

**Dated: 7 June 2024**

**Professor Andreas Stephan**

as Claimant

**INNSWORTH CAPITAL LIMITED**

as Funder

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**FUNDING AGREEMENT**

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## Table of Contents

	Page
1. Definitions and Interpretation .....	3
2. Manager .....	10
3. Funding .....	11
4. Role of the Claimant .....	13
5. Lawyers' Appointment .....	16
6. Appeal .....	16
7. Settlement .....	17
8. Resolution Sum .....	17
9. Confidentiality and Provision of Documents .....	18
10. No Charge or other Encumbrance .....	20
11. Duration of Agreement .....	20
12. Termination .....	21
13. Further Assurances .....	22
14. Assignment .....	22
15. Participation.....	23
16. Know Your Client.....	23
17. Data Protection.....	23
18. Governing Law and Disputes.....	24
19. Notices and Communication .....	25
20. Acknowledgement and Exclusion of Liability.....	26
21. Entire Agreement .....	26
22. No Partnership; No Agency .....	27
23. Amendments and Waivers.....	27
24. Severance .....	27
25. Survival .....	27
26. Third Party Rights.....	27
27. Counterparts.....	28
28. Language .....	28
Schedule 1 Claimant and Particulars .....	30
Schedule 2 Consultative Panel – Terms of Reference .....	31
Schedule 3 Commission .....	35
Schedule 4 Approved Budget.....	36
Schedule 5 Form of Claimant's Certificate .....	38
Schedule 6 Standard Lawyer Terms .....	39
Schedule 7 Form of Guarantee .....	52
Schedule 8 Form of Instruction by Claimant.....	60

**THIS AGREEMENT IS MADE THIS 7<sup>th</sup> June 2024**

**BETWEEN:**

- (i) **Professor Andreas Stephan** of [REDACTED] (the “**Claimant**”); and
- (ii) **Innsworth Capital Limited** of 44 Esplanade, St Helier, Jersey, JE4 9WG (with company number 125002) (the “**Funder**”).

**BACKGROUND**

- (A) The Claimant is the proposed class representative acting for the benefit of the proposed Class (as defined in this Agreement) that have Claims (as defined in this Agreement) against the Defendants.
- (B) The Claimant has requested, and the Funder has agreed, to provide funding to the Claimant, on the terms and conditions set out in this Agreement.

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 The following definitions and rules of interpretation in the clause shall apply in this Agreement.

**“Adverse Costs Order”** Any quantified costs order made in favour of the Defendant(s) and/or any other party and/or non-party in connection with the Proceedings in respect of costs of the Defendant(s) and/or any other party and/or non-party incurred following the Commencement Date (the Funder having no liability under this Agreement for any such costs preceding that date) but excluding any costs order in relation to a counterclaim (which shall be for the account of the Claimant) or any appeal unless the Funder has agreed to fund the same pursuant to clause 6).

**“Adverse Costs Limit”** In respect of the period from the Commencement Date until the issuance or refusal of a CPO in the Proceedings, £5,000,000, and in respect of any phases of the proceedings following the issuance of a CPO, £20,000,000 (in aggregate £25,000,000).

**“Affiliate”** In relation to a Person:

- (a) Any investment fund of which: (i) that Person (or any group undertaking of, or any (direct or indirect) shareholder in, that Person); or (ii) that Person’s (or any group undertaking of, or any (direct or indirect) shareholder in, that Person’s) general partner, trustee, nominee, manager or adviser, is a general partner, trustee, nominee, manager or adviser;
- (b) Any group undertaking of that Person, or of any (direct or indirect) shareholder in that Person, or of that Person’s or of any (direct or indirect) shareholder in that Person’s general

partner, trustee, nominee, manager or adviser;  
or

- (c) Any general partner, limited partner, trustee, nominee, operator, arranger or manager of, adviser to, or holder of interests (whether directly or indirectly) in, that Person, or in any (direct or indirect) shareholder in that Person, (or of, to or in any group undertaking of that Person, or of any (direct or indirect) shareholder in that Person), or of, to or in any Investment Fund referred to in (a) above or of, to or in any group undertaking referred to in (b) above.

**“Approved Budget”**

The itemised budget accepted in writing by the Funder and the Lawyers attached at Schedule 4 and any amended or varied budget which may subsequently be prepared by the Lawyers and approved in writing by the Funder (at its sole and absolute discretion) and the Claimant.

**“ATE Insurances” and  
“ATE Insurers”**

Any insurance(s) effected by the Manager and/or the Funder and/or the Claimant and/or the Affiliates of the Funder or the Manager (in all cases following advance notification to the Claimant) by which insurer(s) (“**ATE Insurers**”) agree(s), in return for the payment of a premium, to underwrite any specified financial risks (including any order to provide security for the Defendant(s)’ costs and any Adverse Costs Orders) in relation to the Proceedings, and which shall include any liability of the Elliott Guarantors.

