Action. Should the Class Representative wish to retain alternative solicitors in place of the Solicitors, it shall consult with the Funder, and shall only retain alternative solicitors on terms equivalent to the CFAs and shall require the new solicitors to accede to the terms of this Agreement and the Priorities Deed or enter into a deed of priority in materially the same form as the Priorities Deed.
- 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 date of this Agreement may be relied on by the Funder.
- 21.7 The Solicitors shall and the Class Representative will 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 and the Class Representative will instruct the Solicitors to provide to the Funder:
- 21.8.1 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; and
- 21.8.2 with every written report pursuant Clause 13.3 a copy of the current Litigation Plan Budget, details of Action Costs that have been the subject of Funding Notices for each Phase of the Action as against the relevant Phase Costs Limit; and details of any Solicitors Excess Fees.

- 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 (but not the Class Members) 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 Chair 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 Chair 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 If a Conditions Satisfaction Notice has not been issued within 140 days of the date of this Agreement or such longer period as the Parties shall agree, the Funder may at any time thereafter terminate this Agreement, with immediate effect, by written notice to the Class Representative.
- 24.2 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 5.3 and 7.1 of this Agreement) shall terminate when the Costs Limit is reached or the Action is concluded, whichever is earlier.
- 24.3 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:
- 24.3.1 the Class Representative or the Solicitors commit a material and irremediable breach of any other term of this Agreement;
  - 24.3.2 the Class Representative or the Solicitors commit 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 or the Solicitors as relevant within 10 Business Days of notice by the Funder, or such longer period as may be reasonably necessary for the breach to be remedied;
  - 24.3.3 the Class Representative is unable to pay its debts as they fall due or is the subject of any corporate action, legal proceedings or other procedure or step taken against it in relation to i) winding-up, administration or re-organisation or ii) the appointment of a liquidator, administrator or other similar officer in respect of it or any of its assets;

- 24.3.4 any director of the Class Representative dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or resigns as a director of the Class Representative and, within 10 Business Days, a replacement director approved by the Funder is not appointed; and/or
  - 24.3.5 any individual involved with the Action is the subject of any proceedings brought by the Solicitors Regulation Authority or the Solicitors (i) are unable to pay their debts as they fall due; or (ii) are the subject of any insolvency proceedings; or (iii) have their authorisation by the SRA revoked or have conditions imposed by the SRA on their authorisation that, in the opinion of the Funder, restricts their ability to act; or (iv) fail to comply with the financial or insurance terms of their authorisation, statutory obligations and relevant requirements of the SRA Standards and Regulations (as amended from time to time) insofar as they relate to the their financial or insurance status; or (v) receive notice that they are no longer representing the Class Representative in circumstances where a suitable replacement fails to be appointed.
- 24.4 The Funder may terminate this Agreement, at any time, by giving the Class Representative 10 Business Days prior written notice that the Funder reasonably:
- 24.4.1 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
  - 24.4.2 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.
- 24.5 During any notice period arising out of a termination of this Agreement pursuant to Clause 24.4 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.
- 24.6 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 10 Business Days of receipt of such notice 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.
- 25.3 If a Conditions Satisfaction Notice has not been issued within 140 days of the date of this Agreement or such longer period as the Parties shall agree, the Class Representative may at any time thereafter terminate this Agreement, with immediate effect, by written notice to the Funder.

## **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 24.2.
- 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 - 26.5 shall be as set out in those Clauses.
- 26.4 Following termination of this Agreement under:
  - 26.4.1 Clause 24.1 or 25.3, the Funder will remain entitled, in the event of Success, to be paid its reasonable costs and expenses in relation to this Agreement and the Action, including, but not limited to, its costs of conducting due diligence on the Action.
  - 26.4.2 Clause 24.2 or 24.3, 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.
  - 26.4.3 Clause 24.4, 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.
- 26.5 Following the termination of this Agreement under Clause 25.1, in the event of Success the Funder shall be entitled to the return of the Funder's Outlay together with the Funder's Initial Return, 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 and Clause 37.2) 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, the Class Representative may resign 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 or any director of the Class Representative resigns as a director of the Class Representative, the Funder may require the Class Representative to assign within such notice period or within 20 Business Days of the Funder being informed of such director resigning, the rights and obligations under this Agreement, the Priorities Deed and any other agreements relating to the Action to which the Class Representative 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 any corporate action, legal proceedings or other procedure or step taken against it in relation to i) winding-up, administration or re-organisation or ii) the appointment of a liquidator, administrator or other similar officer in respect of it or any of its assets, or commits a material and irremediable breach envisaged in Clause 24.3.1, the Funder may require the Class Representative to assign the rights and obligations under this Agreement, the Priorities Deed and any other agreements relating to the Action to which the Class Representative 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 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 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 agree to 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 in accordance with Clause 5.8. 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, the Class Representative shall require any such third party funder to accede to the Priorities Deed executed in satisfaction of the condition precedent in Clause 1.14.3 on the basis that such third party funder ranks behind the Funder unless the Funder agrees otherwise.
- 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.

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 the Priorities Deed, 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 its agent to receive on its 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 the Class Representative 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 Simmons & Simmons LLP  
Patrick Boylan

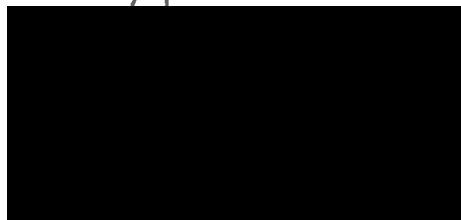
The parties have executed this Agreement as of the date at the beginning of this Agreement.

**Signed**

Erso Capital PCC Limited acting on behalf of and solely in relation to its cell, IDG EU Galibier Cell:

Name:

Position:



**Signed**

Waterside Class Limited:

.....

**Signed**

Simmons & Simmons LLP:

.....

Name:

.....

Position:

.....

The parties have executed this Agreement as of the date at the beginning of this Agreement.

**Signed**

Erso Capital PCC Limited acting on behalf of and solely in relation to its cell, JDG EU Galibier Cell:

.....  
Name: .....  
Position: .....

**Signed**

Waterside Class Limited:



**Signed**

Simmons & Simmons LLP:

.....  
Name: .....  
Position: .....

The parties have executed this Agreement as of the date at the beginning of this Agreement.

**Signed**

Erso Capital PCC Limited acting on behalf of and solely in relation to its cell, JDG EU Galibier Cell:

.....  
Name: .....  
Position: .....

**Signed**

Waterside Class Limited: .....

**Signed**

Simmons & Simmons LLP: .....  
Name: Patrick Boylan .....  
Position: Partner .....

## **SCHEDULE 1**

**(Form of update to Funder)**

### **Update to Funder**

**Waterside Class Ltd v Salmon**

Dated [ ] 2022

(Terms are as defined in the litigation funding agreement dated [...] 2022.)

