

THERIUM.
LITIGATION FUNDING

Therium Litigation Funding IC
Charter Place, 23/27 Seaton Place, St Heller, Jersey,
JE1 1JY
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Registered in Jersey, No. 118617

DATE: 28 March 2016

LITIGATION FUNDING AGREEMENT

- (1) THERIUM LITIGATION FUNDING IC; and
- (2) THE INDIVIDUALS LISTED IN SCHEDULE A

DATE: 28 March 2016

PARTIES:

- (1) THERIUM LITIGATION FUNDING IC (an Incorporated cell registered in Jersey number 118617) whose address is Charter Place, 23/27 Seaton Place, St Heller, Jersey, JE1 1JY ("Therium"); and
- (2) THE INDIVIDUALS listed in Schedule A (the "Claimantss") and this Agreement also constitutes an agreement between each of them, as well as between them and Therium;

RECITALS:

- (A) The Claimants wish to bring the Claim against the Defendant and have taken, and continue to take, legal advice on the merits of the Claim from the Solicitors.
- (B) The Claimants wish to irrevocably appoint a steering committee to act as their agent in relation to the Claim, and to manage the Claim, on the terms of this agreement ("the Agreement").
- (C) In order to facilitate access to justice, the Claimants have sought the agreement of Therium to provide funding in respect of the Claimants' costs of pursuing the Claim on the terms of the Agreement.
- (D) The Claimants and Therium have therefore agreed that Therium will provide funding in respect of the Claim in accordance with the terms of the Agreement.
- (E) The Claimants intend to enter and/or have each entered into a Conditional Fee Agreement with the Solicitors which imposes on each of the Claimants an individual liability to pay the Solicitor's costs and disbursements of the Claimants' pursuing the Claim. Save as expressly provided herein, nothing in this Agreement affects the Claimants' liability to pay their own costs of pursuing the Claim but Therium's funding shall be in terms of providing an indemnity in relation to the Claimants' liability for costs (and to pay them up front) as set out in this Agreement, and all referenced in this Agreement to paying the costs shall be construed in that context.

OPERATIVE PROVISIONS:

1. Interpretation

- 1.1. In this Agreement the following definitions shall have the following meanings:

"Adverse Costs Order" means any order of a Court (or agreement, or as a liability as a result of a settlement offer or liability by discontinuing the Claimant's claim) requiring the Claimants or one or more of them to pay some or all of the costs of any other party to the Proceedings;

"Adverse Costs Indemnity" means the indemnity in respect of an Adverse Costs Order from Therium to the Claimants pursuant to clause 12.1 below;

"Adverse Costs Indemnity Limit" means the total of the Adverse Costs Indemnity Limit as specified in Schedule B for all tranches of Adverse Costs Indemnity incepted;

"Adverse Costs Indemnity Fee" means, in respect of each tranche of Adverse Costs Indemnity Incepted, the percentage specified in Schedule B of the Adverse Costs Indemnity Limit for all tranches of Adverse Costs Indemnity Incepted;

"Adverse Costs Indemnity Tranche 1" means tranche 1 of the Adverse Costs Indemnity up to the Adverse Costs Indemnity Limit for that tranche;

"Adverse Costs Indemnity Tranche 2" means tranche 2 of the Adverse Costs Indemnity up to the Adverse Costs Indemnity Limit for that tranche;

"Adverse Costs Indemnity Tranche 3" means tranche 3 of the Adverse Costs Indemnity up to the Adverse Costs Indemnity Limit for that tranche;

"Appeal" means an appeal of a judgment or award in the Proceedings, including any cross-appeal of the Claimants and the Claimants' response to any appeal of the Defendants.

"Application" means any application form submitted to Therium by the Claimants together with all materials and documents submitted to Therium prior to the Commencement Date in connection with the Claimants' application;

"Business Day" means a day on which banks generally are open in the City of London for the transaction of normal banking business (other than a Saturday);

"Challenge Notice" means written notice setting out the grounds of a challenge to the fees billed which are payable by Therium pursuant to the Agreement;

"Claim" means the claim, details of which are set out in Schedule B;

"Claims" means the individual claims by Claimants, comprising the Claim;

"Claim Proceeds" means any and all value due to and/or received by, on behalf of, or in lieu of payment to, the Claimants in connection with or arising out of the Claim as a result of any judgment, award, order, settlement arrangement or compromise, (including payment of any damages, compensation, interest, restitution, recovery, judgment sum, arbitral award, settlement sum, compensation payment, costs and interest on costs), whether in monetary or non-monetary form, whether actual or contingent, and before deduction of any taxes which the Claimants may be liable to pay in respect of the Claim Proceeds;

"Claim Proceeds Account" means an account prepared by Therium or its nominee setting out how any Claim Proceeds are to be distributed to the parties under the Priorities Agreement;

"Claimants" means the individuals and any other as may have entered into a Deed of Adherence substantially in the form appearing at Appendix 4, after the Commencement Date;

"Commencement Date" means the date specified in Schedule B;

"Committee" means the group of individuals appointed by the Claimants to act as the Claimants' agent in respect of the Claims and this Agreement and to manage the Claims under and on the terms of this Agreement, together with any additional or replacement individuals who may hereafter be appointed to the Committee to so act in accordance with the terms of this Agreement.

"Committee Members" means each of the individuals appointed to the Committee.

"Committed Funds" means, in relation to each tranche of Funding Incepted, the Committed Funds for that tranche of Funding as detailed in Schedule B;

"Contingency Fee" means, in respect of all tranches of Funding Incepted, the greater of:

- i. the multiple of the total Committed Funds for all tranches of funding incepted, and
- ii. the percentage of the balance of all Claim Proceeds after payment to Therium of the Reasonable Costs Sum and any other sums payable in priority to the Contingency Fee under the Priorities Agreement at the rate applicable to the last tranche of funding incepted,

as specified in the Schedule, together with any VAT payable on such amount;

"Costs" means legal costs and Disbursements specified in the Project Plan;

"Counsel" means the barrister(s) identified in Schedule B who has or have been instructed to represent the Claimants in respect of the Claim;

"Court" means the court, arbitration panel or tribunal which has conduct of the Proceedings;

"CPR" means the Civil Procedure Rules and supporting Practice Directions or equivalent applicable to the Proceedings;

"Defendants" means the defendants specified in Schedule B;

"Disbursements" means disbursements (whether raised by invoices by the supplier to the Claimants or invoiced to the Solicitors and invoiced by them to the Claimants) plus VAT if applicable, any premium payable for Legal Expenses Insurance and the cost of providing security for costs if required, where specified in the Project Plan or otherwise agreed or paid by Therium;

"Funding" means the total of the amount of the Committed Funds as detailed in Schedule B for all tranches of funding incepted;

"Funding Agreements" means all contractual agreements entered into by the Claimants as a result of, or arising from, the Proceedings, including this Agreement, the Priorities Agreement and any Legal Expenses Insurance policy;

"Legal Expenses Insurance" means an after the event legal expenses insurance policy in favour of the Claimants in respect of their potential liability for an Adverse Costs Order on terms and with an insurer approved by Therium, such approval not to be unreasonably withheld;

"Net Claims Proceeds" means the aggregate sum remaining for distribution to Claimants under clause 3.2.5 of the Priorities Agreement

"Non-Monetary Proceeds" means any Claim Proceeds received in non-monetary form;

"Notice" means a notice given in accordance with clause 29;

"Notice of Interest" means a notice of interest given pursuant to clause 16.3;

"Notice of Release of Interest" means a notice of release of interest given pursuant to clause 20.6;

"Party" means a party to this Agreement;

"Priorities Agreement" means a priorities agreement substantially in the form appended to this Agreement as Appendix 3, to be executed by the Claimants in accordance with clause 8.1;

"Proceedings" means the proceedings in the High Court of Justice, Queen's Bench Division, Commercial Court or Chancery Division and such other litigation or arbitral or ADR proceeding issued or arising out of or in connection with the Claim including any pre-action correspondence, settlement negotiations or mediation and any enforcement proceedings to enforce payment of any judgment, order, award or settlement agreement, which Therium agrees in writing shall be the subject of this Agreement pursuant to clause 6.5. For the avoidance of doubt "Proceedings" does not include an Appeal unless specifically agreed by Therium pursuant to clause 6.4;

"Project Plan" means the project plan for the Claim, including relevant strategy, the Solicitor's estimate of the Funding required to pursue the Claim and an outline timetable, appended to this Agreement as Appendix 1, as may be varied by agreement between the Parties from time to time in accordance with clause 24;

"Reasonable Costs" means the Costs, to the extent that those Costs are reasonably incurred by the Claimants in accordance with the terms of this Agreement and are within the limit of the Committed Funds in respect of each tranche;

"Reasonable Costs Sum" means a sum equal to the total of all Costs paid or otherwise funded by Therium pursuant to this Agreement, whether or not those Costs were reasonably incurred by the Claimants in accordance with this Agreement and whether or not they were specified in the Project Plan;

"Recovery" means the recovery of any Claim Proceeds;

"Solicitors" means the firm of solicitors instructed by the Claimants to act on its behalf in connection with the Claim and identified as such in Schedule B;

"Tranche 1" means the steps in the Proceedings and the funding requirement, as detailed in the Project Plan, up to the maximum of the Committed Funds in respect of that first tranche;

"Tranche 2" means the steps in the Proceedings and the funding requirement, as detailed in the Project Plan, up to the maximum of the Committed Funds in respect of that second tranche;

"Tranche 3" means the steps in the Proceedings and the funding requirement, as detailed in the Project Plan, up to the maximum of the Committed Funds in respect of that third tranche;

"Tranche 4" means the steps in the Proceedings and the funding requirement, as detailed in the Project Plan, up to the maximum of the Committed Funds in respect of that fourth tranche;

"Tranche 5" means the steps in the Proceedings and the funding requirement, as detailed in the Project Plan, up to the maximum of the Committed Funds in respect of that fifth tranche;

"Trust Period" means the period of 80 years from the date of this Agreement; and

"VAT" means value added tax at the rate for the time being in force (as may be varied from time to time by HM Revenue & Customs) or equivalent sales tax.

- 1.2. Any reference to a Recital, Clause, Schedule or Appendix is to the relevant Recital, Clause, Schedule or Appendix of or to this Agreement and any reference to a sub-clause or paragraph is to the relevant sub-clause or paragraph of the Clause or Schedule in which it appears.
- 1.3. Except where the context requires otherwise words denoting the singular include the plural and vice versa, and words denoting any one gender include all genders.
- 1.4. Any reference to "persons" includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality).
- 1.5. Any reference to powers, rights, entitlements and obligations of the Claimants shall, where the context allows, be construed as references to, inter alia, rights of "the Committee".
- 1.6. Any reference to a statute, statutory provision or subordinate legislation shall be construed as referring to it as from time to time amended, extended or re-enacted.
- 1.7. Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words following those terms.