**“Alternative Dispute  
Resolution Process”**

Any form of negotiation, discussions, mediation, conciliation, expert determination or other form of consensual dispute resolution process (other than arbitration) which seeks to Settle the Claims and/or the Proceedings.

**“CAT”**

Competition Appeal Tribunal.

**“Claimant”**

The person whose details appear in Schedule 1 and successors and permitted assigns.

**“Claims”**

The claim(s) set out in Schedule 1.

**“Class”**

All UK-domiciled Sellers that used Amazon’s e-commerce marketplace services to reach customers in the UK within the Relevant Period.

For the purposes of this definition of the term “Class” only:

**Relevant Period** means the period starting six years before the date of the Collective Proceedings Claim



Form and ending on the date of the Collective Proceedings Claim Form.

**Sellers** means third-party (i.e., non-Amazon) sellers acting in the course of a business, trade or profession who:

- (a) are admitted to sell products for purchase on the Website or the App using Amazon's e-commerce marketplace services; and
- (b) hold a "Professional" selling account or equivalent.

An "Amazon Professional seller account" is a selling plan offered by Amazon. Amazon offers individual and professional selling plans: the individual plan enables Sellers intending to sell lower volumes to pay fees according to the number of items sold, whilst the professional selling plan caters to Sellers of larger volumes and entails a fixed monthly fee. In addition to these plan fees, other fees apply, such as referral fees for each item sold and high-volume listing fees for Sellers listing items that cumulatively exceed a certain value: Decision of the European Commission dated 20 December 2022 in cases AT.04062 (Amazon Marketplace) and AT.40703 (Amazon Buy Box), at (144) and footnote 78.

Amazon's e-commerce marketplace services means Amazon's service called the "Amazon Marketplace" (a service for which Amazon charges fees to Sellers to make their goods available on the Website and the App).

Website means Amazon.co.uk and includes all related web pages.

"App" means the Amazon app, insofar as the app's settings specify the UK as the region in which the customer has chosen to shop. pages.

**"Commencement Date"**

The date stated in Schedule 1.

**"Commission"**

The amount calculated in accordance with Schedule 3.

**"Costs Award"**

Any amount ordered to be paid by any or all Defendant(s) or any other party or non-party to the Proceedings in respect of the Claimant's costs and disbursements and/or expenses incurred in connection with the Claims and/or the Proceedings.

**"Court"**

The Tribunal in which the Proceedings are conducted or such other body having jurisdiction to determine the Claims.

<b>“CPO”</b>	Collective Proceedings Order.
<b>“Damages”</b>	The damages awarded in favour of the Claimant and/or the Class or agreed by way of Settlement in respect of the Claims and/or Proceedings.
<b>“Defendant(s)”</b>	Each of separately and/or jointly the Person(s) named in Schedule 1 and any others against whom Proceedings are commenced in respect of the Claims.
<b>“Distribution”</b>	The formal process of distribution of the Damages against the Class in accordance with the Competition Appeal Tribunal Rules and/or directions of the CAT.
<b>“Distribution Period”</b>	The period during which Distribution takes place.
<b>“Elliott Group”</b>	The Guarantors and each of their Affiliates.
<b>“External Controller”</b>	<ul style="list-style-type: none"><li>(a) In relation to an individual, the Official Trustee in Bankruptcy, an Official Receiver in Bankruptcy, a trustee in bankruptcy and a controlling trustee; and</li><li>(b) In relation to a body corporate, an administrator (including a voluntary administrator and an administrator under a deed of company arrangement, scheme of arrangement, compromise or other arrangement), a provisional liquidator and a liquidator.</li></ul>
<b>“Funder”</b>	Innsworth Capital Limited of 44 Esplanade, St Helier, Jersey, JE4 9WG with company number 125002 and its successors or assignees permitted by this Agreement.
<b>“Guarantors”</b>	Elliott Associates, L.P. and Elliott International, L.P.
<b>“Lawyers”</b>	The firm named in Schedule 1 or any firm of lawyers appointed in their place by the Claimant, along with the counsel named in Schedule 1 or any other counsel appointed in their place by the Claimant (all such replacements requiring the approval of the Funder, which shall not be unreasonably withheld).
<b>“Legal Privilege”</b>	Privilege against disclosure, including any joint interest privilege or common interest privilege.
<b>“Manager”</b>	Innsworth Advisors Limited (Company No. 08945649) of 1 Chancery Lane, London WC2A 1LF, and their successors and assigns.
<b>“Other Confidential Information”</b>	All information that is supplied by the Elliott Group in connection with this Agreement, including information on the Elliott Group and its business and affairs (and the business and affairs of its Affiliates) and the

existence and contents of this Agreement and any guarantee to which any member of the Elliott Group is a party and the Elliott Group's name, whether orally, in writing or in any form, whether before or after the date of this Agreement, including all notes, analyses, compilations, studies, memoranda or other documents or information which contain or reflect or are generated from such information.