**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]

**4. Costs**

[Attach current Litigation Funding Budget]

Details of Action Costs that have been the subject of Funding Notices for each Phase of the Action as against the relevant Phase Costs Limit; and

Details of any Solicitors Excess Fees]

Signed by

.....

**Patrick Boylan, for and on behalf of Simmons & Simmons LLP**

**SCHEDULE 2****(Form of Funding Notice)****Funding Notice****Waterside Class Ltd v Salmon**

Dated [ ] 2022

For the period from [ ] 2022 to [ ] 2022 (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:

	<b>Payee</b>	<b>Invoice date</b>	<b>Total amount (£)</b>
Solicitors' fees			
Solicitors' disbursements			
Counsel's fees			
Expert's fees			
VAT (fees and disbursements)			

ATE Premium			
Court/Tribunal fees			
Other fees			
<b>Grand total claimed by this funding notice</b>			<u>[XXXX]</u>

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]

#### 6. Irrevocability

This Funding Notice is irrevocable.

Signed by

.....  
**Waterside Class Limited, Class Representative**

.....  
**Patrick Boylan, for and on behalf of Simmons & Simmons LLP**



**SCHEDULE 3**

**Not Used**

## SCHEDULE 4

### (Form of Notice and Irrevocable Direction to the Solicitors)

Waterside Class Limited  
1 The Green  
Richmond  
England  
TW9 1PL

Simmons & Simmons LLP  
Citypoint  
1 Ropemaker Street  
London  
EC2Y 9SS

(the “**Solicitors**”)

Dear Simmons & Simmons LLP

**Litigation Funding Agreement originally dated 9 November 2022, as amended and restated on [DATE....] between Erso Capital PCC Limited acting on behalf of and solely in relation to its cell, JDG EU Galibier Cell and Waterside Class Limited (the "Class Representative") (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.

Please acknowledge receipt of this letter by return.

Yours faithfully

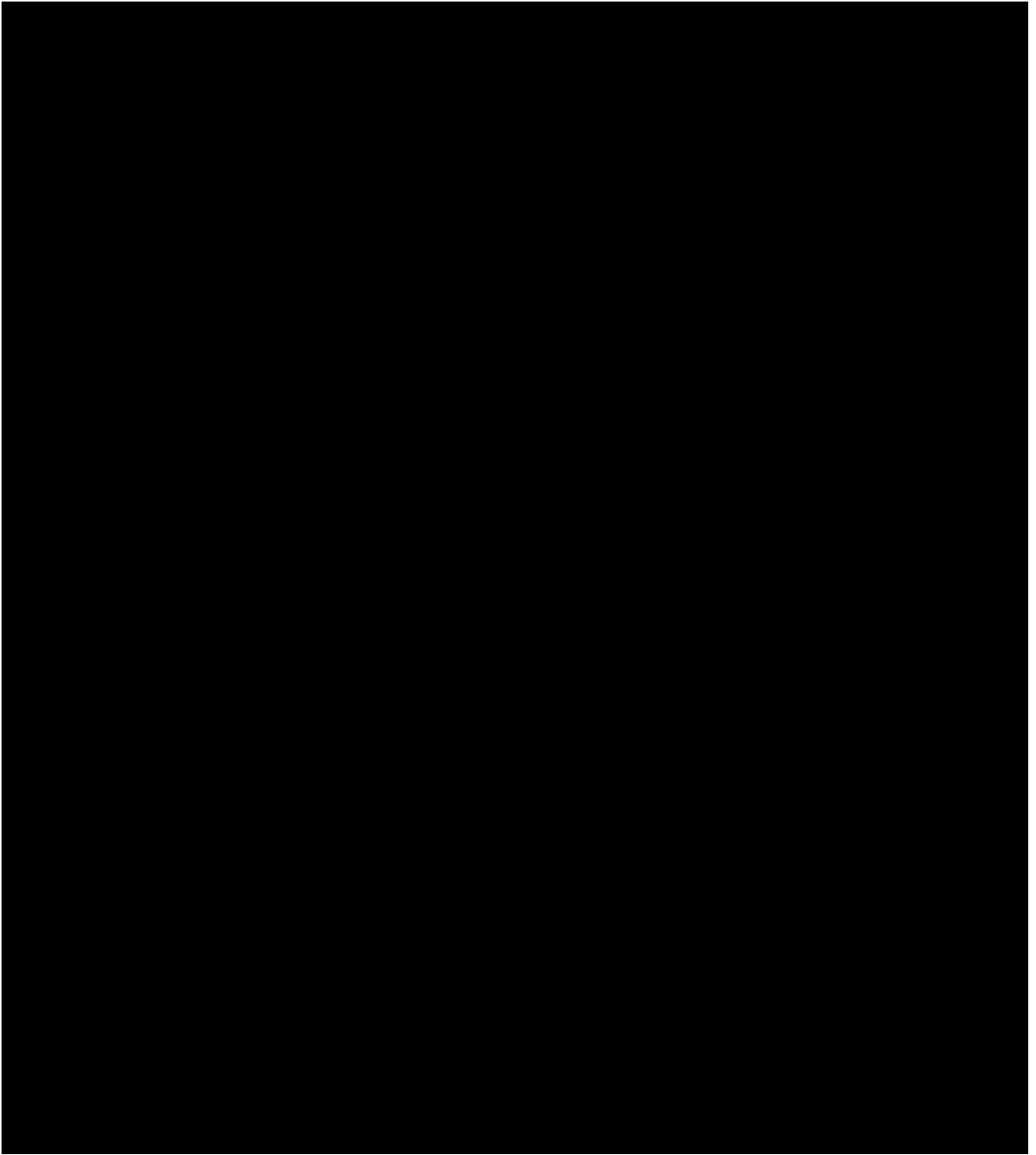
.....  
**Waterside Class Limited**

We acknowledge receipt and the contents of this letter

.....  
**Simmons & Simmons LLP**

Date:.....

**APPENDIX 1**  
**Litigation Plan Budget**



## APPENDIX 2

Specimen reliance letter from Solicitors to be printed on Solicitors' Letterhead

Erso Capital PCC Limited  
(acting on behalf of and solely in relation to its cell, JDG EU Galibier Cell),  
Level 2,  
Samuel House,  
5-11 St Georges St,  
Douglas,  
IM1 1AJ,  
Isle of Man

Dear Erso Capital PCC Limited

### **CAT collective action against various salmon producers (the "Action")**

1. We refer to the above Action in which we act for the Class Representative. Erso Capital PCC Limited acting on behalf of and solely in relation to its cell, JDG EU Galibier Cell: (the "**Funder**") entered into a Litigation Funding Agreement and Priorities Deed on 9 November 2022, in which the Funder agreed to fund the Class Representative's costs and disbursements on the terms set out in the Litigation Plan Budget therein.
2. The Class Representative and Funder have now entered into an amended and restated Litigation Funding Agreement (the "**LFA**") and an amended and restated Priorities Deed (the "**Priorities Deed**") on or around the date of this letter.
3. At Clause 20 of the LFA, the Class Representative acknowledges that the Funder has entered into the LFA based upon the completeness and accuracy of the information provided by the Class Representative, or by its Solicitors, or others on the Class Representative's instructions, to the Funder. The Class Representative warrants to the best of the Class Representative's knowledge and belief that the information and material made available to the Funder is accurate, complete and true in all material respects and that they have not failed to disclose any information, documents or material which would be relevant to the Funder's decision to enter into and remain bound by the LFA.
4. Insofar as the information, materials and/or documents made available to the Funder prior to entering into the LFA, consist of information, documents or advice to the Class Representative provided by the Solicitors, the Solicitors acknowledge and accept that they have assumed a duty of care to the Funder in respect of that information and /or advice, and the Funder has relied upon the information, documents and advice to the Class Representative provided by the Solicitors.