2. The Committee – appointment, authority and constitution

2.1. The Claimants irrevocably appoint the Committee to act as their agent in relation to the Proceedings, the management of the Proceedings, and, unless otherwise provided herein, this Agreement. The agency includes, without limitation, authority to:

- 2.1.1. Instruct the Solicitors to discontinue the Proceedings, whether on behalf of one or more of the Claimants;
- 2.1.2. Instruct the Solicitors to enter into and conduct settlement negotiations in relation to the Claimants as a collective group or individual claims;
- 2.1.3. Instruct the Solicitors to accept and make offers to settle in respect of the Proceedings as a whole and/or individual Claims;
- 2.1.4. Instruct the Solicitors to incur Costs, Reasonable Costs and the Reasonable Costs Sum;
- 2.1.5. amend or vary this Agreement, and enter into, amend or vary any of the Funding Agreements, and to give instructions to the Solicitors accordingly.

2.2. The Initial Committee Members shall be the following, each of whom is a Claimant, and each of whom agrees to his/her appointment to the Committee, to act as a Committee Member in accordance with the Committee's agency as prescribed above, until they cease to do so in accordance with this Agreement:

- 2.2.1. Alan Bates of [*] ("the Chairman");
- 2.2.2. Kay Linnell of
- 2.2.3. [*]

2.3. The following rules shall govern the appointment, removal and resignation of Committee Members.

- 2.3.1. A person shall cease to be a Committee Member as soon as he or she:
 - (a) retires by notifying each Committee Member and the Solicitors in writing;
 - (b) dies;
 - (c) becomes incapable by reason of mental disorder, illness or injury of managing and administering his or her own affairs;
 - (d) has a bankruptcy order made against him or her; or
 - (e) a majority of the Committee Members resolve at a properly convened meeting of the Committee (or by the

remaining Member in the event that 2.3.1(a), (b), (c), (d) or (e) applies), with the consent of the Solicitors, that he or she should cease to be a Committee Member.

- 2.3.2. No person shall be eligible to be appointed a Committee Member until he or she has executed a confidentiality agreement on the terms prepared by the Solicitors.
- 2.3.3. A person shall be appointed a Committee Member by the resolution of a majority of the Committee at a properly convened meeting of the Committee, subject to the consent of the Solicitors and provided that the number of Committee Members shall not exceed seven at any one time.
- 2.4. The following rules shall govern Committee meetings:
 - 2.4.1. Committee meetings may be called by a Committee Member and may be held in person on 5 Business Days' notice or by conference call on 24 hours' notice, such notice to be provided by email or by other means agreed.
 - 2.4.2. Committee meetings shall be considered quorate only if two or more Committee Members are in attendance, whether in person or by telephone or by alternative means of electronic communication (FaceTime, Skype), save where the number of Committee Members has fallen below two by operation of clause 2.3.1 above, or in the event that the Initial Committee Members number less than five, in which case a Committee meeting shall be quorate if all remaining members are in attendance.
 - 2.4.3. The Committee will inform the Solicitors and Therium immediately a Committee meeting has been called, and the Solicitors and Therium may attend such meeting in whatever manner they deem suitable.
 - 2.4.4. Claimants who are not Committee Members shall not be entitled to attend Committee Meetings, save by express invitation of the Chairman.
 - 2.4.5. The Committee shall agree by simple majority to appoint a Committee Member as Chairman from time to time.
 - 2.4.6. Minutes must be kept of all Committee Meetings, approved by the Committee and copies retained by the Committee and provided to the Solicitors and Therium.
- 2.5. The business of the Committee will be resolved by a simple majority vote or unanimous vote of Committee Members; in the absence of a majority or unanimous vote, the Chairman of the Committee will have the deciding vote.
- 2.6. With respect to the acceptance, and making of, offers to settle the Claim, the Committee shall not exercise a vote in accordance with clause 2.5 above until the Committee has instructed senior Claimants' Counsel, and senior Leading Counsel has advised, that acceptance of, or the making of, a given offer is in the best interests of the Claimants, either individually or collectively.

- 2.7. The Committee shall instruct the Solicitors to act in accordance with the terms of this Agreement and, in particular, in accordance with clause 13.2.1 to 13.2.7, 13.2.10 to 13.2.16, and 13.3 below.
- 2.8. The Committee shall, acting on behalf of the Claimants:
- 2.8.1. act in accordance with the terms of this Agreement, using its reasonable endeavours to act in the best interests of the Claimants as a collective group. If there is a conflict between the two, the interests of the collective group shall prevail over those of individual Claimants
 - 2.8.2. act as the Claimants' representative to the Solicitors in respect of the Proceedings;
 - 2.8.3. agree to the Project Plan, after consultation with the Solicitors in accordance with this Agreement;
 - 2.8.4. provide instructions to the Solicitors with respect to entering into any Funding Agreements;
 - 2.8.5. report to the Claimants from time to time on its discussions with the Solicitors. The Claimants agree that, for reasons of practicality and strategic confidentiality, the level of detail of such reports may be restricted to reflect the risk of unintentional dissemination to the Defendants. The Claimants also agree that the Solicitors' report on costs (as defined in this Agreement) to the Committee will be a sufficient report to them, and that the Solicitors will have no further duty to report on costs;
 - 2.8.6. seek regular reports from the Solicitors on the Costs, Reasonable Costs, and Reasonable Costs Sum;
 - 2.8.7. approve Reasonable Costs, with or without the assistance of an appointed costs draftsman, on whose advice they may rely;
 - 2.8.8. manage the distribution of Claim Proceeds, to the Claimants, both in respect of the amounts and timing of payments.
- 2.9. Subject to clause 2.8.1 above, and subject to a Committee Member breaching his or her duties under the confidentiality agreement executed in accordance with clause 2.3.2 above, no Committee Member shall be liable to the Claimants for his own acts, omissions or defaults or for any loss to the Claimants incurred in connection with his role on the Committee, save where the same is caused through the Committee Member's fraud or dishonesty.
- 2.10. No Committee Member shall be liable, whether jointly or severally, for the acts, omissions or defaults of any other Committee Member.
- 2.11. The Committee Members shall be indemnified by the Claimants against any costs, losses or expenses to which they may become liable to a third party as a result of the proper exercise of their duties as Committee Members, but Committee Members shall be entitled to reimbursement of out of pocket expenses and compensation for time reasonably incurred in discharging

their committee duties, subject to any such time/cost being approved in advance by the Solicitors and Therium.

3. Committee – settlement

- 3.1. The Claimants expressly authorise the Committee to make, and accept, offers to settle the Proceedings and the Claims, individually and also on a global basis, and, on a settlement, to allocate and to distribute the Claim Proceeds, subject to the terms of this Agreement and the Funding Agreements, by reference to each Individual Claimant's Proportionate Share (as defined in clause 12.10) of the Claim.
- 3.2. The Claimants agree that for the purposes of clause 3.1 above and distribution (amount and timing) of Claim Proceeds generally, no account will be taken by the Committee of the individual strengths or weaknesses of an individual Claimant's case given the disproportionate costs of so doing.
- 3.3. Notwithstanding the generality of clauses 3.1. and 3.2 above, the Claimants hereby agree with each other and expressly authorise the Committee, subject only to acting in accordance with the advice of the Solicitors and Counsel, to adjust the distribution of Claim Proceeds between the Claimants where to distribute the Claim Proceeds in accordance with clause 3.1 would give rise to manifest unfairness. Subject to the requirement that the Committee act at all times in accordance with legal advice of Solicitors and Counsel, the Committee's decision on the allocation of Claim Proceeds between Claimants for distribution purposes shall be final. The Committee shall be under no obligation to exercise its discretion pursuant to this clause 3.3 nor shall it be under any duty to conduct any investigation or enquiry into, or have regard to any, circumstances which may be potentially relevant to the exercise of that discretion.

4. Agreement to Fund

- 4.1. Subject to clause 4.2 and 4.8 below, in return for the Claimants' agreement to pay, where there is a Recovery, the Reasonable Costs Sum and the Contingency Fee and the Adverse Costs Indemnity Fee (if any) in accordance with the terms of this Agreement, Therium agrees with effect from the Commencement Date to pay the Claimants' Reasonable Costs incurred in respect of Tranche 1 and any subsequent tranches of Funding incepted, up to the amount of the Committed Funds for those tranches, in accordance with the terms of this Agreement.
- 4.2. If the Recovery is insufficient to pay the Reasonable Costs Sum and the Contingency Fee in full then the Recovery shall be applied in accordance with the priority as set out in the Priorities Agreement until the Recovery has been fully applied, after which no further sum shall be payable pursuant to this Agreement.
- 4.3. At the option of Therium, exercisable on the completion of the stages of the Proceedings secured by Tranche 1, and at Therium's sole discretion, Therium shall have the exclusive right but not the obligation to fund Tranche 2 on the terms set out in this Agreement. Therium may elect to incept Tranche 2 either as a single tranche of Funding or as a series of sub-tranches each exercisable on the exhaustion of the Committed Funds from the previous tranche.