**“Overarching Purpose”**

To facilitate the just resolution of the Claims and the Proceedings according to law and as quickly, inexpensively and efficiently as possible within the Approved Budget and with the aim of maximising Settlement or Damages or other judgment proceeds net of Project Costs and minimising all risks, including in particular the risk of Adverse Costs Orders and/or the Proceedings being unsuccessful.

**“Parties”**

The parties to this Agreement.

**“Person”**

Any person, natural or otherwise, including, without limitation, a corporation, partnership, limited liability company, company, association, trust or organisation, whether or not a legal entity.

**“Proceedings”**

Any proceedings against the Defendant(s) before the CAT including application(s) for a CPO and any court proceedings, or other legal process to prosecute and resolve all or some of the Claims, including any proceedings for pre-action disclosure, and any Alternative Dispute Resolution Process. If any or all of the Defendants (or any or all of the Defendant(s)' assets) comes under the control of an External Controller, the Proceedings will also include all relevant methods of pursuing the Claims in the external administration, including the filing of proofs of debt. The prosecution of any proceedings against third parties (including proceedings seeking third party discovery) require the prior written approval of the Funder, unless the costs of the same are expressly included in the Approved Budget.

**“Project”**

The pursuit of the Claims (as defined herein) and the conduct of the Proceedings to judgment or award or resolution by Settlement (but excluding any appeal unless approved in writing by the Funder pursuant to clause 6), acting consistently with the Overarching Purpose.

**“Project Costs”**

The costs and expenses of the Project (whether incurred or committed prior to the Commencement Date with the prior written consent of the Manager and/or Funder or incurred following the Commencement Date) comprising:

- (a) All costs and expenses itemised in the Approved Budget, including the fees, disbursements and expenses of the Lawyers (including Counsel, factual consultants and/or experts) and the costs of the Claimant provided that at all times the same are within and subject to the Approved Budget and reasonably incurred for the sole purpose of investigating, prosecuting and resolving the Claims and/or the Proceedings;
- (b) Any court fees (or fees payable to the tribunal in an arbitration) or any fees payable to a mediator or other third party acting as adjudicator or arbiter in the event of an Alternative Dispute Resolution Process;
- (c) Any other costs stated to be treated as Project Costs according to the terms of this Agreement;
- (d) The costs involved in the provision and maintenance by the Funder of any Security for Costs, which are in addition to the Approved Budget;
- (e) Any costs paid or payable under any Adverse Costs Order(s) and any costs incurred by the Funder or any of the Funder's or Manager's Affiliates in quantifying, challenging or referring to assessment, any Adverse Costs Order(s);
- (f) Any third party direct expenses incurred by the Funder or the Manager in connection with the investigation, evaluation, development and promotion of the Project, including fees paid to experts (including loss assessors and/or economists), counsel (including independent counsel or lawyers providing a second opinion) and investigators, which are in addition to the Approved Budget and fees associated with the development, use and/or licensing of software and technology (including software and technology owned or licensed by the Manager and/or its Affiliates) for the purposes of the investigation, evaluation, development, conduct, promotion, the Distribution or otherwise in connection with the Project;
- (g) Any VAT or other taxes paid by, charged to or assessed against the Funder associated with the costs and activities described above, in connection with this Agreement and/or or arising from the Funder's rights, obligations or entitlements under it;

- (h) Any costs and expenses associated with the enforcement of any judgment or award obtained in the Proceedings against one or more of the Defendants; and
- (i) Any other costs and expenses incurred by the Funder or the Manager in connection with the Claims and/or Proceedings.

**“Project Information”**

All information, communications and documents provided to or acquired, exchanged or generated by or between either of the Parties, the Manager or the Lawyers in relation to the Project.

**“Resolution Sum”**

The amount or amounts of money payable in favour of the Claimant and/or the Class, including Damages and any amount(s) in respect of any Costs Award(s) and including any amount or amounts of money, or the value of goods, services or benefits, for which the Claims are settled, or in respect of which judgment or award is made in the Proceedings, in favour of the Claimant and/or the Class, whether in whole or in part, including any interim or final payment order(s) made in the Proceedings, any award or compensation under any statutory or other scheme, interest and costs, fees, expenses and disbursements (including any insurance premium in respect of any ATE Insurances which the Defendant(s) becomes liable to pay), any ex gratia payments and any payments in respect of the Claims where any property, assets or liabilities of the Defendant(s) has come under the control of an External Controller or where any type of arrangement is entered into.