Yours faithfully

.....  
**Simmons & Simmons LLP**

Date:.....

DATED 8 January 2024

(This Deed of Priority replaces and restates the Deed made between the Parties on 30th November 2022.)

## DEED OF PRIORITY

Between

Waterside Class Limited of 1 The Green, Richmond, England, TW9 1PL (the "Class Representative")  
(1)

Erso Capital PCC Limited of Level 2, Samuel House, 5-11 St Georges St, Douglas, IM1 1AJ, Isle of Man acting on behalf of and solely in relation to its cell, JDG EU Galibier Cell: (company number 018415V) (the "Funder") (2)

Simmons & Simmons LLP of Citypoint, 1 Ropemaker Street, London EC2Y 9SS (the "Solicitors")  
(3)

Sarah Abram KC of Brick Court Chambers, 7-8 Essex Street,  
London WC2R 3LD (4)

Matthew Kennedy of Brick Court Chambers, 7-8 Essex Street, London WC2R 3LD (5)

Litica Ltd of 16 Eastcheap, London EC3M 1BD (company number 11864319) (6)

Lloyd's Syndicate AES 1225 (AEGIS Managing Agency Limited), Lloyd's Syndicate AUW 609 (Atrium Underwriters Limited), and Lloyd's Syndicates KLN 510 and TMK 1880 (Tokio Marine Kiln Syndicates Ltd) (7)

VALE Insurance Partners Europe BV., UK Branch of 51 Eastcheap, London EC3M 1JP (company number FC036430 and UK establishment number BR021518) (8)

Mission Underwriting UK Limited t/a Ignite of One Fleet Place, London, England, EC4M 7WS  
(company number 05314336) (9)

International General Insurance Company (UK) Limited of 15-18 Forum House, Lime Street,  
London EC3M 7AN (company number 06870207) (10)

Angeion Group International with company registration number FC037343 whose registered office is  
~~1650 Arch Street, Suite 2210, Philadelphia, Pennsylvania 19103, United States~~ ("Claims  
Administrator") (11)

ONE HIGH ST  
ECHAM  
LONDON  
TW20 9HJ

This Deed is made on 8 January 2024

[Date]

(This Deed replaces and restates the Deed made between the Parties on 30th November 2022.)

**Between:**

- (1) Waterside Class Limited of 1 The Green, Richmond, England, TW9 1PL (the "**Class Representative**")
- (2) Erso Capital PCC Limited of Level 2, Samuel House, 5-11 St Georges St, Douglas, IM1 1AJ, Isle of Man acting on behalf of and solely in relation to its cell, JDG EU Galibier Cell (company number 018415V ) (the "**Funder**")
- (3) Simmons & Simmons LLP of Citypoint, 1 Ropemaker Street, London EC2Y 9SS (the "**Solicitors**")
- (4) Sarah Abram KC of Brick Court Chambers, 7-8 Essex Street, London WC2R 3LD ("**Senior Counsel**")
- (5) Matthew Kennedy of Brick Court Chambers, 7-8 Essex Street, London WC2R 3LD ("**Junior Counsel**")
- (6) Litica Ltd of 16 Eastcheap, London EC3M 1BD(company number 11864319) acting as agent of Accredited Insurance (Europe) Ltd, AXA Insurance UK PLC, Axis Specialty Europe SE, International General Insurance Company (UK) Limited, and Markel Bermuda Limited
- (7) Lloyd's Syndicate AES 1225 (AEGIS Managing Agency Limited), Lloyd's Syndicate AWW 609 (Atrium Underwriters Limited), and Lloyd's Syndicates KLN 510 and TMK 1880 (Tokio Marine Kiln Syndicates Ltd) acting under a lineslip agreement B0793FNM2209253
- (8) VALE Insurance Partners Europe B.V., UK Branch of 51 Eastcheap, London EC3M 1JP (company number FC036430 and UK establishment number BR021518) acting under a binding authority agreement on behalf of HDI Global Specialty SE and PartnerRe Ireland Insurance dac
- (9) Mission Underwriting UK Limited t/a Ignite of One Fleet Place, London, England, EC4M 7WS (company number 05314336) acting under a binding authority agreement on behalf of Accelerant Insurance Europe SA
- (10) International General Insurance Company (UK) Limited of 15-18 Forum House, Lime Street, London EC3M 7AN (company number 06870207)

(parties 6–10 referred to collectively as the "**ATE Insurers**")

- (11) Angeion Group International with company registration number FC037343 whose registered office is ~~1650 Arch Street, Suite 2210, Philadelphia, Pennsylvania 19103, United States~~ ("**Claims Administrator**") \*<sup>2</sup>

Hereafter, each a "**Party**" and together "**the Parties**"

ONE HIGH ST  
OSHAM  
LONDON  
TW20 9HS



## RECITALS

- (A) The Class Representative has a potential claim on behalf of the Class Members against the Defendants for money, compensation, damages, interest and/or other relief in the Action.
- (B) The Class Representative is lawfully entitled to pursue the Action.
- (C) To enable the Action to be pursued the Class Representative entered into: (i) the LFA, the Simmons CFA, the Senior Counsel CFA, the Junior Counsel CFA and this agreement; and (ii) the ATE Policy (as defined in the LFA) and (iii) the Claims Administrator Services Agreement (collectively "**the Agreements**").
- (D) The Parties also entered into a priorities deed which set out the agreement of the Parties as to the basis on which the Solicitors shall hold any Stakeholder Proceeds on trust for the Parties and the order in which payments will be made to them in respect of their entitlement to payment under the Agreements (the "**Original Priorities Deed**").
- (E) The Parties now intend to amend and restate the Original Priorities Deed in the form set out in this Deed.

**NOW THIS DEED WITNESSES** as follows:

## DEFINITIONS AND INTERPRETATION

1. In this agreement, except where the context requires otherwise, the following words and expressions shall have the following meanings:

**ATE Insurers' Return:** the Contingent Premium payable under, and as defined in, the ATE Policy, plus any insurance premium tax applicable to the same.

**Junior Counsel CFA:** the two conditional fee agreements dated 9<sup>th</sup> November 2022 between each Junior Counsel, the Solicitors and the Class Representative.