- 4.4. At the further option of Therium, exercisable on the completion of the stages of the Proceedings covered by Tranche 1 and Tranche 2, and at Therium's sole discretion, Therium shall have the exclusive right but not the obligation to fund Tranche 3 on the terms set out in this Agreement. Therium may elect to Incept Tranche 3 either as a single tranche of Funding or as a series of sub-tranches each exercisable on the exhaustion of the Committed Funds from the previous tranche.
- 4.5. At the further option of Therium, exercisable on the completion of the stages of the Proceedings covered by Tranche 1, Tranche 2 and Tranche 3, and at Therium's sole discretion, Therium shall have the exclusive right but not the obligation to fund Tranche 4 on the terms set out in this Agreement. Therium may elect to Incept Tranche 4 either as a single tranche of Funding or as a series of sub-tranches each exercisable on the exhaustion of the Committed Funds from the previous tranche.
- 4.6. At the further option of Therium, exercisable on the completion of the stages of the Proceedings covered by Tranche 1, Tranche 2, Tranche 3 and Tranche 4, and at Therium's sole discretion, Therium shall have the exclusive right but not the obligation to fund Tranche 5 on the terms set out in this Agreement. Therium may elect to Incept Tranche 5 either as a single tranche of Funding or as a series of sub-tranches each exercisable on the exhaustion of the Committed Funds from the previous tranche.
- 4.7. The options set out as clauses 4.3, 4.4, 4.5 and 4.6 above shall be exercisable from the date they arise and remain open and exclusive for 2 months from that date. Whilst the Claimants acknowledge that the exercise of the options set out at clauses 4.3 to 4.6 above is in Therium's sole discretion, Therium agrees that it shall exercise (or decline to exercise) those options in a rational manner having regard to the benefit for which the Parties entered into this Agreement. Time shall only start running for the purposes of this sub-clause when the Claimants or the Solicitors have notified Therium in writing that the preceding tranche has been exhausted. If the period of 6 weeks expires without Therium exercising the option, the Claimants may enter into alternative funding arrangements for that and any subsequent tranche, save that Therium shall continue to be entitled to exercise that option at any time up until the Claimants enters into a binding obligation which puts alternative funding in place for the whole of the Committed Funds for that and any subsequent tranche, at which point the option shall lapse.
- 4.8. In the event that Therium declines to exercise the options set out at clauses 4.3, 4.4, 4.5 and 4.6 above within 6 weeks in accordance with the foregoing clause, the Claimants may terminate this agreement and discontinue the litigation, subject to clause 20.7.
5. Payment Terms and Interest
- 5.1. The Reasonable Costs Sum and Contingency Fee shall become payable in the event that the Claimants achieve a Recovery and shall be paid in accordance with clause 17.
- 5.2. In the event that any sum payable under this Agreement is not paid by its due date, Interest will be payable on such sum at the rate of 4% per annum above National Westminster Bank Plc's base rate for the time being in force, compounded annually, from the date on which payment was due to the date

payment is received, or for such other period as may be specified in this Agreement. All references in this Agreement to Funding, funding or fund the costs and expenses of pursuing the Claim however described, shall be construed to be references to Therium's investment in the Claim and associated right to share in the Claim Proceeds together with the other rights set out in this Agreement, and it shall not be construed as a loan from Therium to the Claimants or as giving rise to a lender / borrower arrangement.

6. The Project Plan

- 6.1. For reasons of strategic and commercial sensitivity, the Claimants agree to waive any requirement there may be to be sent (electronically or otherwise) a full copy of this Agreement, which will instead be made available in redacted form or on a secure website to which each Claimant will have restricted access, and for inspection at the offices of the Solicitors only. Each Claimant will, on execution, receive a copy of this Agreement with *inter alia* details of the Project Plan and Contingency Fee and Committed Funds redacted, and Therium will request the Solicitors to prepare, and distribute to each Claimant, an information sheet containing an overview of this Agreement and its effect.
- 6.2. The Project Plan will be the subject of discussion and agreement between the Committee and the Solicitors and may be amended from time to time.
- 6.3. In the event that the Defendant brings a counterclaim in the Proceedings (on a generic or claim-specific basis), then the Claimants may request Therium to provide funding in respect of the Costs of defending the counterclaim. If Therium consents to this request, then the Costs of defending the counterclaim(s) shall form part of the Funding and be incorporated into the Project Plan (which, along with Schedule B, shall be deemed amended accordingly).
- 6.4. In the event of an Appeal, then the Claimants may request Therium to provide funding in respect of the Costs of dealing with the Appeal. If Therium consents to this request, then the Costs of dealing with the Appeal shall form part of the Funding and be incorporated into the Project Plan (which, along with Schedule B, shall be deemed amended accordingly).
- 6.5. In the event that proceedings involving the Claimants and relating to the Claim, other than the Proceedings, are begun, the Claimants may request Therium to fund the Costs of any or all of such proceedings. If Therium consents to this request (and for the avoidance of doubt Therium may consent to providing funding in respect of the Costs of any or all of such proceedings (or none of them)) the Costs of the proceedings shall form part of the Funding and be incorporated into the Project Plan (which, along with Schedule B, shall be amended accordingly).

7. Excluded Costs and Liabilities

- 7.1. Unless otherwise agreed by Therium, Therium will not pay nor be liable under this Agreement for any of the following costs, sums or liabilities incurred by the Claimants:
 - 7.1.1. Costs and/or other sums incurred as a result of the Claimants' failure (on any one or more occasions) to co-operate with or to

follow the advice of the Solicitors and/or Counsel;

- 7.1.2. Costs and/or other sums incurred as a result of any default by the Claimants;
- 7.1.3. any liability for payment of the Defendant's costs or the Claimants' liability for fines or penalties save to the extent set out in the Project Plan or as otherwise provided for in this Agreement;
- 7.1.4. Costs and/or other sums incurred as a result of any unreasonable failure by the Claimants to comply with the CPR or an order of the Court during the Proceedings;
- 7.1.5. Costs and/or other sums incurred as a result of any unreasonable failure by the Claimants to comply with a pre-action protocol;
- 7.1.6. Costs and/or other sums incurred prior to the Commencement Date (save to the extent that those costs are included in the Project Plan) or after termination of this Agreement;
- 7.1.7. any element of VAT where otherwise recoverable by the Claimants;
- 7.1.8. any Costs incurred in excess of the Reasonable Costs;
- 7.1.9. save if and to the extent ordered by the Court, any adverse costs incurred as a result of steps taken before the Commencement Date or after the date of termination of this Agreement; or
- 7.1.10. save to the extent set out in the Project Plan (or as otherwise agreed), any premium for costs insurance including the Legal Expenses Insurance.

8. Conditions Precedent and Warranties

- 8.1. This Agreement shall not come into force unless and until the Claimants have executed the Priorities Agreement.
- 8.2. The Claimants acknowledge and accept that Therium's decision to enter into this Agreement is solely based on the information and materials provided in and with the Application (which shall include copies of all legal advice to the Claimants relating to the Claim and all correspondence with the Defendant relating to the Claim) and other documents and materials provided to Therium and/or their representatives prior to the Commencement Date and that if any such information, documents and/or materials are inaccurate, untrue, incomplete or have not been disclosed to Therium and/or their representatives, this may affect Therium's decision to provide or continue to provide funding under this Agreement. The Claimants confirm that to the best of the Claimants' knowledge and belief, the information and materials provided in and with the Application, and the documents and materials provided to Therium and/or their representatives prior to the Commencement Date are accurate, complete and true in all material respects and that the Claimants have not failed to disclose any information, document and/or material which would be relevant to Therium's decision to enter into and remain bound by this Agreement.

- 8.3. Except as may already have been fully disclosed in writing to Therium prior to the execution of this Agreement, the Claimants warrant that:
- 8.3.1. the Claimants have not granted (or purported to grant) any charge, lien or other security in favour of a third party over the Claim or the Claim Proceeds (or otherwise dealt with the same in any way);
- 8.3.2. they will not grant (or purport to grant) any such charge, lien or other security or otherwise deal with the Claim or the Claim Proceeds in any way (save in respect of any Legal Expenses Insurance premiums payable by the Claimants) until all payments due to Therium under this Agreement have been met or otherwise extinguished; and
- 8.4. Therium and the Claimants each warrant that the execution and performance of, and compliance with, their respective obligations under this Agreement is fully authorised by each of them and the persons executing the Agreement have the necessary and appropriate authority to do so.
- 8.5. The Claimants warrant and acknowledge that they have taken legal advice from the Solicitors or otherwise on the terms of this Agreement prior to entering into it.
9. Claimants' costs
- 9.1. The Claimants' liability for costs will be provided for by the terms of the Solicitors' engagement letters, the Conditional Fee Agreement (and any subsequent conditional fee agreements) and this Agreement, unless otherwise agreed in writing.
- 9.2. The Claimants agree, so far as possible, to run the common elements of their separate claims jointly, and for the common costs ("Common Costs") recoverable from the Defendants on success, to be shared in accordance with this Agreement. The definitions of "Common Costs" and "Individual Costs" as set out in the Conditional Fee Agreement between the Claimants and the Solicitors are adopted also for the purposes of this Agreement and specific issues which apply to some, but not all, Claimants shall be treated as Common Costs.
- 9.3. The Claimants agree that, if appropriate, the Proceedings should be managed under a Group Litigation Order to regulate their claims and agree that the costs of any test case within the Proceedings will be treated as Common Costs.
10. Costs sharing
- 10.1. The Claimants agree that, unless the Court orders otherwise, the amount of Common Costs, including Reasonable Costs and those comprised in the Reasonable Costs Sum, referable to each Claimant, shall be a Proportionate Share as defined in clause 12.10 below. In contrast, Individual Claimants are each liable for 100% of the Individual Costs of their Individual Claims.
- 10.2. The Claimants instruct the Solicitors to apply to the Court for an order reflecting the agreement in clause 10.1, subject to the Solicitors' advice not

to do so. In the absence of such an application or where no order is made, the Claimants agree to the following mechanism in respect of the Proportionate Share of the costs referred to in clause 10.1 above:

- 10.2.1. a Claimant can require all other Claimants to provide him with their share of an indemnity in respect of his own costs, each such indemnity in respect of other Claimants' costs being calculated on the same basis as the Proportionate Share in respect of each Claimant's costs liability, so that, in that event, each Claimant is liable for their own Proportionate Share of the costs as defined in clause 10.1 above.
- 10.2.2. the indemnity at clause 10.2.1 above shall be, in total, a full indemnity; and
- 10.2.3. by agreeing to accept the indemnity at clause 10.2.1 above, each Claimant is required to provide all other Claimants with his share of an indemnity in respect of the other Claimants' own costs as per the Proportionate Share.

11. Payment of Reasonable Costs

- 11.1. The Claimants shall instruct the Solicitors and any other suppliers of services provided for in the Project Plan to address invoices relating to the work described in the Project Plan to the Claimants (whom remain primarily liable for the same) but marked payable by Therium and to deliver those invoices to Therium (copied to the Claimants) for payment. In the case of the Solicitors' own costs, these shall be paid monthly or on such other terms as are agreed between the Claimants, Therium and the Solicitors.
- 11.2. If in the reasonably held opinion of Therium, any Costs invoiced by the Solicitors or any other supplier of services are not Reasonable Costs, Therium shall serve a Challenge Notice on the Claimants, with a copy to the relevant supplier, within 20 Business Days of delivery of the relevant invoice.
- 11.3. In the event of a Challenge Notice being served, the Claimants agree to raise any queries identified in the Challenge Notice with the relevant supplier with the aim of reaching an agreement as to the disputed Costs. Where an agreement, satisfactory to Therium, cannot be reached within 10 Business Days of service of the Challenge Notice, the decision as to whether such Costs are Reasonable Costs shall be taken by an independent costs lawyer (the "Costs Lawyer") within 20 Business Days of his appointment. The Costs Lawyer so appointed shall be a member of the Association of Costs Lawyers and shall be appointed by Therium. Therium and the Claimants agree to be bound by such decision, and the Claimants shall use all reasonable endeavours to procure the agreement of the relevant supplier to be bound by such decision. Unless the Costs Lawyer directs another person to pay his costs, Therium agrees to meet his costs which shall be treated as part of the Reasonable Costs and within the Project Plan save that the amount of the Committed Funds shall remain unaffected.
- 11.4. Pending resolution of a Challenge Notice, Therium shall pay all Costs that are not subject to challenge.