**“Security for Costs”**

Any security in respect of the costs of any Defendant(s) that is either (i) ordered by the Court or (ii) with the prior written consent of the Funder, agreed with the Defendant(s) to be provided by the Claimant.

**“Settlement”**

Any agreement, compromise, discontinuance, waiver, payment (including any ex gratia payment), release, understanding or any other arrangement whatsoever (and whether before or after any Proceedings have been commenced) where money, value or a benefit passes from or on behalf of a Defendant to the Claimant and/or the Class in respect of some or all of the Claims, including in circumstances where the Proceedings do not continue, as against that Defendant in respect of those Claims as a result of, or in connection with, the passing of that money, value or

benefit and "Settle", "Settles" and "Settled" have corresponding meanings.

**"Standard Lawyers Terms"**

The terms and conditions attached at Schedule 6.

**"Total Commitment Amount"**

£32,900,000.

**"Trust Account"**

A separate interest-bearing client account held by the Lawyers at a first-class bank in England, and designated in the joint names of the Claimant and the Funder for the sole purpose of the Project.

**"VAT"**

Value added tax charged under the United Kingdom Value Added Tax Act 1994 and any similar taxes charged to or assessed against the Claimant, the Funder and/or the Manager or any of their Affiliates in any jurisdiction in connection with the Project or payment by it of Project Costs.

- 1.2 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.3 A reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other agreement or document as varied or novated in accordance with its terms from time to time.
- 1.4 A reference to a "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 A reference to any Party shall include that Party's successors and permitted assigns.
- 1.6 A reference to a "subsidiary" means a subsidiary undertaking as defined in section 1162 of the Companies Act 2006 and for the purposes only of the membership requirement contained in sections 1162(2)(b) and (d), a company shall be treated as a member of another company even if its shares in that other company are registered in the name of:
  - (a) Another person (or its nominee), by way of security or in connection with the taking of security; or
  - (b) Its nominee.
- 1.7 Any words following the terms "including", "include", "in particular", "for example", "such as", "other" and "otherwise" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

## **2. MANAGER**

- 2.1 The Funder has retained the Manager to provide certain investigation and management services to the Funder in respect of the Project during the term of this

Agreement (whether prior to or during the course of the Proceedings) and the Claimant agrees that the Manager is authorised to perform such services and undertakes that it shall cooperate with the Manager to enable it to do so. Such services include:

- (a) investigating and evaluating the merits of the Claims and the Proceedings or any aspect of them;
- (b) discussing strategy with the Claimant and the Funder;
- (c) investigating the credit standing and capacity of the Defendant(s) to pay any judgment or award or other order against it;
- (d) monitoring the Claims and the Proceedings and liaising with the Lawyers to obtain information;
- (e) assisting the Claimant to provide instructions to the Lawyers (provided that this is consistent with clause 4.1);
- (f) reporting periodically to the Funder;
- (g) monitoring compliance with the Approved Budget;
- (h) participating, upon request by the Manager, in meetings between all participants in the Project to ensure all parties are kept appropriately informed;
- (i) obtaining ATE Insurances;
- (j) assisting the Claimant to utilise any Alternative Dispute Resolution Process (provided that this is consistent with clause 4.1); and
- (k) carrying out such other functions as the Manager deems appropriate in fulfilling its services to the Funder (subject to clauses 4.1 and 4.2).

- 2.2 The Claimant acknowledges and agrees that the Manager, in carrying out its management services, is not assuming any liability or duty of care to the Claimant and/or the Class.

### **3. FUNDING**

- 3.1 With effect from the Commencement Date (and without any obligation to the Claimant to fund Project Costs prior to such date), the Funder agrees that:

- (a) it will provide funding by paying the Project Costs within the Approved Budget according to the terms of this Agreement (subject to the limits below), and without prejudice to the foregoing such funding will include:
  - (i) Project Costs from the Commencement Date until the date of issuance by the CAT of the CPO, if granted, (or the Settlement of the Claim, if earlier), (including any costs preceding the Commencement Date which are deemed to be Project Costs) up to but not exceeding £10,300,000; and
  - (ii) Project Costs from the date of issuance by the CAT of the CPO, if granted, until final judgment of the CAT (or the Settlement of the Claim, if earlier), up to but not exceeding £22,600,000;

- (b) it will provide or effect in such manner as it determines in its sole and absolute discretion (provided that the same is acceptable to the CAT) any Security for Costs;
- (c) it will pay any Adverse Costs Order(s) made after the Commencement Date, less any sums received by the Defendant(s) pursuant to the Security for Costs referred to in sub-clause (b) above); and
- (d) it will deliver to the Claimant, within forty-five (45) calendar days of the Commencement Date, by way of security for its funding obligations under this Agreement, a guarantee in the form attached as Schedule 7 duly executed by the Guarantors.