**LFA:** the Litigation Funding Agreement dated 9<sup>th</sup> November 2022 and restated on [8 January 2024] between the Class Representative and the Funder; and

**Claims Administrator Services Agreement:** the agreement between the Class Representative, the Solicitors and the Claims Administrator, dated .

**Deferred Fees:** all fees, excluding Success Fees, payable pursuant to the Simmons CFA, the Senior Counsel CFA, the Junior Counsel CFA other than those fees which have been funded by the Funder pursuant to the LFA;

**Original Priorities Deed:** has the meaning given at Recital D.

**Success Fees:** all fees payable pursuant to the Simmons CFA, the Senior Counsel CFA, and the Junior Counsel CFA upon success other than those fees which are Deferred Fees;

**Simmons CFA:** the conditional fee agreement dated 9<sup>th</sup> November 2022, including the Simmons & Simmons Terms of Business, between the Solicitors and the Class Representative;

**Senior Counsel CFA:** the conditional fee agreement dated 9<sup>th</sup> November 2022 between Senior Counsel, the Solicitors and the Class Representative;

**The Legal Representatives:** the Solicitors, Senior Counsel and Junior Counsel;

**Unfunded Claims Administrator Fees:** the fees due to the Claims Administrator pursuant to clause 2.3 of the Claims Administrator Services Agreement.

and otherwise the definitions and provisions relating to interpretation in the LFA apply.

2. Unless a contrary indication appears, any reference in this Deed to:
  - 2.1. the LFA, the ATE Policy, the Simmons CFA, the Senior Counsel CFA, the Junior Counsel CFA and this agreement or any one or more of them is a reference to the relevant document as amended (however fundamentally, including any amendment providing for any increase in the amount of any funding or liability) from time to time with the agreement of the relevant parties and (where such consent is, by the terms of the relevant document, required to be obtained as a condition to such amendment being permitted) the prior consent of the Funder;
  - 2.2. an "amendment" includes a supplement, restatement, variation, novation or re-enactment (and "amended" and "amend" shall be construed accordingly);
  - 2.3. a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
  - 2.4. the singular includes a reference to the plural and vice versa;
  - 2.5. a provision of law is a reference to that provision as amended or re-enacted; and
  - 2.6. section and clause headings are for ease of reference only.

## **AMENDMENT AND RESTATEMENT**

2A. With effect from the date of this Agreement, the Original Priorities Deed shall be read and construed for all purposes as recorded in this Deed.

## **PRIORITIES**

3. It is agreed that, subject to any Order of the Court to the contrary, in the event that any Stakeholder Proceeds are received the Class Representative shall (unless the Parties agree and jointly instruct the Solicitors otherwise) instruct the Solicitors to hold those Stakeholder Proceeds (and any interest accrued whilst held) in the Proceeds Account on trust for the Parties in accordance with Clauses 21-24 of this Deed. The Solicitors shall apply those Stakeholder Proceeds in accordance with the terms of this Deed until all such entitlements of the Parties are discharged or until the Stakeholder Proceeds are exhausted, in accordance with and subject to the following order of priorities:
  - 3.1. First, solely from Recovered Costs, that are (i) obtained as an interim recovery of Action Costs and (ii) treated as such in accordance with clause 11 of the LFA, to pay on a pro rata pari passu basis:
    - a) the Funder for the Funder's Outlay; and
    - b) the ATE Insurers for any payments made by them in respect of Adverse Costs pursuant to the ATE Policy;
  - 3.2. Second, provided that and strictly to the extent that there are Recovered Costs which specifically relate to the Unfunded Claims Administrator Fees, to pay to the Claims Administrator those amounts

- 3.3. Third, to pay either in full or reduced by the amounts paid in Clause 3.1(a) and 3.1(b) above on a pro rata pari passu basis:
- a) the Funder the Funder's Outlay; and
  - b) the ATE Insurers for any payments made by them in respect of Adverse Costs pursuant to the ATE Policy;
- 3.4. Fourth, to pay on a pro rata pari passu basis:
- a) the Funder for the Funder's Initial Return;
  - b) the ATE Insurers' Return;
  - c) the remainder of the Legal Representatives' Deferred Fees; and
- 3.5. Fifth, to pay on a pro rata pari passu basis:
- a) the Funder for the Funder's Further Return;
  - b) the Legal Representatives' Success Fees.
- 3.6. Sixth, to pay any outstanding Unfunded Claims Administrator Fees that have not been paid under Clause 3.2 above or otherwise.
- 3.7. Seventh, to pay the Funder for the Funder's Supplemental Return.
4. For the avoidance of doubt, where Stakeholder Proceeds are received and there is an Appeal whose outcome may affect either the award of or the amount of those Stakeholder Proceeds, the Solicitor's obligation to apply those Stakeholder Proceeds in accordance with the terms of this Deed shall be suspended until any final Appeal is resolved by whatever means, including by way of final settlement.
5. In the event that successive recoveries of Stakeholder Proceeds are made, whether from any Defendant, from any third party, by Order of the Court or otherwise in connection with the Action, the duties under Clause 3 of this Deed shall apply to each and every recovery of Stakeholder Proceeds.
6. In the event of Success, the Class Representative, assisted by the Solicitors, shall use all reasonable endeavours to procure that the Court makes an Order which maximises recovery of the costs, fees, disbursements and expenses incurred by the Class Representative in connection with the Action, including the amounts referred to in Clauses 3 above, from Undistributed Damages or otherwise.
7. In the event that 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 as the Funder agrees, in its absolute discretion, to the Litigation Plan Budget so as to increase the Phase Costs Limit of any subsequent Phase(s) of the Action. Any interim recoveries of Action Costs not applied in this way shall be treated as Recovered Costs and applied in accordance with Clause 3 of this Deed. For the avoidance of any doubt, any interim recoveries reallocated to the Litigation Plan Budget so as to increase the Phase Cost Limit of any subsequent Phase(s) of the Action as envisaged in this Clause 7 shall not be treated as Recovered Costs and therefore shall not be applied in accordance with Clause 3 of this Deed.
8. Save as expressly dealt with herein, nothing in this Deed shall as between the Class Representative, the Funder, the ATE Insurers, the Solicitors, Senior Counsel, Junior Counsel and the Claims

Administrator affect or prejudice any of the rights or remedies of the Class Representative, the Funder, the ATE Insurers, the Solicitors, Senior Counsel or Junior Counsel has under any of the Agreements, which shall remain in full force and effect.