- 11.5. Within 5 Business Days of receiving the Costs Lawyer's decision, Therium will pay any sum owing to either the relevant supplier and/or the Costs Lawyer if directed by the Costs Lawyer.
- 11.6. The Solicitors shall have the option to request that Therium approve any intended item of expenditure before it is incurred, and in the event that approval is granted, clauses 11.2 to 11.5 above shall not apply.

12. Adverse Costs Orders

- 12.1. Therium agrees that, from the Commencement Date and up until termination of this Agreement or the prior conclusion of the Proceedings, Therium shall indemnify the Claimant in respect of any Adverse Costs Order made against the Claimants up to a maximum amount of the Adverse Costs Indemnity Limit for Adverse Costs Indemnity Tranche 1 (if any) and for any additional tranches of the Adverse Costs Indemnity Incepted from time to time pursuant to clauses 12.2 and 12.3 below.
- 12.2. At the option of Therium, exercisable from when Therium reasonably considers that the Defendants' costs have exceeded the Adverse Costs Indemnity Limit for Adverse Costs Indemnity Tranche 1, at Therium's sole discretion, Therium shall have the exclusive right, but not the obligation, to Incept Adverse Costs Indemnity Tranche 2 on the terms set out in this Agreement.
- 12.3. At the further option of Therium, exercisable from when Therium reasonably considers that the Defendants' costs have exceeded the Adverse Costs Indemnity Limit for Adverse Costs Indemnity Tranche 2, at Therium's sole discretion, Therium shall have the exclusive right, but not the obligation, to Incept Adverse Costs Indemnity Tranche 3 on the terms set out in this Agreement.
- 12.4. The Claimants agree to irrevocably instruct the Solicitors to report monthly on the known or anticipated level of costs incurred by the Defendants from time to time and to advise if the level of those costs exceed the Adverse Costs Indemnity Limit for the incepted tranches of the Adverse Costs Indemnity.
- 12.5. For the avoidance of doubt, Therium may elect to Incept tranches of the Adverse Costs Indemnity independently of the Incepting of the Funding Tranches under this Agreement.
- 12.6. The Parties agree that any sum paid by Therium in respect of any Adverse Costs Order (whether made against the Claimant or Therium and whether or not paid pursuant to the Adverse Costs Indemnity) shall form part of the Reasonable Costs Sum and shall be reimbursed to Therium from Claim Proceeds pursuant to clause 3.2 of the Priorities Agreement.
- 12.7. Unless agreed by the Parties in writing, the Claimants shall use reasonable endeavours to take out and maintain an after the event Legal Expenses Insurance policy (at their own cost) sufficient to meet any risk of any Adverse Costs Order in favour of the Defendant or any third party relating to the Claim and the Proceedings above the Adverse Costs Indemnity Limit for all tranches of the Adverse Costs Indemnity as set out in Schedule B. In the event that, other than as a result of breach of this clause 12.7, the level of costs incurred by the Defendants as are reasonably advised by the

Solicitors pursuant to clause 12.4 exceeds the level of the Adverse Costs Indemnity and any cover under any after the event Legal Expenses Insurance policies such that the Claimants are exposed to uncovered adverse costs risk, Therium agrees that the Claimants shall be entitled, for the purpose of this Agreement, to discontinue the Proceedings forthwith.

- 12.8. Subject to clause 12.1 and the exercise of the options at clauses 12.2 and/or 12.3 above, and without prejudice to clauses 12.6 and 12.7, nothing in this Agreement shall confer any liability on Therium for any adverse costs and/or any Adverse Costs Order and the Claimants shall indemnify Therium against any order for costs as may be made against Therium.
- 12.9. Nothing in this Agreement shall prejudice:
- 12.9.1. Therium's right to such an indemnity or contribution from the Claimants in respect of any Adverse Costs Order; or
- 12.9.2. Therium's contentions in relation to any application by any party to the Proceedings for an order for costs against Therium.
- 12.10. The Claimants agree and acknowledge that, notwithstanding clauses 12.1 to 12.8 above, they may be jointly and severally liable in law to satisfy an Adverse Costs Order. The Claimants agree collectively for the purposes of this Agreement that the Claimants' liability for an Adverse Costs Order for Common Costs is several and not joint and that each individual Claimant shall only bear a share of an Adverse Costs Order for Common Costs, calculated as the following fraction (save if paragraph 12.10.3 below applies):
- 12.10.1. the numerator is the value of the individual Claimant's claim, as estimated by the Solicitors as at the time of the closure of the Group Litigation Order (GLO) register, (of if no GLO is made, a cut-off date determined and notified by the Solicitors), excluding any consequential loss of opportunity claims;
- 12.10.2. the denominator is the value of all the Claimants' claims as estimated by the Solicitors as at the time of the closure of the Group Litigation Order (GLO) register, (of if no GLO is made, a cut-off date determined and notified by the Solicitors), excluding any consequential loss of opportunity claims.
- 12.10.3. If at any time any of the figures relevant for the calculation in clauses 12.10.1 and 12.10.2 immediately above is not ascertainable (e.g. if it is sought prior to the estimates in those clauses being available and/or in the absence of any of the relevant figures), the liability for an Adverse Costs Order will in those circumstances (and those circumstances alone) shall be equal for each Claimant.
- 12.10.4. Following resolution of all the Claims, the liability of each individual Claimant in respect of an Adverse Costs Order for Common Costs shall still be determined (and thus crystallised) by the calculation in clauses 12.10.1 and 12.10.2, save that in each respect the calculations shall if necessary be adjusted by reference to the actual amounts ordered or agreed to be payable to the individual Claimant and the actual amounts ordered or

agreed to be payable to all the Claimants respectively instead of the estimated figures.

("the Proportionate Share")

- 12.11. The Claimants instruct the Solicitors to apply to the Court for an order reflecting the Proportionate Share, subject to the Solicitors' advice not to do so. In the absence of such an application, or where no such Court order is made, the Claimants each accept that any Claimant who is required or ordered to pay a share greater than their respective Proportionate Share shall be entitled to recover the difference from the remaining Claimants, and the Claimants indemnify one another to such an extent.
 - 12.12. In contrast, in relation to an Adverse Costs Order, Individual Claimants are each liable for 100% of the Individual Costs in respect of their individual Claims.
13. Claimants' Obligations
- 13.1. The Parties recognise that the Solicitors must at all times comply with their duties under the Solicitors Code of Conduct 2011 (and any subsequent replacement or additional code of conduct) to act independently and in the best interests of the Claimants and in accordance with their other professional duties. Nothing in this Agreement entitles Therium to interfere in the conduct of the Claim and/or the Proceedings.
 - 13.2. The Claimants shall:
 - 13.2.1. instruct the Solicitors to provide Therium, prior to execution of this Agreement, with a reliance letter substantially in the form of that annexed to this Agreement at Appendix 2;
 - 13.2.2. Irrevocably instruct the Solicitors and Counsel to conduct the Proceedings in accordance with the procedural rules applicable in the Court and comply with any judgment, order or award made in the Proceedings;
 - 13.2.3. Irrevocably instruct the Solicitors to provide Therium with any documents or information relating to the Claim and Proceedings as may be reasonably requested by Therium;
 - 13.2.4. Irrevocably instruct the Solicitors to provide Therium with regular updates, including as to any potential or suggested changes, with respect to the Project Plan;
 - 13.2.5. Irrevocably instruct the Solicitors to provide Therium, insofar as is reasonably practicable and proportionate, with copies of draft pleadings, witness statements and significant correspondence, prior to issue;
 - 13.2.6. Irrevocably instruct the Solicitors to report to the Claimants as a body of the facts underlying each Claimant's claim, including the facts stated in the evidence disclosed by the Defendants, provided that doing so is consistent with its and their implied obligation to the Defendants only to use the documents disclosed

in the Proceedings for the purpose of the Proceedings and provided that the individual Claimant does not specifically request that their anonymity be preserved.

- 13.2.7. Irrevocably instruct the Solicitors to disclose to any other Claimant, the Committee and Therium the terms of any offer to settle made to any individual Claimant.
- 13.2.8. Irrevocably instruct the Solicitors to use information or documents derived from a Claimant's individual claim in any other Claimant's claim or in the Proceedings as a whole, if the Solicitors so advise.
- 13.2.9. Irrevocably instruct the Solicitors, in satisfaction of the Solicitors' duty to report to the Claimants, to report only to the Committee, for reasons of practicality and strategic confidentiality and given the risk of unintentional dissemination to the Defendants.
- 13.2.10. Irrevocably instruct and authorise the Solicitors to take such steps and perform such actions as may be required and/or desirable in order to perform and/or give effect to this Agreement, including discharging any obligations of the Claimants on the Claimants' behalf as their agent in all respects;
- 13.2.11. through irrevocable instructions to the Solicitors and/or on its own account:
 - (a) keep Therium promptly informed of any significant developments in the Proceedings (including any settlement discussions, any offers received and any information, evidence or advice coming to the attention of the Claimants or the Solicitors which may be material either to the prospects of success of the Claim or of enforcing any judgment or award), including any material adverse change in the prospects of success or if the prospects of success have deteriorated to a level where the case is unlikely to be successful; and
 - (b) make a monthly summary report in such form as Therium may reasonably require to Therium regarding the overall progress and conduct of the Proceedings, the prospects of success of the Claim, the Costs incurred against the Project Plan and the expected exposure to adverse costs;
- 13.2.12. comply with the terms of the Legal Expenses Insurance (including as to payment of any premium as and when due) and any duty owed to the insurer providing such cover, not take or omit to take any step which might potentially lead to withdrawal, avoidance or cancellation of cover, and supply to Therium a copy of any correspondence from the Legal Expenses Insurance provider threatening to withdraw or withdrawing cover;
- 13.2.13. take and follow the legal advice of the Solicitors and Counsel at all appropriate junctures, including whether it would be appropriate to make or accept any offer to settle the Claim;