- 3.2 The Funder's obligations under clause 3.1(a) shall be limited, in aggregate, to the Total Commitment Amount. The Funder's obligations under clause 3.1 in respect of any Security for Costs and/or Adverse Costs Order(s) shall be limited, in aggregate, to the Adverse Costs Limit. Any Project Costs or other sums including liabilities incurred in excess of such limits shall be borne by the Claimant (or the party providing the relevant services, including the Lawyers).

The Total Commitment Amount and Adverse Costs Limit are separate limits. For the purpose of applying the Total Commitment Amount, any amounts to be funded under Clause 3.1(b) and (c) shall be excluded and be separately subject to the Adverse Costs Limit whether or not such amounts are Project Costs for the purposes of clause 3.1(a).

- 3.3 The Parties acknowledge that the Claimant may encounter unforeseen developments in the Proceedings and may request adjustments to the Approved Budget. If that situation occurs, the Claimant will, firstly, apply reasonable efforts to amend the Claimant's actual and planned expenses and liabilities with a view to remedying the expected shortfall and, only if no resolution can be found within the boundaries of the overall amount of the Approved Budget, the Claimant will submit in writing to the Managers (for consideration by them and the Funder) a request for the required increase of the Approved Budget including (i) particulars of the adjustment(s) being requested, showing proposed changes against the Approved Budget, (ii) reasons for the adjustment(s) and (iii) such other supporting information as may be reasonably requested by the Managers. Any request for an adjustment will be made promptly and prospectively before any costs and/or expenses which are the subject of the adjustment have been incurred or committed. Any adjustment to the Approved Budget shall be subject to the sole and absolute discretion of the Funder and the Commission shall be adjusted proportionately as set out in Schedule 3 to reflect increases (if any) in the Approved Budget. Unless otherwise expressly agreed in writing by the Funder, the Total Commitment and other limits set out in clauses 3.1 and 3.2 shall not be adjusted by reason of any adjustment to the Approved Budget.

- 3.4 The Claimant acknowledges and agrees that (i) the Funder may obtain ATE Insurances in respect of its obligations to fund Adverse Cost Orders pursuant to Clause 3.1 of this Agreement, and (ii) that the costs of any ATE Insurances (including deposit premium, deferred and contingent premium and insurance premium tax (IPT) if applicable) are costs incurred in the provision of the funding for the benefit of the Claimant, and shall comprise Project Costs within the scope of the Claimant's responsibility in accordance with Clause 8 of this Agreement, and (iii) if ATE Insurances cannot be effected at a reasonable market cost prior to commencement of the Proceedings, this shall be deemed an event entitling the Funder to terminate pursuant to clause 12.1(b). The Funder will fund the payment of any deposit premium payable to the ATE Insurers (and IPT) in connection with the placement of the policy of ATE Insurances. Any deferred and contingent premium to which the ATE Insurers



may be entitled under the policy of ATE Insurances following Settlement or judgment shall be paid as set out in, and subject to, Clause 8 of this Agreement.

#### **4. ROLE OF THE CLAIMANT**

4.1 The Funder acknowledges that the Claimant remains independent and is solely responsible for the conduct of the Proceedings, and that any and all decisions regarding the conduct of the Proceedings are for the Claimant to make in the best interests of the Class and in accordance with its obligations under this Agreement (including the Overarching Purpose). For the avoidance of doubt, the Manager or Funder shall not exercise control or conduct over the Proceedings.