9. In the event of an inconsistency between any of the terms of any of the Agreements and the terms of this agreement, the terms of this Deed shall prevail.
10. For the avoidance of doubt, in the event that the share of the Stakeholder Proceeds payable to all or any Parties to this Deed in accordance with and subject to the order of priorities at Clause 3 is less than the sum which that Party or Parties is entitled to receive from the Class Representative pursuant to this Deed, the relevant Agreement(s) or as determined by the Court, the Class Representative shall only be obliged to pay to that Party or Parties, and the Party or Parties shall only be entitled to receive, the lesser amount in full and final settlement of their obligations pursuant to the relevant Agreement(s).
11. Pursuant to Clause 9 of this Deed and notwithstanding any provision of the Claims Administrator Services Agreement, the Class Representative's liability (and, if any, Solicitors' liability) to the Claims Administrator pursuant to clause 2.3 of the Claims Administrator Services Agreement is limited to the amounts to be distributed to it in accordance with this Deed.
12. For the avoidance of doubt, and to the extent necessary, no waiver of privilege is intended by referring to the Agreements in this Deed.
13. If, other than in accordance with the provisions of Clause 3 above (the "**Distribution Provisions**"):
  - 13.1. any Party to this Deed receives or recovers any payment or distribution of, or on account of or in relation to, any of the Stakeholder Proceeds, that Party shall hold an amount of that receipt or recovery on trust for the Parties to this Deed and promptly pay that amount into the Proceeds Account for application in or towards payment of the Stakeholder Proceeds in accordance with the Distribution Provisions; and
  - 13.2. in particular (and without prejudice to the generality of the foregoing) each of the Parties to this Deed hereby declares that pending any distribution in accordance with the Distribution Provisions it holds all its right, title and interest in any payment or distribution referred to in Clause 12.1 above on trust to be applied in accordance with the Distribution Provisions.

and the Agreements are hereby amended accordingly.

14. If, for any reason, any of the trusts expressed to be created under Clause 12 should fail or be unenforceable, the affected party to this Deed shall promptly pay an amount equal to that receipt or recovery of the Stakeholder Proceeds into the Proceeds Account, to be held on trust for application in or towards payment of the Stakeholder Proceeds in accordance with the Distribution Provisions.

## PAYMENTS

15. All the Parties to this agreement hereby expressly, irrevocably and unconditionally agree to use all reasonable endeavours to ensure that all Stakeholder Proceeds are paid into the Proceeds Account, or such other account as ordered or directed by the Court, on their behalf and hereby further irrevocably and unconditionally authorise and direct the Solicitors to receive and apply such Stakeholder Proceeds in accordance with the terms of this Deed only.
16. The Solicitors hereby expressly confirm and undertake that at least 7 Business Days before making a distribution under Clause 3 of this Deed, the Solicitors shall prepare a schedule of the distribution of the Stakeholder Proceeds in accordance with the Distribution Provisions (the "**Distribution Schedule**"). A copy of the Distribution Schedule will be provided to the Parties. If a Party wishes

to challenge the distribution of Stakeholder Proceeds as proposed in the Distribution Schedule, it must provide to the Solicitors written reasons in support of the challenge within 10 Business Days of receipt of the Distribution Schedule (the “**Notice of Dispute**”).

17. Within 10 Business Days of cleared receipt of any payment of any Stakeholder Proceeds pursuant to the terms of Clause 12 above, the Solicitors shall, subject to any Order of the Court to the contrary, apply and make a payment of such Stakeholder Proceeds in accordance with the terms of this Deed, subject to there being no Notice of Dispute. If there is a Notice of Dispute, then the provisions of Clause 17 (below) shall apply to determine the Dispute.
18. In the event of a Dispute, the Parties will jointly brief a mutually acceptable King's Counsel of the English Bar to advise on how payments should be made in accordance with the terms of this agreement. If no mutually acceptable King's Counsel can be agreed upon by the Parties within 10 Business Days, the King's Counsel shall be selected by the Chairman of the Bar Council. The Solicitors will provide (or procure that others provide) King's Counsel with such assistance and documents as is reasonably required for the purpose of reaching a decision. The advice of such King's Counsel will be binding on the Parties in the absence of manifest error or fraud. Each Party shall bear its own costs in relation to the reference to King's Counsel, but the King's Counsel's fees will, in any event, be paid out of the Stakeholder Proceeds and prior to any payments being paid pursuant to the Distribution Provisions.
19. Where any trust property is applied under this Deed, it shall be credited to such account as may be specified by the relevant beneficiary to the Solicitors in writing from time to time.
20. For the purposes of Clause 18 above, the account specified by the Funder shall be:

[REDACTED]

## **TERM AND CONDITIONS OF TRUST**

21. The Solicitors are empowered to act as trustees in respect of the Stakeholder Proceeds for the benefit of the Parties and to exercise such rights, powers and discretions as are specifically vested in the Solicitors pursuant to this Deed (together with such rights, powers and discretions which are incidental thereto). In addition to the express powers given to the Solicitors under this Deed, the Solicitors shall have all the powers given to trustees by the Trustee Act 1925 and the Trustee Act 2000 (the **Acts**). Where there are any inconsistencies between such Acts and this Deed, the provisions of this Deed shall prevail (to the extent permitted by law). Notwithstanding the powers given to the Solicitors under this Deed and the Acts, and subject to any Order of the Court, the Solicitors shall be prohibited from delegating any of their powers (in any respect) without the prior written consent of the Funder.
22. For the avoidance of doubt, the Solicitors shall not be entitled to any fees or expenses in relation to acting as trustee hereunder and shall not make any claim against or deduction from the Stakeholder Proceeds save as expressly provided above.
23. If, for any reason, any of the trusts expressed to be created in this Deed should fail or be unenforceable, the Solicitors will promptly pay an amount equal to that receipt or recovery of the Stakeholder Proceeds to the Parties for application in accordance with the terms of this Deed.

24. The perpetuity period for the trusts created by this Deed is 125 years commencing on the date of this Deed.

## NOTICES

25. Any communication to be made under or in connection with this agreement shall be made in writing by letter or email.

26. The address and email address (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this agreement is that stated in this Clause 25 or any substitute address or email address or department or officer as the party may notify to the other parties by not less than five Business Days' notice.

26.1. Waterside Class Limited – Anne Heal, 1 The Green, Richmond, England, TW9 1PL, [REDACTED]@gmail.com

26.2. Erso PCC Capital Limited – [REDACTED], Level 2, Samuel Harris House, 5-11 St Georges St, Douglas, IM1 1AJ, Isle of Man, [REDACTED]@thomasmiller.com; [REDACTED]@thomasmiller.com with a copy to: [REDACTED]@ersocap.com

26.3. Simmons & Simmons LLP – Patrick Boylan, Citypoint, 1 Ropemaker Street, London EC2Y 9SS, [Patrick.Boylan@simmons-simmons.com](mailto:Patrick.Boylan@simmons-simmons.com)

26.4. Sarah Abram KC, Brick Court Chambers, 7-8 Essex Street, London WC2R 3LD, [sarah.abram@brickcourt.co.uk](mailto:sarah.abram@brickcourt.co.uk)

26.5. Matthew Kennedy, Brick Court Chambers, 7-8 Essex Street, London WC2R 3LD, [matthew.kennedy@brickcourt.co.uk](mailto:matthew.kennedy@brickcourt.co.uk)