- 13.2.14. 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 Claim, including providing, or procuring the provision of, documents in the possession or control of the Claimants or any subsidiaries or associated companies of the Claimants and, in so far as advised by the Solicitors or Counsel, including providing access to witnesses for the purpose of preparing witness statements and procuring the attendance of those witnesses at trial to give evidence on the Claimants' behalf;
- 13.2.15. give reasonable notice of and permit Therium, where reasonably practicable, to attend as an observer at internal meetings which include meetings with Counsel and experts and send an observer to any mediation or hearing relating to the Claim; and
- 13.3. The Claimants hereby irrevocably instructs the Solicitors to notify Therium in the event that the Claimants breaches the Claimants' obligations under this Agreement including but not limited to:
 - 13.3.1. revoking its instructions made pursuant to clauses 13.2 and this clause 13.3;
 - 13.3.2. threatening to cease or ceasing to instruct the Solicitors or Counsel in its dispute;
 - 13.3.3. disputing any invoice;
 - 13.3.4. failing to follow the advice of the Solicitors or Counsel in any material way; or
 - 13.3.5. where the Claimants has made any material misrepresentation or non-disclosure in its application for funding or otherwise during the course of the operation of this Agreement.
- 13.4. The Parties agree not to do or permit to be done anything likely to deprive each other of any benefit for which the other has entered into this Agreement.
- 13.5. Therium acknowledges the Claimants' right to seek advice in relation to the Claim from whichever solicitors or counsel they may choose. In the event, however, that the Solicitors and/or Counsel cease to have conduct of the Claim, then the Claimants shall obtain Therium's consent to the instruction of any alternative solicitors and/or counsel proposed by the Claimants before they are instructed.
- 13.6. The Claimants agree that if Therium requires any advice given by the Solicitors to the Claimants in respect of the Claim and/or the Proceedings to be confirmed by Counsel, the Claimants will instruct the Solicitors to instruct Counsel to provide an opinion to the Claimants on such advice and to provide a copy of such opinion to Therium. The cost of such opinion shall be Reasonable Costs and deemed to be included within the Project Plan save that the total amount of the Committed Funds shall remain unaffected.
- 13.7. For the avoidance of doubt, subject to Therium's rights to termination pursuant to clause 20, nothing in this Agreement shall permit Therium to

override any advice given by the Solicitors or Counsel to the Claimants. This includes any opinion given pursuant to clause 13.6 of this Agreement.

14. Appeals

- 14.1. If Therium agrees to provide funding in respect of an Appeal (there being no obligation on it to do so), then the Claimants agree to instruct the Solicitors and Counsel to act on the Appeal.
- 14.2. Where Therium elects not to provide funding in respect of the Costs of any Appeal:
 - 14.2.1. the Claimants shall not be obliged to pursue or defend the Appeal but, if they do so, shall comply with their obligations set out in clause 13;
 - 14.2.2. subject to any contrary order of the Court and its right to be indemnified by the Claimants, Therium shall have no liability for any Adverse Costs Order made in relation to the Appeal; and
 - 14.2.3. If the Appeal was brought by the Claimants and the Claim Proceeds are reduced as a result of the Appeal, the Contingency Fee shall be calculated by reference to the amount of the Claim Proceeds immediately prior to the Appeal.
 - 14.2.4. For the avoidance of doubt, If the Appeal was brought by the Defendants and the Claim Proceeds are reduced as a result of the Appeal, the Contingency Fee shall be calculated by reference to the amount of the Claim Proceeds as reduced by the Appeal.
- 14.3. Where Therium elects to provide funding in respect of the Costs of any Appeal;
 - 14.3.1. clause 14.2.1 will apply;
 - 14.3.2. clause 12 shall apply in relation to any order for costs relating to the Appeal;
 - 14.3.3. If the Claim Proceeds are reduced as a result of the Appeal then the Contingency Fee due to Therium shall be recalculated to reduce the amount due to Therium following the Appeal; and
 - 14.3.4. following recalculation in accordance with clause 14.3.3, Therium shall repay any sums paid to it in excess of its entitlement under this Agreement.

15. Recovery

The Claimants shall use its best endeavours to cause any Claim Proceeds to be recovered as quickly as possible.

16. Security for costs

- 16.1. Where specified in the Project Plan or as otherwise agreed, in the event of an order of the Court that the Claimants shall provide security for the costs

of a party to the Proceedings, Therium will discharge that order to the satisfaction of the Court.

- 16.2. The Claimants agree to hold the Legal Expenses Insurance policy and all proceeds payable under it on trust for Therium throughout the Trust Period on terms that Therium shall be entitled to such part or all of any proceeds of the Legal Expenses Insurance which become payable as a consequence of an Adverse Costs Order as shall be equal to the amount of any security posted by Therium pursuant to clause 16.1 used to discharge the Claimants' liability (either entirely or in part) in respect of any Adverse Costs Order.
- 16.3. The Claimants agree that within 2 Business Days of whichever is the later of:
 - 16.3.1. the date on which this Agreement is executed; or
 - 16.3.2. the date on which the Legal Expenses Insurance policy comes on risk, the Claimants will send to the Insurer(s) providing the Legal Expenses Insurance a written Notice of Interest in duplicate for noting on the Insurer's records and will provide a copy of such Notice of Interest, duly acknowledged by the Insurer(s), to Therium within 5 Business Days of receipt of the same by the Claimants.

17. Treatment of Claim Proceeds

- 17.1. The Claimants agree to hold any Claim Proceeds received by them, or by the Solicitors on their behalf, upon trust for Therium throughout the Trust Period on terms that Therium shall be entitled to such part of the Claim Proceeds as shall be equal to the total of all amounts due under the terms of this Agreement to Therium (as the same may be reduced in accordance with the Priorities Agreement).
- 17.2. The Parties agree that any Claim Proceeds received in monetary form shall be paid into the Solicitors' client account immediately upon receipt. In the case of any Claim Proceeds received in non-monetary form, the Claimants shall either deliver the Claim Proceeds to the Solicitors or pay to the Solicitors as soon as is reasonably practicable the market value of the Claim Proceeds determined in accordance with clause 17.3.
- 17.3. If the Claimants receive any Non-Monetary Proceeds, the Parties agree that such Non-Monetary Proceeds shall be valued by an independent valuer agreed by the Parties with the cost of that valuation to be met by the Claimants. The Parties shall use their respective reasonable endeavours to agree on the appointment of the independent valuer and agree to his terms of appointment. Where the Parties cannot agree on the identity of the independent valuer within 20 Business Days of receipt of the Non-Monetary Proceeds, the President of the Law Society from time to time shall be requested by any of the Parties to recommend a valuer who shall be the independent valuer for the purposes of this clause and clauses 13.4 to 13.7 inclusive.
- 17.4. The Parties shall be entitled to make written submissions to the independent valuer (provided such submissions are received by the independent valuer within 10 Business Days of his appointment) and shall use their reasonable endeavours to provide the independent valuer with such assistance and

documents as the Independent valuer reasonably requires for the purpose of reaching a determination as to the value of the Non-Monetary Proceeds.

- 17.5. To the extent not provided for by clause 17.4 above, the independent valuer may, in his reasonable discretion, determine such other procedures to assist with the conduct of the determination as he considers just or appropriate, including (to the extent he considers necessary) instructing professional advisers to assist him in reaching his determination.
- 17.6. In making his determination the independent valuer will act as an expert and not as an arbitrator. The independent valuer shall prepare a written determination and give notice (including a copy) of that determination to the Parties within 2 months of the matter being referred to him. The independent valuer's written determination on the matters referred to him shall be final and binding on the Parties in the absence of manifest error or fraud.
- 17.7. If the independent valuer dies or becomes unwilling or unable to act, or does not deliver his determination within the time required by clause 17.6 above then either party may apply to the President from time to time of the ICAEW to discharge the independent valuer and to appoint a replacement independent valuer and clauses 17.3 to 17.7 shall apply in relation to the new independent valuer as if he were the first independent valuer appointed.
- 17.8. On receipt of all Claim Proceeds (following resolution of the last of the Claims), the Claimants shall instruct the Solicitors (for which purpose the Solicitors shall be hereby deemed to be instructed) to provide Therium with such information as Therium reasonably requires to enable Therium, or the Solicitors at Therium's request, to prepare a draft Claim Proceeds Account which Therium (or the Solicitors as the case may be) shall deliver to the Solicitors to the Priorities Agreement for agreement.
- 17.9. The Claims Proceeds shall be apportioned (within the Claims Proceeds Account and subject to any adjustment pursuant to clause 3.3) between the Claimants by applying the same fraction as set out in clause 12.10 (but using the actual value of each Claim, rather than estimated). The Claims Proceeds Account shall specify each Claimant's proportionate share of the Net Claims Proceeds following payment of all sums to be distributed in priority to the Claimants in accordance with the Priorities Agreement.
- 17.10. Once the draft Claim Proceeds Account is agreed or deemed to be agreed pursuant to the Priorities Agreement (whichever is the earlier), the Parties agree that the Solicitors shall forthwith pay out the Claim Proceeds in accordance with the agreed Claim Proceeds Account.
- 17.11. Therium shall have the right, but not the obligation, to request an interim draft Claim Proceeds Account for the purpose of determining whether or not an interim and partial distribution can be made to one or more of the Claimants at any point prior to the final agreement of the Claim Proceeds Account. Therium shall have the right but not the obligation to agree to the making of such an interim partial distribution of Claim Proceeds, and if so, the amount and timing of such distribution. The apportionment of any such interim distribution shall be in accordance with clause 17.9.