4.2 Without prejudice to clause 4.1, the Claimant shall:

- (a) ensure that the Standard Lawyers Terms are executed and, on his instructions, performed by the Lawyers and that the terms and conditions on which the Claimant appoints the Lawyers are at all times consistent with, and in no way conflict with, the Standard Lawyers Terms.
- (b) promptly provide full, frank and honest instructions to the Lawyers and counsel and provide the Lawyers with all documents in the possession, custody or power of the Claimant that are reasonably relevant to the Claims or the Proceedings, and such other documentation as the Lawyers may reasonably request including documentation relating to the status and capacity of the Claimant required in connection with the Proceedings;
- (c) provide, or procure, such signed, written witness statements as the Lawyers may request for use in the Claims and the Proceedings, attend the Court to give evidence in person if required by the Lawyers to do so and actively participate in any Alternative Dispute Resolution Process;
- (d) diligently prosecute the Claims and the Proceedings and do all things necessary to enable the Lawyers to ensure that the Claims and the Proceedings are conducted consistently with the Overarching Purpose and within the Approved Budget; and seek the prior written agreement of the Funder before asserting any new claim/cause of action, adding any new defendants or otherwise making any material amendment to the claims/causes of action made in the Proceedings;
- (e) comply with all orders of the CAT and all statutory provisions, regulations, rules and directions which apply to the Claimant in relation to the Claims or Proceedings;
- (f) immediately inform the Lawyers and the Manager of any information, circumstance or change in circumstances which is, in the reasonable opinion of the Claimant, likely to affect the Claims, any issue in any Proceedings or the recoverability of any Damages or Resolution Sum or any proceeds of any ATE Insurances (if any), and to ensure that the Funder is given reasonable prior notice in advance of any instruction or decision by the Claimant that may give rise to any Adverse Costs Order;
- (g) ensure that the requirements to report to the Managers and/or Funder set out in this Agreement and in the Standard Lawyers Terms shall be adhered to at all times;
- (h) review invoices in respect of any fees, disbursements and expenses prior to submission for funding to ensure that the same comply with this Agreement

(including billing guidelines) and that the sums invoiced have been incurred in accordance with this Agreement and are within the Approved Budget, and provide the Claimant's Certificate in the form of Schedule 5 monthly upon the provision of any invoice submitted for funding by the Funder;

- (i) instruct the Lawyers to provide written advice from leading counsel engaged by them on the merits of the Claim and/or on any material aspect of the Proceedings (including any material case management conference and/or interlocutory applications, and including iterative requests) at such times and at stages of the prosecution of the Claim and/or Proceedings as is prudent or as may be requested by the Manager;
- (j) convene and consult on a regular basis (at least twice per year and at such times as coincide with material developments in the case, including the handing down of judgments and any consideration of settlement) a consultative panel (comprising subject matter experts and experienced commercial litigation practitioners) to support it in the conduct of the Claim, according to the terms of reference attached at Schedule 2 or similar terms in substance;
- (k) effect any Settlement that the Parties agree on and which is approved by the CAT or that is otherwise determined in accordance with clause 7.2, including but not limited to signing any reasonably worded settlement deed, confidentiality agreement and/or release required by any Defendant and give the instruction and direction to the Lawyers, upon entering into this Agreement, set out in Schedule 6 ;
- (l) obtain a Costs Award in respect of all of its properly recoverable costs and disbursements in connection with the Claims and/or Proceedings (or any Settlement relating thereto) and, if applicable, to minimise the sums payable in respect of any Adverse Costs Order(s) and/or Security for Costs Order and seek the prior written consent of the Funder before agreeing any such awards/orders;
- (m) cause any Resolution Sum to be received and applied according to the terms of this Agreement; and
- (n) diligently enforce any judgment or award obtained in the Proceedings against the Defendant(s).

4.3 The Claimant agrees to instruct the Lawyers at all times to:

- (a) comply with all orders of the CAT and all statutory provisions, regulations, rules and directions which apply to the Claimant in relation to the Claims and the Proceedings;
- (b) conduct the Proceedings efficiently and effectively, within the Approved Budget and in accordance with the Overarching Purpose;
- (c) keep the Manager fully informed of all material developments in the Proceedings and in relation to the Claims, including immediately informing the Manager if, in the Lawyers' opinion, the Claimant's prospects of achieving success in the Proceedings or the Defendant(s)' capacity to pay any judgment is or is likely to be impaired;
- (d) promptly provide the Manager with a copy of all written advice given by the Lawyers or counsel to the Claimant or a written summary thereof if the advice is given orally in relation to the Claims (or any part thereof) and the Proceedings

and, if requested to do so by the Manager, a copy of all documents obtained from, or provided to, any Defendant(s) in the Proceedings, subject to any confidentiality restrictions that prevent any document being shared with a third party;

- (e) promptly inform the Manager of any Settlement offer or offers to engage in an Alternative Dispute Resolution Process received from the Defendant and to use all reasonable endeavours to allow the Manager and the Funder the opportunity to attend any Alternative Dispute Resolution Process agreed with the Defendant(s);
- (f) provide to the Manager and update at material intervals during the Proceedings an estimate of the realistically recoverable costs that the Defendant(s) and/or any non-party might incur and details of any costs incurred and notified by the Defendant(s);
- (g) promptly inform the Manager of any application for security for costs made by the Defendant(s) or the issuance of any Security for Costs Order;
- (h) assist the Funder in obtaining ATE Insurances when requested to do so by the Manager, including attending such meetings and providing such opinions in writing when and as requested by the Manager for this purpose;
- (i) promptly inform the Manager of any Adverse Costs Order or of any circumstances which might reasonably give rise to an Adverse Costs Order, whether in connection with the Proceedings as a whole or any interlocutory applications/preliminary issues;
- (j) unless otherwise agreed by the Funder, require a detailed assessment of the Defendant(s)' costs comprising any Adverse Costs Order and provide a copy of all documents relating to the taxation or assessment to the Manager; and
- (k) provide full assistance and co-operation to the Manager and/or the Funder in relation to opposing, taxing, assessing or resolving any application for Security for Costs or any Adverse Costs Order or recovering any Security for Costs that is no longer needed.