26.6. Litica Ltd – [REDACTED] 16 Eastcheap, London EC3M 1BD, [REDACTED]@litica.co.uk

26.7. Lloyd's Syndicate AES 1225 (AEGIS Managing Agency Limited), Lloyd's Syndicate AUW 609 (Atrium Underwriters Limited), and Lloyd's Syndicates KLN 510 and TMK 1880 (Tokio Marine Kiln Syndicates Ltd) – [REDACTED] 16 Eastcheap, London EC3M 1BD, [REDACTED]@litica.co.uk

26.8. VALE Insurance Partners Europe BV., UK Branch – [REDACTED], 51 Eastcheap, London EC3M 1JP, [REDACTED]@valeip.com; [REDACTED]@valeip.com

26.9. Mission Underwriting UK Limited t/a Ignite – [REDACTED], One Fleet Place, London, England, EC4M 7WS, [REDACTED]@igniteins.com

26.10. International General Insurance Company (UK) Limited – [REDACTED], 15-18 Forum House, Lime Street, London EC3M 7AN, [REDACTED]@iginsure.com

26.11. Angeion Group International – [REDACTED] 1650 Arch Street, Suite 2210, Philadelphia, Pennsylvania 19103, United States, [REDACTED]@angeiongroup.com and [REDACTED]@angeiongroup.com

\* ONE HIGH ST  
ECONAM  
LONDON  
TU20 9HS

## MISCELLANEOUS

27. The Solicitors hereby undertake to inform the Funder and the Insurers about any and all offers to settle the Actions without unreasonable delay.

28. The Solicitors, Junior Counsel and Senior Counsel will comply with any and all obligations imposed upon them by the Agreements or terms relating to them in the Agreements and use all reasonable endeavours to ensure compliance by the Class Representative with all obligations imposed upon it by the Agreements.
29. The Parties agree that, except as expressly provided herein or otherwise required by law, the priorities, rights and obligations of the Funder, ATE Insurers, the Legal Representatives and the Claims Administrator set out herein shall apply in all events and circumstances, including any application of law, bankruptcy proceedings or any receivership, assignment for the benefit of creditors, liquidation, reorganisation, arrangement or other similar proceedings relating to the Class Representative and shall apply regardless of:
  - 29.1. the time of execution or delivery of (or of the documents relating to) any of the Agreements or any security therefor;
  - 29.2. the time of attachment, registration, filing, recording or perfection of any of security;
  - 29.3. the time that any Stakeholder Proceeds are advanced to the Class Representative or any obligations become due from the Class Representative to any other Party hereto (whether at scheduled due date, by demand, acceleration or otherwise);
  - 29.4. the time of commencement of any proceedings to enforce any of the obligations due by the Class Representative to any other party hereto or any security therefor or the time any order or judgment in respect thereof is made or entered or the time any execution is obtained or registered in respect thereof or any other proceeding is commenced or completed in respect thereof;
  - 29.5. any priority granted by any principle of law or any statute;
  - 29.6. any waiver, consent or composition between all or any of the Parties;
  - 29.7. any amendment, variation or termination of (or breach or default under) the Agreements;
  - 29.8. any unenforceability, illegality or invalidity of any provision of this Deed or any Agreement;
  - 29.9. any intermediate payment of Stakeholder Proceeds; or
  - 29.10. any other factor relevant under applicable law in establishing the priority of the obligations owing by the Class Representative to the other parties hereto and the priority or relative rights of enforcement of any security therefor.
30. The Parties shall at their own expense do all such things and execute all agreements, instruments and other documents as the Funder or the Class Representative may require as being necessary or desirable to carry out the intent and purposes of this Deed and the Agreements.
31. This Deed is binding on the successors and assigns of the Parties hereto.
32. The Parties each warrant that:
  - 32.1. they have the power to enter into, perform and deliver, and have taken all necessary action to authorise their entry into, performance and delivery of, this Deed;
  - 32.2. the obligations expressed to be assumed by them in this Deed are legal, valid, binding and enforceable obligations;

- 32.3. the entry into and performance by them of, and the transactions contemplated by, this Deed, do not and will not conflict with any law or regulation applicable to them or their constitutional documents (where applicable).
33. This Deed may be executed in any number of counterparts each of which shall be an original but the counterparts shall together constitute one and the same agreement. The executed signature page of a counterpart of this Deed by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this Deed. 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.
34. The Class Representative shall not assign, transfer or otherwise dispose of any of its rights in the Stakeholder Proceeds, other than under the LFA. Nothing in this Deed does or is intended to create a security interest, mortgage, charge, pledge, lien or other encumbrance over the Stakeholder Proceeds.
35. A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this agreement.
36. If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.
37. No failure to exercise, nor delay in exercising, on the part of any party hereto, any right or remedy under this agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy preclude any further or other exercise, or the exercise of any other right or remedy. The rights and remedies of any of the parties hereto provided in this agreement are cumulative and not exclusive of any rights or remedies provided by law.
38. No variation of this Deed shall be valid unless it is in writing and signed by or on behalf of each of the Parties.
39. Each Party undertakes to the others that (unless the prior written consent of the other Parties has first been obtained) it shall, and shall procure that its officers, employees, advisers and agents shall, keep confidential and not by failure to exercise due care or otherwise by any act or omission, disclose to any person the existence or terms of this Deed or the contents of the discussions and negotiations leading to this Deed, unless:
- 39.1. the disclosure is necessary to the performance of this Deed or to the prosecution of the Action (and in this regard the Parties anticipate that a non-confidential copy of this Deed will likely need to be disclosed to the Defendant and to the Class Members in due course);
- 39.2. the disclosure is made on confidential terms to the Party's professional advisors and agents and where they agree to maintain such confidentiality;
- 39.3. the disclosure is made on a confidential basis and the third party is a parent or associated company or an actual or potential, direct or indirect, shareholder, investor or financier of or in the Funder, its parent or an associated company; or
- 39.4. the disclosure is required by law.



**LAW AND JURISDICTION**

40. This Deed is to be construed in accordance with, and governed by, the laws of England and Wales. Without prejudice to the parties' rights to raise a dispute pursuant to Clause 16 and Clause 17, the parties irrevocably submit to the exclusive jurisdiction of the English courts for all purposes.
41. The Class Representative irrevocably appoints the Solicitors of CityPoint, 1 Ropemaker Street, London EC2Y 9SS as its agent to receive on its behalf in England and 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.

This Deed has been executed as a deed and delivered on the date stated at the beginning of this Deed.