- 17.12. Any damages awarded against the Claimants in respect of a counterclaim funded pursuant to clause 4.1 shall be deducted from the Claim Proceeds for the purposes of calculating the distribution under the Claims Proceeds Account, regardless of whether Therium has funded the cost of defending the counterclaim.
 - 17.13. If any payment due to Therium from the Claim Proceeds is delayed due to action or failure to act on the part of the Claimants, the Claimants shall compensate Therium for the delay in making payment by paying to Therium interest on the sum delayed for the period of the delay calculated in accordance with clause 3.2.
 - 17.14. Any dispute arising under clauses 17.8 to 17.13 herein shall be resolved in accordance with the procedure set out in clause 4 of the Priorities Agreement.
18. Privilege and Agency
- 18.1. The Claimants hereby appoints Therium as the Claimants' agent for the sole purpose of holding, reviewing and commenting on the documents and information provided, including any privileged documents and information, and deciding whether to fund the Proceedings. The express and only terms of that agency were and are that Therium agrees 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 waive any privilege attaching to them;
 - 18.1.3. keep them secure and safe; and
 - 18.1.4. use them only in connection with Therium's business as a litigation funder in connection with the Proceedings to enable the parties to decide whether Therium should be involved in funding and continuing to fund the Proceedings and in accordance with clause 16 below.
 - 18.2. The Claimants and Therium do not waive any legal professional privilege, common interest privilege or other privilege or protection attaching to any documents and information disclosed to Therium. Any privileged information and documents disclosed at any time to Therium have been or will be disclosed on the additional basis that Therium has, or will have, a common interest in the pursuit and success of the Proceedings and will at all times take all reasonable steps to maintain that privilege.
 - 18.3. Therium shall, for the purposes of clauses 18.1 and 18.2, include Therium's directors, officers, employees, litigation advisers and sub-litigation advisers, attorneys, consultants, solicitors, counsel, associated companies, insurers, shareholders and agents.
19. Confidentiality
- 19.1. Without prejudice to clause 18 above, the Parties agree to keep confidential and, where appropriate, maintain any privilege belonging to the Claimants, in all documents and information supplied by the Claimants, Therium or the

Solicitors, including (unless otherwise agreed) the existence and / or terms of this Agreement. The Claimants agree that they will not disclose to any third party who is not either a Claimant or a professional advisor of a Claimant with a duty of confidentiality to that Claimant any advice received from the Solicitors, or any other communication received from the Solicitors or from the Committee in connection with the Funding Agreements or the Proceedings. It is agreed that the provision of privileged documents does not amount to any waiver of privilege, and the Parties shall not use these for any purpose other than in respect of this Agreement, except a purpose to which the Parties have consented or as required by law or regulation. The Claimants agree that Therium may disclose such documents and information:

- 19.1.1. to its advisers, including litigation and investment advisers, auditors, brokers, legal advisers, investors and potential investors, insurers and potential insurers;
 - 19.1.2. where Therium is under a legal or regulatory obligation to make such disclosure, but limited to the extent of that legal obligation;
 - 19.1.3. to the extent that it is already in the public domain (other than as a result of Therium's breach of this Agreement);
 - 19.1.4. with the prior written consent of the Claimants; or
 - 19.1.5. to the extent necessary to take legal action to enforce Therium's rights under this Agreement or to defend such action.
- 19.2. Therium shall procure that any persons receiving confidential documents or information pursuant to sub-clause 19.1.1 shall comply with the obligations imposed on Therium pursuant to sub-clause 19.1.
- 19.3. Nothing in this Agreement shall prevent Therium instructing one or more agents to undertake any action or review documents, evidence or information which Therium would be entitled to undertake pursuant to this Agreement save that Therium shall procure that any agent acting on its behalf shall comply with the obligations imposed on Therium by clause 19.1.
- 19.4. Therium will immediately inform the Claimants of any request or order to disclose its privileged documents or any other privileged information held by Therium, except where informing the Claimants would contravene any law or regulation.
- 19.5. The Claimants agree that the duty of confidentiality owed to them individually by the Solicitors in respect of:
- 19.5.1. the facts of their individual claims disclosed to the Solicitors by each Claimant; and
 - 19.5.2. any documents produced by them or to them on disclosure,

shall be waived as against the other Claimants and the Committee insofar as the Solicitors consider it necessary or desirable to compare the facts of individual claims for the purposes of advising on and conducting the common aspects of the individual claims in the Proceedings, and shall be

walved as against the Solicitors provided the Claimants' confidential information is shared on terms of confidentiality and without any waiver of privilege.

- 19.6. If a Claimant ceases to be a party to this Agreement, his duty of confidentiality shall continue with full force and effect.

20. Termination

- 20.1. Without prejudice to clause 8.1 and subject to earlier termination of this Agreement pursuant to clauses 20.2 to 20.5, this Agreement shall continue in full force and effect until payment of any and all sums due to Therium pursuant to this Agreement and in any event clauses 1 (Interpretation), 2 & 3 (Committee), 5.2 (Payment Terms and Interest), 8.2, 8.3 and 8.4 (Conditions Precedent and Warranties), 9 (Claimants' costs), 10 (Costs Sharing) 12 (Adverse Costs Orders), 13 (Claimants' Obligations) 16.2 (Security for Costs), 17 to 19, 21 to 33 shall continue in full force and effect notwithstanding Termination of this Agreement. For the avoidance of doubt, the options at clauses 4.3, 4.4 and 4.5 above shall not remain open for exercise by Therium after termination of this Agreement; but any option exercised by Therium prior to termination will continue in full force and effect, subject to, and in accordance with, the remainder of this clause.
- 20.2. The Claimants and Therium may at any time agree, by mutual consent in writing, to suspend or terminate this Agreement in which event they shall serve Notice of such suspension or termination on the Solicitors.
- 20.3. If, Therium reasonably ceases to be satisfied as to the merits of the Claim or Therium reasonably believes that the Claim is no longer commercially viable, then Therium shall be entitled to suspend until further notice by Therium or terminate this Agreement by giving 5 Business Days' Notice to the Claimants. Following such termination or during the period of suspension, Therium shall have no further liability to fund the Reasonable Costs but this shall not affect any accrued rights or entitlements of Therium.
- 20.4. In the event that Therium reasonably considers that there has been a material breach of this Agreement by the Claimants, Therium may notify the Claimants that Therium requires the Claimants to remedy the breach within 20 Business Days. In the event that the breach is not remedied within that period, Therium shall be entitled to suspend until further notice by Therium or terminate this Agreement forthwith by giving Notice to the Claimants, copied to the Solicitors. Following such termination or during the period of suspension under this clause 20.4, Therium shall have no further liability to fund the Reasonable Costs. Within 5 Business Days of termination under this clause 20.4, the Claimants shall pay to Therium the Reasonable Costs Sum calculated as at that date, together with interest calculated in accordance with clause 5.2 from the date of this Agreement to the date of payment. Following such termination Therium shall remain entitled to the Reasonable Costs Sum and the Contingency Fee upon Recovery and, for the purpose of calculating this, Therium shall be deemed to have exercised the options set out above at clauses 4.3 to 4.6 inclusive. For the purposes of this clause 20.4, a material breach shall include, but not be limited to, any breach of any of the warranties set out in clauses 8.2 to 8.4, save for any breach that does not materially affect the contemplated litigation or the anticipated financial benefit for which Therium entered this agreement.

- 20.5. In the event of a material breach of this Agreement by Therlum, the Claimants shall notify Therlum that the Claimants requires Therlum to remedy the breach within 20 Business Days. In the event that the breach is not remedied within that period, the Claimants shall be entitled to terminate this Agreement forthwith by giving Notice to Therlum, copied to the Solicitors. Following such termination Therlum shall remain entitled to the Reasonable Costs Sum, calculated as at the date of termination, upon Recovery. For the avoidance of doubt, following such termination Therlum shall have no future entitlement to the Contingency Fee.
- 20.6. In the event of termination of this Agreement pursuant to clauses 20.2 to 20.5, the Claimants shall within 20 Business Days use all reasonable endeavours to put in place alternative arrangements to discharge any order for security for costs and, at the end of the 20 Business Days period, Therlum shall be entitled to terminate any such arrangements made on the Claimants' behalf pursuant to clause 14.1. Therlum shall, on payment by the Claimants to Therlum of an amount equal to the amount (if any) of any security for costs posted by Therlum which has been used to discharge the Claimants' liability in respect of any Adverse Costs Order, provide the Claimants with a written Notice of Release of Interest in respect of the Legal Expenses Insurance.
- 20.7. Termination of this Agreement shall not affect any accrued rights or liabilities, including, without limitation, any arising under any Adverse Costs Indemnity granted pursuant to Clause 12, nor will it affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination, including but not limited to clauses 4.1, 9, 11 and 13 including in particular its right to information, to continue to hold its security and to be paid any amounts due to it including the Contingency Fee as provided for at clause 20.4.
21. Contracts (Rights of Third Parties) Act
- A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Agreement.
22. Data Protection
- In performing their respective obligations and exercising their respective rights under this Agreement, the parties agree to comply with the terms of the Data Protection Act 1998 and all regulations published pursuant to that Act.
23. Assignment
- 23.1. The Parties agree that Therlum shall be entitled to assign to any group company any or all of its rights, interests and obligations pursuant to this Agreement upon giving 5 Business Days' Notice of its intention to do so to the Claimants.
- 23.2. Save as provided in clause 23.1, a Party shall not assign or transfer this Agreement or any of its rights under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement without having first obtained the prior written consent of the other Party.

24. Variation

No variation to this Agreement shall be valid unless it is in writing and signed by the Parties' authorised signatories.

25. Waiver

No forbearance or delay by a Party in enforcing its rights shall prejudice or restrict the rights of that Party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

26. Invalidity and severability

If any provision of this Agreement is or becomes invalid, illegal or unenforceable whether in whole or in part or in relation to any of the Parties to the Agreement, the validity, legality and enforceability of the remainder of the Agreement, or its validity and enforceability as against other parties, shall not be affected in any way. The Parties shall nevertheless negotiate in good faith in order to agree the terms of a mutually satisfactory provision, achieving so nearly as possible the same commercial effect, to be substituted for the provision so found to be invalid, illegal or unenforceable and each Party shall take any step required, including executing any further or other document, in order to give effect to the Parties' intention in entering into this Agreement.

27. Most Favoured Nation

Should the Claimants enter into any subsequent agreement with any other person to provide funding in relation to the Claim which provides for benefits or terms more favourable than those contained in this Agreement, then the Agreement shall be deemed to be modified, in whole or in part, at the election of Therium, to provide Therium with those more favourable benefits and terms. The Claimants shall notify Therium promptly of the existence of such more favourable benefits and terms and Therium shall have the right to receive the more favourable benefits and terms with immediate effect from that notice. If requested in writing by Therium, the Claimants shall amend this Agreement to contain the more favourable benefits or terms.

28. Succession

This Agreement shall be binding on the Parties, their successors and assigns and the name of a Party appearing herein shall be deemed to include the names of any such successor or assign.

29. Notices

29.1. Any Notice to be served under this Agreement shall be in writing and may be delivered by hand or sent by pre-paid first class recorded delivery post to the Party to be served at the relevant address set out in this Agreement or any such other address as the Party to be served may have notified to the other Party for the purposes of this clause 29.1.

29.2. For the purpose of service of Notice or other documents on the Claimants (including but not limited to service of proceedings), the Claimants agree that service on the Solicitors shall be valid and adequate service on the Claimants.