- 4.4 At the reasonable request of the Manager and/or the Funder, the Claimant will take all appropriate actions to tax or assess any of the Lawyers' invoices and/or any costs claimed by the Defendant(s) or any other party or non-party to the Proceedings in an Adverse Costs Order (keeping the Managers and Funder apprised of the progress of any such taxation or assessment). Each of the Lawyers and the Funder shall bear their own costs of any taxation or assessment, subject to any contrary inter partes order in respect of costs made by the court.
- 4.5 The Claimant agrees to instruct the Lawyers to co-operate with the Manager in the performance of its services to the Funder (subject always to clause 4.1).
- 4.6 The Claimant warrants that, to the best of the Claimant's knowledge, there is no information in the custody, possession or control of the Claimant that is materially relevant to the Claims or the Proceedings or the potential for any judgment sum to be recovered in respect of the Claims from the Defendant(s), which has not been disclosed to the Manager.
- 4.7 Subject to the confidentiality provisions of clause 9 and/or any CAT ordered confidentiality, the Claimant will promptly provide, or procure the provision of all information, documents and assistance as the Manager may reasonably request for

the purpose of the Claims and/or Proceedings and/or performance of its duties to the Funder.

## **5. LAWYERS' APPOINTMENT**

- 5.1 Subject to such costs being within the Approved Budget, the Lawyers' costs and disbursements will be invoiced to the Claimant and shall be payable by the Claimant, but will be funded by the Funder on behalf of the Claimant pursuant to the terms of this Agreement.
- 5.2 If the appointment of the Lawyers is terminated pursuant to clause 7 of the Standard Lawyers Terms, the Manager will inform the Claimant whether the Funder wishes the Claimant to appoint other solicitors and/or counsel, acceptable to the Claimant (such agreement by the Claimant not to be unreasonably withheld or delayed) in place of the Lawyers.
- 5.3 The Manager may require the Claimant to terminate the appointment of the Lawyers:
  - (a) upon fourteen (14) days' written notice to the Lawyers setting out the grounds for the requested termination, provided the Claimant agrees to such a course, such agreement not to be unreasonably withheld or delayed; or
  - (b) if the Funding Agreement is terminated.
- 5.4 If pursuant to clause 5.3 the Manager requests that the Claimant appoint other solicitors selected by the Funder in place of the Lawyers, provided those solicitors agree with the Funder to terms that are the same as, or substantially the same as, the Standard Lawyers Terms, and the other solicitors are acceptable to the Claimant (such agreement by the Claimant not to be unreasonably withheld or delayed), those solicitors will become the Lawyers for the purposes of this Agreement in place of the previous Lawyers.
- 5.5 Replacement of the Lawyers pursuant to clause 5.4 will:
  - (a) not result in a termination of this Agreement; and
  - (b) not result in the replacement solicitors assuming any obligations of the previous Lawyers accrued to the date the appointment of the previous Lawyers is terminated.
- 5.6 If the Manager informs the Claimant that the Funder does not wish the Claimant to appoint replacement solicitors in place of the Lawyers, this Agreement will terminate as at the date of such notice. If this occurs, then the provisions of 12.3 will apply.

## **6. APPEAL**

- 6.1 The funding obligations of the Funder under this Agreement exclude all appeals (in respect of any final judgment at first instance and/or judgments, decisions or rulings on interlocutory applications, preliminary issues or otherwise). The Claimant may request funding for an appeal; and the Funder may, at its sole and absolute discretion, either decline or agree to extend its funding for the appeal (to which the increased commission set out in Schedule 3 will apply). If the Funder agrees in writing to extend the funding, this shall be recorded as an amendment to the terms of this Agreement and the appeal shall be treated as part of the Proceedings for the purpose of this Agreement.