**The Class Representative**

EXECUTED and DELIVERED as a DEED )  
 for and on behalf of Waterside Class Limited )  
 by \_\_\_\_\_ in the presence of: ) Signature of Director

Witness name:  
 Witness address:  
 Witness occupation:

**Funder**

EXECUTED and DELIVERED as a DEED for )  
 and on behalf of Erso Capital PCC Limited )  
 acting on behalf of and )  
 solely in relation to its cell, )  
 JDG EU GALIBIER Cell, by \_\_\_\_\_ )  
 in the presence of: ) Signature of Director

.....  
 Witness name:  
 Witness address:  
 Witness occupation:

**Solicitors**

EXECUTED and DELIVERED as a DEED )  
 by Simmons & Simmons LLP acting by )  
 Patrick Boylan, a member, in )  
 the presence of: ) Signature of Member

.....  
 Witness name:  
 Witness address:  
 Witness occupation:

**LAW AND JURISDICTION**

40. This Deed is to be construed in accordance with, and governed by, the laws of England and Wales. Without prejudice to the parties' rights to raise a dispute pursuant to Clause 16 and Clause 17, the parties irrevocably submit to the exclusive jurisdiction of the English courts for all purposes.
41. The Class Representative irrevocably appoints the Solicitors of CityPoint, 1 Ropemaker Street, London EC2Y 9SS as its agent to receive on its behalf in England and 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.

This Deed has been executed as a deed and delivered on the date stated at the beginning of this Deed.

**The Class Representative**

EXECUTED and DELIVERED as a DEED )  
for and on behalf of Waterside Class Limited ) .....  
by [REDACTED] in the presence of: ) Signature of Director

.....  
Witness name:  
Witness address:  
Witness occupation:

**Funder**

EXECUTED and DELIVERED as a DEED for ) [REDACTED]  
and on behalf of Erso Capital PCC Limited )  
acting on behalf of and )  
solely in relation to its cell, [REDACTED]  
JDG EU GALIBIER Cell, b [REDACTED] .....  
in the presence of: [REDACTED] ) Signature of Director

Witness name: [REDACTED]  
Witness address: [REDACTED]  
Witness occupation: [REDACTED]

**Solicitors**

EXECUTED and DELIVERED as a DEED )  
by Simmons & Simmons LLP acting by )  
Patrick Boylan, a member, in ) .....  
the presence of: ) Signature of Member

.....  
Witness name:  
Witness address:  
Witness occupation:

## LAW AND JURISDICTION

40. This Deed is to be construed in accordance with, and governed by, the laws of England and Wales. Without prejudice to the parties' rights to raise a dispute pursuant to Clause 16 and Clause 17, the parties irrevocably submit to the exclusive jurisdiction of the English courts for all purposes.
41. The Class Representative irrevocably appoints the Solicitors of CityPoint, 1 Ropemaker Street, London EC2Y 9SS as its agent to receive on its behalf in England and 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.

This Deed has been executed as a deed and delivered on the date stated at the beginning of this Deed.

### The Class Representative

EXECUTED and DELIVERED as a DEED )  
for and on behalf of Waterside Class Limited ) .....  
by [REDACTED] in the presence of: ) Signature of Director

.....  
Witness name:  
Witness address:  
Witness occupation:

### Funder

EXECUTED and DELIVERED as a DEED for )  
and on behalf of Erso Capital PCC Limited )  
acting on behalf of and )  
solely in relation to its cell, )  
JDG EU GALIBIER Cell, by [REDACTED] ) .....  
in the presence of: ) Signature of Director

.....  
Witness name:  
Witness address:  
Witness occupation:

### Solicitors

EXECUTED and DELIVERED as a DEED ) [REDACTED]  
by Simmons & Simmons LLP acting by ) [REDACTED]  
Patrick Boylan, a member, in ) .....  
the presence of: ) Signature of Member

Witness name: [REDACTED]  
Witness address: Simmons & Simmons LLP, Citypoint, 1 Ropemaker St, London, EC2Y 9SS  
Witness occupation: [REDACTED]

**Sarah Abram KC**

EXECUTED and DELIVERED as a DEED  
by Sarah Abram in the presence of:

.....  
Witness name:

Witness address:

Witness occupation:

**Matthew Kennedy**

EXECUTED and DELIVERED as a DEED  
by Matthew Kennedy in the presence of:

.....  
Witness name:

Witness address:

Witness occupation:

**Litica Ltd**

EXECUTED and DELIVERED as a DEED )  
for and on behalf of Litica Ltd acting as agent of )  
Accredited Insurance (Europe) Ltd, AXA )  
Insurance UK PLC, Axis Specialty Europe SE, )  
International General Insurance Company (UK) )  
Limited, Markel Bermuda Limited, by )

in the presence of:

) .....  
) Signature of Director

.....  
Witness name:

Witness address:

Witness occupation:

EXECUTED and DELIVERED as a DEED )  
by Litica Ltd as has been agreed by Lloyd's )  
Syndicate AES 1225 (AEGIS Managing Agency )  
Limited), Lloyd's Syndicate AUW 609 (Atrium )  
Underwriters Limited), Lloyd's Syndicates KLN )  
510 and TMK 1880 (Tokio Marine Kiln )  
Syndicates Ltd) by )  
presence of: )

) .....  
) Signature of Director

.....  
Witness name:

Witness address:

Witness occupation:

**VALE Insurance Partners Europe BV**

EXECUTED and DELIVERED as a DEED )  
for and on behalf of VALE Insurance Partners )  
Europe BV acting under a binding authority )  
agreement on behalf of HDI Global Specialty SE )  
by )  
in the presence of:

) .....  
) Signature of Director

.....  
Witness name:

Witness address:

**Sarah Abram KC**

EXECUTED and DELIVERED as a DEED ) .....  
by Sarah Abram in the presence of: )

.....  
Witness name:  
Witness address:  
Witness occupation:

**Matthew Kennedy**

EXECUTED and DELIVERED as a DEED ) .....  
by Matthew Kennedy in the presence of: )

.....  
Witness name:  
Witness address:  
Witness occupation:

**Litica Ltd**

EXECUTED and DELIVERED as a DEED )  
for and on behalf of Litica Ltd acting as agent of )  
Accredited Insurance (Europe) Ltd, AXA )  
Insurance UK PLC, Axis Specialty Europe SE, )  
International General Insurance Company (UK) )  
Limited, Markel Bermuda Limited, by [redacted] ) ..  
[redacted] in the presence of: ) Signature of Director

Witness name: [redacted]  
Witness address: c/o Litica Ltd, 16 Eastcheap, London, EC3M1BD  
Witness occupation: [redacted]

EXECUTED and DELIVERED as a DEED )  
by Litica Ltd as has been agreed by Lloyd's )  
Syndicate AES 1225 (AEGIS Managing Agency )  
Limited), Lloyd's Syndicate AUW 609 (Atrium )  
Underwriters Limited), Lloyd's Syndicates KLN )  
510 and TMK 1880 (Tokio Marine Kiln )  
Syndicates Ltd) by [redacted] in the )  
presence of: ) Signature of Director

Witness name: [redacted]  
Witness address: c/o Litica Ltd, 16 Eastcheap, London, EC3M1BD  
Witness occupation: [redacted]

**VALE Insurance Partners Europe BV** )  
EXECUTED and DELIVERED as a DEED )  
for and on behalf of VALE Insurance Partners )  
Europe BV acting under a binding authority )  
agreement on behalf of HDI Global Specialty SE ) .....  
by [redacted] in the presence of: ) Signature of Director

.....  
Witness name:  
Witness address:

**Sarah Abram KC**

EXECUTED and DELIVERED as a DEED ) .....  
by Sarah Abram in the presence of: )

.....  
Witness name:  
Witness address:  
Witness occupation:

**Matthew Kennedy**

EXECUTED and DELIVERED as a DEED ) .....  
by Matthew Kennedy in the presence of: )

.....  
Witness name:  
Witness address:  
Witness occupation:

**Litica Ltd**

EXECUTED and DELIVERED as a DEED )  
for and on behalf of Litica Ltd acting as agent of )  
Accredited Insurance (Europe) Ltd, AXA )  
Insurance UK PLC, Axis Specialty Europe SE, )  
International General Insurance Company (UK) )  
Limited, Markel Bermuda Limited, by ) .....  
in the presence of: ) Signature of Director

.....  
Witness name:  
Witness address:  
Witness occupation:

EXECUTED and DELIVERED as a DEED )  
by Litica Ltd as has been agreed by Lloyd's )  
Syndicate AES 1225 (AEGIS Managing Agency )  
Limited), Lloyd's Syndicate AUW 609 (Atrium )  
Underwriters Limited), Lloyd's Syndicates KLN )  
510 and TMK 1880 (Tokio Marine Kiln )  
Syndicates Ltd) by ) .....  
presence of: ) Signature of Director

.....  
Witness name:  
Witness address:  
Witness occupation:

**VALE Insurance Partners Europe BV**

EXECUTED and DELIVERED as a DEED  
for and on behalf of VALE Insurance Partners  
Europe BV acting under a binding authority  
agreement on behalf of HDI Global Specialty SE  
by ) .....  
in the presence of: ) Signature of Director

Witness name:  
Witness address:

Witness occupation: [redacted]

EXECUTED and DELIVERED as a DEED )  
for and on behalf of VALE Insurance Partners [redacted]  
Europe BV acting under a binding authority  
agreement on behalf of PartnerRe Ireland  
Insurance dac by [redacted] in  
the presence of: [redacted] ) Signature of Director

[redacted]  
Witness name: [redacted]  
Witness address: [redacted]  
Witness occupation: [redacted]

**Mission Underwriting UK Limited** )  
EXECUTED and DELIVERED as a DEED )  
for and on behalf of Mission Underwriting UK )  
Limited t/as Ignite acting under a binding )  
authority agreement on behalf of Accelerant ) .....  
Insurance Europe SA by [redacted] in ) Signature of Director  
the presence of: )  
.....  
Witness name:  
Witness address:  
Witness occupation:

**International General Insurance Company (UK) Limited**  
EXECUTED and DELIVERED as a DEED )  
for and on behalf of International General )  
Insurance Company (UK) Limited by ) .....  
[redacted] in the presence of: ) Signature of Director  
.....  
Witness name:  
Witness address:  
Witness occupation:

**Claims Administrator** )  
EXECUTED and DELIVERED as a DEED )  
for and on behalf of Angeion Group International by ) .....  
[redacted] in the presence of: ) Signature of Director  
.....  
Witness name:  
Witness address:  
Witness occupation:

Witness occupation:

EXECUTED and DELIVERED as a DEED )  
for and on behalf of VALE Insurance Partners )  
Europe BV acting under a binding authority )  
agreement on behalf of PartnerRe Ireland )  
Insurance dac by [REDACTED] in ) .....  
the presence of: ) Signature of Director

.....  
Witness name:  
Witness address:  
Witness occupation:

**Mission Underwriting UK Limited** )  
EXECUTED and DELIVERED as a DEED ) [REDACTED]  
for and on behalf of Mission Underwriting UK )  
Limited t/as Ignite acting under a binding )  
authority agreement on behalf of Accelerant ) .....  
Insurance Europe SA by [REDACTED] in ) Signature of Director  
the presence of: )

.....  
Witness name: [REDACTED]  
Witness address: [REDACTED]  
Witness occupation: [REDACTED]

**International General Insurance Company (UK) Limited**  
EXECUTED and DELIVERED as a DEED )  
for and on behalf of International General )  
Insurance Company (UK) Limited by ) .....  
[REDACTED] in the presence of: ) Signature of Director

.....  
Witness name:  
Witness address:  
Witness occupation:

**Claims Administrator** )  
EXECUTED and DELIVERED as a DEED )  
for and on behalf of Angeion Group International by ) .....  
[REDACTED] in the presence of: ) Signature of Director

.....  
Witness name:  
Witness address:  
Witness occupation:



Witness occupation:

EXECUTED and DELIVERED as a DEED )  
for and on behalf of VALE Insurance Partners )  
Europe BV acting under a binding authority )  
agreement on behalf of PartnerRe Ireland )  
Insurance dac by [REDACTED] in ) .....  
the presence of: ) Signature of Director

.....

Witness name:

Witness address:

Witness occupation:

**Mission Underwriting UK Limited** )  
EXECUTED and DELIVERED as a DEED )  
for and on behalf of Mission Underwriting UK )  
Limited t/as Ignite acting under a binding )  
authority agreement on behalf of Accelerant ) .....  
Insurance Europe SA by [REDACTED] in ) Signature of Director  
the presence of: )

.....

Witness name:

Witness address:

Witness occupation:

**International General Insurance Company (UK) Limited**

EXECUTED and DELIVERED as a DEED )  
for and on behalf of International General )  
Insurance Company (UK) Limited by )  
[REDACTED] in the presence of: )

Witness name:

Witness address:

Witness occupation:

**Claims Administrator**

EXECUTED and DELIVERED as a DEED )  
for and on behalf of Angeion Group International by ) .....  
[REDACTED] in the presence of: ) Signature of Director

.....

Witness name:

Witness address:

Witness occupation:

Witness occupation:

EXECUTED and DELIVERED as a DEED )  
for and on behalf of VALE Insurance Partners )  
Europe BV acting under a binding authority )  
agreement on behalf of PartnerRe Ireland )  
Insurance dac by [REDACTED] in ) .....  
the presence of: ) Signature of Director

.....  
Witness name:

Witness address:

Witness occupation:

**Mission Underwriting UK Limited** )  
EXECUTED and DELIVERED as a DEED )  
for and on behalf of Mission Underwriting UK )  
Limited t/as Ignite acting under a binding )  
authority agreement on behalf of Accelerant ) .....  
Insurance Europe SA by [REDACTED] in ) Signature of Director  
the presence of: )

.....  
Witness name:

Witness address:

Witness occupation:

**International General Insurance Company (UK) Limited**  
EXECUTED and DELIVERED as a DEED )  
for and on behalf of International General )  
Insurance Company (UK) Limited by ) .....  
[REDACTED] in the presence of: ) Signature of Director

.....  
Witness name:

Witness address:

Witness occupation:

**Claims Administrator**

EXECUTED and DELIVERED as a DEED )  
for and on behalf of Angeion Group International by )  
[REDACTED] in the presence of: ) Signature of Director

Witness name:

Witness address:

Witness occupation:

## **APPENDIX 4**

[SPECIMEN ATE POLICY]