29.3. Any Notice shall be deemed to have been served:

29.3.1. If delivered by hand, at the time of delivery to the Party or Solicitors; or

29.3.2. If posted, at 10.00am on the second Business Day after it was posted to the Party or Solicitors.

29.4. In proving service of a Notice it shall be sufficient to prove that delivery by hand was made or that the envelope containing the Notice was properly addressed and posted as a pre-paid first class recorded delivery letter.

30. Counterparts

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

31. Non-reliance and exclusion of liability

The Claimants accept and agree that the Claimants has taken such legal advice as the Claimants requires prior to entering into this Agreement and has not relied on Therium, its directors, officers, shareholders, investors or advisers (including but not limited to its litigation adviser and litigation sub-adviser) in deciding whether or not to enter into this Agreement and in deciding whether or not to bring the Proceedings. By entering into this Agreement, the Claimants agrees and accepts that neither Therium nor its directors, officers, shareholders, investors nor advisers (including but not limited to its litigation adviser and litigation sub-adviser) owe any obligation, responsibility or duty to the Claimants save as expressly set out in this Agreement and the Priorities Agreement and do not accept any liability to the Claimants or any third party whatsoever save as expressly set out in this Agreement and the Priorities Agreement.

32. Dispute Resolution

32.1. The Parties agree that in the event of any dispute between Therium and the Claimants relating to:

32.1.1. settlement of the Claim or any of the Claims; or

32.1.2. termination of this Agreement under clause 20;

either party shall be entitled to direct the Solicitors to refer the dispute to an independent Queen's Counsel, whose identity is to be agreed between the Parties or, in lieu of such agreement, to be nominated by the Chairman of the Bar Council. Such Queen's Counsel shall be deemed to be jointly instructed by both parties.

32.2. In the event of a dispute over settlement of the Claim, the Queen's Counsel shall be instructed to provide an opinion as to the appropriate level of settlement. The Parties agree that the Queen's Counsel's opinion on settlement shall be final and binding on each one of them and the Claimants shall instruct the Solicitors and Counsel accordingly. In the event of Therium making a reference to Queen's Counsel in respect of settlement, the Claimants shall not take further steps to settle the Claim without the

consent of Therium until the Opinion is obtained.

- 32.3. In the event of a dispute over termination of this Agreement, the Queen's Counsel shall be instructed to provide an opinion on the rights and entitlements of each of the Parties, to include the reasonableness or otherwise of Therium's views under clause 20.3. The Parties agree that the Queen's Counsel's opinion on this issue in dispute shall be final and binding on each one of them.
- 32.4. In giving any opinion pursuant to clauses 32.2 and 32.3 above, Queen's Counsel shall also be instructed to determine which one or more of the Parties should bear Queen's Counsel's fees of giving the Opinion (and, if more than one Party, the shares in which they are each to bear those fees) and the Parties agree to be bound by this determination as to liability for the Queen's Counsel's fees.

33. Law and Jurisdiction

This Agreement is governed by and is to be construed in accordance with the law of England and Wales. Save for any dispute resolved finally pursuant to clause 32 above, any dispute arising out of or connected to this Agreement, including the validity or termination thereof, shall be finally resolved by a sole arbitrator under the arbitration rules of the London Court of International Arbitration (the "LCIA"). The seat of the arbitration shall be London, the language of the arbitration shall be English and the arbitrator shall be a practising member of the English Bar. The arbitrator shall be appointed by the agreement of the Parties provided that, if the Parties cannot reach agreement on the appointment of the arbitrator within 30 days, then any Party may apply to have the arbitrator appointed by the LCIA.

IN WITNESS of which the Parties have each executed this Agreement on the date shown above

Signed
For and on behalf of THERIUM LITIGATION FUNDING IC

Signed 

Name: Seema Misra

SCHEDULE A – List of Claimants

SCHEDULE B

APPENDIX 1

Project Plan

Stage	Date	Incurred and estimated costs
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APPENDIX 2

Specimen letter from Solicitors

TO BE PRINTED ONTO FREETHS LLP's LETTERHEAD

To: Therium Litigation Funding IC
Charter Place
23/27 Seaton Place
St Helier
Jersey
JE1 1JY

Dear Sirs,

Re: The Individuals listed in the attached schedule and parties to a funding agreement with Therium Litigation Finance IC ("the Claimants") v the defendants set out in the Claim Form attached ("the Claim")("the Claim").

I refer to the above Claim in which we ("the Solicitors") are acting for the Claimants. Therium Litigation Funding IC ("Therium") has entered into a funding agreement ("the Funding Agreement") and priorities agreement ("the Priorities Agreement") in which Therium agrees to fund the Claimants' costs and disbursements on the terms set out in those agreements.

At clause 8.2 of the Funding Agreement, the Claimants acknowledge that Therium has entered into the Funding Agreement solely based upon the information and materials made available to Therium and its representatives prior to the commencement date of the Funding Agreement and that, if any information, documents and/or materials are inaccurate, untrue, incomplete or have not been disclosed to Therium or its representatives, that this may affect Therium's decision to provide (or continue to provide) funding under the funding Agreement. The Claimants warrant to the best of the Claimants' knowledge and belief that the information and material made available to Therium and its representatives 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 Therium's decision to enter into, and remain bound by, the Funding Agreement.

Save as provided elsewhere in this letter, insofar as the information, materials and/or documents made available to Therium and its representatives prior to entering into the Funding Agreement, consist of information, documents or advice to the Claimants provided by the Solicitors, the Solicitors acknowledge and accept that they have assumed a duty of care to Therium in respect of that information and/or advice, and the Solicitors agree that Therium has not conducted any independent information gathering exercise, has not sought separate legal advice in relation to the merits of the Claim brought by the Claimants and Therium has relied upon the information, documents and advice to the Claimants provided by the Solicitors. Furthermore, in continuing to fund the Claim, the Solicitors agree and acknowledge that Therium will continue to rely upon the Solicitors in respect of the

advice the firm provides to the Claimants and its ongoing conduct of the Claim while instructed by the Claimants.

For the avoidance of doubt, the Solicitors have not provided to Therium all of the documents which have been provided to it by the Claimants, nor have the Solicitors provided full details of the information provided to them orally by the Claimants. To that extent, the information provided by the Solicitors to Therium is incomplete but, so far as the Solicitors are aware, the Solicitors have not failed to disclose any information documents or material which would be relevant to Therium's decision to enter into, and remain bound by, the Funding Agreement.

Furthermore, insofar as the Solicitors accept a duty of care to Therium in respect of the accuracy of any information, documents or advice provided, the Solicitors are unable to warrant the accuracy of the information provided to it by the Claimants, Defendant or third parties or the validity of the documents so provided on which any advice may be based. However, so far as the Solicitors are aware, the information provided is accurate and the documents provided are valid.

Nothing in this letter shall impose any contractual duty on the Solicitors to advise Therium in relation to the above Claim as a client of the firm. The Solicitors' only client in relation to the Claim is (and will remain) the Claimants in that action and, in the event of any conflict between the Claimants and Therium, the Solicitors shall be under no duty to advise Therium, nor shall they be prevented from continuing to advise the Claimants as a result of that conflict arising.

Yours faithfully,

Freeths LLP

APPENDIX 3

Specimen Priorities Agreement

PRIORITIES AGREEMENT

- (1) THERIUM LITIGATION FUNDING IC;
- (2) VARIOUS INDIVIDUALS more particularly defined herein; and
- (3) FREETHS LLP

THIS AGREEMENT is made this day of 2016

BETWEEN:

- (1) THERIUM LITIGATION FUNDING IC of Charter Place, 23/27 Seaton Place, St Heller, Jersey, JE1 1JY ("Therium");
- (2) THE INDIVIDUALS listed as claimants in the Claim Form (as set out in Schedule A) who have also executed this Agreement, whether signing in manuscript or electronically, before the Commencement Date (the "Claimants"); and
- (3) FREETHS LLP of Floor 3, 100 Wellington Street, Leeds, LS1 4LT (the "Solicitors")

individually a "Party" and together the "Parties".

WHEREAS:

- A. The Solicitors have advised the Claimants they have a legal claim against the Post Office Limited (the "Defendant") for inter alia damages arising out of breach of contract (esp. Implied duty of good faith in relational contracts); breach of duty of care and subject to receipt of evidence; breach of a fiduciary duty; deceit; and unlawful means conspiracy. The Claimants intend to issue legal proceedings against the Defendant in the Queen's Bench Division or Chancery Division of the High Court of Justice of England and Wales (the "Proceedings").
- B. Pursuant to engagement letters and Conditional Fee Agreements (together the "Engagement Letters") the Solicitors act for the Claimants in relation to the Proceedings.
- C. In consideration for Therium entering into a funding agreement (the "Funding Agreement") with the Claimants to enable the Proceedings to progress, the Parties wish to set out in this Agreement the priority order and timing for paying the sums due to each of them from the proceeds of any recoveries made in the prosecution of the Claim.

NOW IT IS AGREED AS FOLLOWS:-

Definitions

1. In this Deed the following definitions shall have the following meanings:

"Agreements" means all of the Engagement Letters and the Funding Agreement collectively;

"Base Costs" means the base costs referred to in the Engagement Letters or any Conditional Fee Agreement entered into by the Claimants and the Solicitors, any of the Solicitors' profit costs (excluding success fee) remaining unpaid under the terms of the Engagement Letters and any of the fees (excluding uplift) remaining unpaid of Counsel (or any other counsel retained by the Solicitors in the case);

"Claim" means the Claimants' claims and causes of action against the Defendant in the Proceedings (and any amendment of those claims or causes of action) and any enforcement action or subsequent proceedings relating thereto;

"Claims" means the individual claims comprising the Claim

"Claimants" means the Individuals and any other persons listed as claimants in the Claim Form (as set out Schedule 1) as may have entered into a Deed of Adherence substantially in the form appearing at Appendix 1, after the Commencement Date;

"Claim Proceeds" means all and any value due to and/or received by, on behalf of, or in lieu of payment to, the Claimants in connection with the Claim as a result of any judgment, award, order, settlement or compromise whatsoever, including payment of any damages, compensation, interest, restitution, recovery, judgment sum, arbitral award, settlement sum, compensation payment, costs and interest on costs, whether in monetary or non-monetary form, before deduction of any taxes which the Claimants may be liable to pay in respect of the Claim Proceeds;

"Claim Proceeds Account" means an account prepared by Therium, settling out the share of any Claims Proceeds due to the Parties and the order of payment;

"Independent Counsel" means an Independent barrister of not less than 10 years call who is not and has not otherwise acted for any of the Parties in connection with the Proceedings;

"Net Claim Proceeds" means the aggregate sum remaining for distribution under clause 3.2.4

"Notice" means a notice given in accordance with Clause 6 of this Agreement; and

"Notice of Disagreement" means a notice setting out in reasonable detail the scope, nature of and reasons for a Party's disagreement with a draft Claims Proceeds Account (either interim or final).

2. Time of the essence

It is agreed that, in relation to any time period specified in this Agreement, time shall be of the essence.

3. Priority for payments from Claim Proceeds

3.1. It is agreed that all sums due to any of the Parties pursuant to the Agreements shall be paid out of any Claim Proceeds in accordance with the terms of this Agreement until all such sums are discharged or until the Claim Proceeds are exhausted.

3.2. It is agreed that the Claim Proceeds shall be distributed in the following priority order:-

3.2.1. First, to pay the Solicitors (and any Counsel instructed by them) such sum as are necessary to bring them up to 100% of their Base Costs;

3.2.2. Secondly, to reimburse Therium for all and any sums paid pursuant to the Funding Agreement

To the extent that the Claim Proceeds are insufficient to discharge in full all sums referred in sub-clauses 3.2.1 to 3.2.2 above, the Claim Proceeds shall be applied between the Solicitors and Therium *pari passu* on a pro rata basis in proportion to their entitlement to sums under those sub-clauses.

- 3.2.3. Thirdly, to pay any Insurance premium(s) due in respect of the after the event Legal Expenses Insurance acquired by the Claimants pursuant to clause 12.7 of the Funding Agreement or otherwise.
- 3.2.4. Fourthly, any further sums due to the Solicitors (to the extent that such sums are provided for in the Project Plan) and Therium until all their entitlements to fees pursuant to the Agreements as at the date of distribution have been discharged in full. To the extent that the Claim Proceeds are insufficient to discharge sums payable pursuant to this sub-clause in full, the Claim Proceeds after payment of all sums referred in sub-clauses 3.2.1 to 3.2.2 above shall be applied pari passu on a pro rata basis to pay the Solicitors and Therium any other sums due to them under the Agreements in accordance with this sub-clause.
- 3.2.5. Fifthly, any further Claim Proceeds remaining after deduction of the sums referred to at clauses 3.2.1 to 3.2.4 above shall be paid to the Claimants or as they may direct from which the Claimants shall discharge any further liability they may have to any other person in such manner as the Claimants and that person shall agree, without further reference to the other Parties.
- 3.3. This Agreement is intended to determine the priority order for distribution of sums recovered in the Proceedings. In the event of conflict between the terms of this Agreement and any of the Agreements, the terms of this Agreement shall take precedence and shall determine the entitlements of the Parties to this Agreement to the Claim Proceeds
- 4. Determination of the Parties' rights and entitlements to the Claim Proceeds
 - 4.1. As soon as reasonably practicable after receipt of all Claim Proceeds (following resolution of the last of the Claims) and receipt of such information requested by Therium pursuant to clause 17 of the Funding Agreement to produce a Claim Proceeds Account, Therium, or the Solicitors at Therium's request, shall prepare a draft Claim Proceeds Account and serve a copy on each of the other Parties.
 - 4.2. The Net Claim Proceeds shall be apportioned between the Claimants in accordance with clause 17 of the Funding Agreement.
 - 4.3. Unless, within 14 calendar days from the date of service of the draft Claim Proceeds Account (or an interim draft Claims Proceeds Account prepared pursuant to clause 17.11), a valid Notice of Disagreement has been served on Therium by any one or more of the Parties, the draft Claim Proceeds Account shall be deemed to be agreed by each of the Parties and any part of a draft Claim Proceeds Account not the subject of a valid Notice of Disagreement served pursuant to this Clause shall similarly be deemed to be agreed.
 - 4.4. In the event that a valid Notice of Disagreement is served in accordance with clause 4.3 above, the Parties agree to seek to resolve that disagreement within a further period of 14 calendar days, failing which any remaining matters not agreed shall be referred to Independent Counsel who shall be instructed to determine the rights and entitlements of each of the Parties to the Claim Proceeds pursuant to the Agreements and this

Agreement. The Parties agree that Independent Counsel's determination on this issue shall be final and binding on each one of them.

- 4.5. In making any determination as to the rights and entitlements of each of the Parties pursuant to clause 4.4 above, Independent Counsel shall also be instructed to determine which one or more of the Parties should bear Independent Counsel's fees of making the determination (and, if more than one Party, the shares in which they are each to bear those fees) and the Parties agree to be bound by this determination as to liability for Independent Counsel's fees.
- 4.6. Pending any draft Claim Proceeds Account or any part of it being deemed to be agreed, or pending resolution of any disputed matter by Independent Counsel, the Solicitors shall hold the Claim Proceeds, or such part as is not agreed, in their client account. The Parties agree that the whole or any part of any draft Claim Proceeds Account which is deemed to be agreed pursuant to Clause 4.3 above, and any determination of Independent Counsel pursuant to Clauses 4.4 and 4.5 above, constitutes a binding and irrevocable instruction to the Solicitors to distribute that element of the Claim Proceeds forthwith in accordance with that whole or part of the Claims Proceeds Account or determination. Where a Party is directed by Independent Counsel to meet the fees of Counsel in making a determination under Clause 4.5, then the amount of those fees, and any VAT payable thereon, shall be deducted by the Solicitors from any amount of the Claims Proceeds due to that Party.

5. Warranty

The Claimants warrant that there are no persons other than the Parties who have any right or claim or interest whatsoever over the Claim Proceeds in priority or ranking equally with any of the Parties, either in whole or part and that the Claimants has obtained all consents, waivers or releases as may be required in order to validly confer on the Parties the rights as set out in this Agreement.

6. Notices

- 6.1. Any Notice to be served under this Agreement may be delivered by hand or sent by pre-paid first class recorded delivery post to the Party to be served at the relevant address set out in this Agreement or any such other address as the Party to be served may have notified to the other Party in accordance with this Clause 6, marked for the attention of the individuals (and/or, if applicable the successors to their current positions) as follows:
- 6.1.1. In the case of the Solicitors, James Hartley of Freeths LLP Floor 3, 100 Wellington Street, Leeds, LS1 4LT;
- 6.1.2. In the case of the Claimants, by service on the Solicitors; and
- 6.1.3. In the case of Therlum, Neil Purslow of Therlum Capital Management Limited, 77 Kingsway London, WC2B 6SR;
- 6.2. Any Notice shall be deemed to have been served:
- 6.2.1. If delivered, at the time of delivery to the Party; or

- 6.2.2. If posted, at 10.00am on the second Business Day after it was posted to the Party.
- 6.3. In proving service of a Notice it shall be sufficient to prove that delivery by hand was made or that the envelope containing the Notice was properly addressed and posted as a pre-paid first class recorded delivery letter.
- 6.4. If Notice is served by means of a pre-paid first class recorded delivery letter, the Party serving such notice shall, on or before posting the Notice, send a copy of it by email to the receiving Party's usual email address.
7. Successors and assignments

This Agreement shall be binding upon and enure for the benefit of the successors-in-title and permitted assignees of the Parties hereto.
8. Waiver and forbearance

No failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof and no waiver by any of the Parties of any breach or non-fulfilment by any of the other Parties of any provision of this Agreement shall be deemed to be a waiver of any subsequent or other breach of that or any other provision hereof and no single or partial exercise of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy.
9. Variation

No variation of this agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties hereto.
10. Counterparts

This Agreement may be executed in any number of parts each of which, when executed by one or more parties hereto, shall constitute an original document but all of which shall together constitute one and the same instrument.
11. Good Faith

Each party shall at all times deal with every other Party in good faith.
12. Choice of law and jurisdiction

This Agreement is governed by and is to be construed in accordance with the law of England and Wales. Any dispute arising out of or connected to this Agreement, including the validity or termination thereof, shall be finally resolved by a sole arbitrator under the arbitration rules of the London Court of International Arbitration (the "LCIA"). The seat of the arbitration shall be London, the language of the arbitration shall be English and the arbitrator shall be a practising member of the English Bar. The arbitrator shall be appointed by the agreement of the Parties provided that, if the Parties cannot reach agreement on the appointment of the arbitrator within 30 days, then any Party may apply to have the arbitrator appointed by the LCIA.

SIGNED FOR AND ON BEHALF OF THE PARTIES:

Signed for and on behalf of

.....

THERIUM LITIGATION FUNDING IC

Signed by

.....

Name:

Signed for and on behalf of

.....

FREETHS LLP

SCHEDULE 1

No	Claimant Name (Surname, Forename(s)), Address etc
----	---

APPENDIX 1 to the Priorities Agreement / APPENDIX 4 to the Litigation Funding Agreement

DEED OF ADHERENCE

THIS DEED OF ADHERENCE is made on [] 20[]

by [] [of] [] (the Covenantor).

BACKGROUND

This deed supplements a Litigation Funding Agreement dated [] 2016 made between (1) Therlum Litigation Funding IC; (2) [] and others; and a Priorities Agreement dated [] 2016 between (1) Therlum Litigation Funding IC, (2) [] and others and (3) Freeths LLP; [(as modified by *[here set out the details of any instrument modifying the original agreement]*) (the Agreements)].

COVENANTS

1. The Covenantor confirms that [he][she] has been supplied with a copy of the Agreements and will be deemed with effect from the date appearing above to be a party to the Agreements as a Claimant (as defined in the Agreements).
2. The Covenantor covenants with each of the other parties to the Agreements from time to time to observe, perform and be bound by all the terms of the Agreements which are capable of applying to the Covenantor as a Claimant and which have not yet been performed and any rights and obligations of the Claimants in the Agreements which are capable of applying to the Covenantor shall be construed as rights and obligations of the Covenantor and the Covenantor covenants with each of the other parties to the Agreements to observe, perform and be bound by all such obligations.
3. The Covenantor confirms that notice may be given to [him][her]it at the following address:

Address: []
4. This deed and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.
5. Any disputes or claims arising out of or in connection with this deed, including the validity of termination of this deed, shall be finally resolved by a sole arbitrator under the arbitration rules of the London Court of International Arbitration (the LCIA). The seat of arbitration shall be London, the language of the arbitration shall be English and the arbitrator shall be a practising member of the English bar. The arbitrator shall be appointed by the agreement of the Company and the Covenantor provided that, if Therlum and the Covenantor cannot reach agreement on the appointment of the

arbitrator within 20 Business Days, then either Therium or the Covenantor may apply to have the arbitrator appointed by the LCIA.

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

[Insert appropriate execution block]