## **7. SETTLEMENT**

- 7.1 The Claimant shall not enter into any agreement to Settle the Claim and/or the Proceedings without the prior written consent of the Funder (not to be unreasonably withheld or delayed).
- 7.2 The Claimant shall immediately inform the Manager (or cause the Lawyers to inform the Manager) of any proposed settlement offers or proposals made by or on behalf of the Defendant(s). The Claimant shall consult (and cause the Lawyers to consult) the Manager and provide such assistance as may be requested by the Manager to evaluate the proposed offer of Settlement.
- 7.3 The Claimant shall not, nor cause the Lawyers to, communicate or make any settlement offers or proposals to the Defendant(s) without the prior written consent of the Funder (not to be unreasonably withheld or delayed). The Claimant will actively consider and seek to initiate offers of Settlement where appropriate to do so. If the Claimant wishes to make a settlement offer or proposal of any kind in respect of the Claims and/or the Proceedings in whole or in part, it shall notify the Funder in advance in writing together with written reasons.
- 7.4 Notwithstanding the foregoing and subject always to clause 4.1, the Funder or the Manager may propose to the Claimant that it explore or pursue a Settlement; and may at any time request that the Lawyers provide a written report on Settlement strategy (which the Claimant shall ensure is provided within fourteen (14) days of any such request).
- 7.5 In the event of any dispute between the Claimant and the Funder in respect of a proposed Settlement, the matter shall be determined in accordance with clause 18.4.

## **8. RESOLUTION SUM**

- 8.1 The Claimant undertakes to use his best endeavours to obtain a Costs Award(s) in respect of all of its properly recoverable costs and disbursements in connection with the Claims and/or Proceedings (and/or any settlement relating thereto). The Parties agree that any Resolution Sum in respect of a Costs Award is to be paid to the Lawyers in the first instance, and the Claimant hereby irrevocably agrees to direct and irrevocably directs the Lawyers to immediately pay any such Resolution Sum received by them into the Trust Account and to distribute such sums to the Funder in and towards the reimbursement of the Project Costs funded pursuant to this Agreement.
- 8.2 The Claimant undertakes to use his best endeavours to obtain approval by the CAT (in the course of the Proceedings and Settlement) for the payment (i) to the Funder of the Project Costs incurred by it less any costs recovered by the Claimant and paid to the Funder pursuant to clause 8.1, (ii) to the Funder the Commission and (iii) to the ATE Insurers any sums to which the ATE Insurers may be entitled in respect of ATE Insurances.
- 8.3 Subject to such approvals and orders as may be made by the CAT, the Claimant undertakes to immediately pay to the Funder the Projects Costs (less any costs recovered by the Claimant and paid to the Funder pursuant to clause 8.1), (ii) the Commission, and (iii) any sums due to the ATE Insurers. The Parties agree that payment is to be paid to the Lawyers in the first instance, and the Claimant hereby irrevocably undertakes to instruct and direct the Lawyers to immediately pay any such sums received by them into the Trust Account and to distribute such sums according to and in the priority set out in clause 8.4.

8.4 The Claimant and the Funder hereby irrevocably agree that with respect to any payments to the Funder, the Lawyers and ATE Insurers the following order of priority shall apply, with all payments within a priority level to be made *pari passu* and *pro rata*:-

- (a) Firstly,
  - (i) to the Funder an amount equal to the Project Costs (less any costs recovered by the Claimant and paid to the Funder pursuant to clause 8.1); and
  - (ii) to the ATE Insurers an amount equal to any sums paid out by them in respect of any Adverse Cost Orders made on an interim basis in the course of the Proceedings prior to any Settlement or final determination.
- (b) Secondly, to:
  - (i) the Funder the Commission limited to 4x Project Costs;
  - (ii) if applicable, the ATE Insurers any deferred and contingent premium entitlement; and
  - (iii) the Lawyers their Deferred Base Fees as defined in Annex 1 to the Standard Lawyers Terms, limited in so far as the same relate to their fees within the initial Approved Budget as of the Commencement Date.
- (c) Thirdly, to:
  - (i) the Funder, the remaining balance of Commission; and
  - (ii) the Lawyers their Success Fees as defined in Annex 1 to the Standard Lawyers Terms, limited in so far as the same relate to their fees within the initial Approved Budget as of the Commencement Date.
- (d) Fourthly, to:
  - (i) the Lawyers their Deferred Base Fees and Success Fees, in so far as the same relate to their fees agreed by the Funder in excess of the initial Approved Budget as of the Commencement Date.

8.5 As the Funder will make payments in respect of VAT as part of the Project Costs, the Claimant shall provide the Manager with such information as the Manager may request as regards the Applicant's input VAT recovery position. If the Applicant is entitled to obtain a credit or a payment in respect of such VAT, it shall, at the Manager's request, pay to the Funder an amount equal to such credit or payment (the "**Input Tax Amount**"). Any such Input Tax Amount is payable at the earliest time the Applicant receives the payment or can claim the credit. If there is any Input Tax Amount not paid to the Funder, that is payable to the Funder pursuant to this clause 8 or would be payable if the Manager had made a request under this clause 8.5, then that amount shall be included as part of the Project Costs.

## **9. CONFIDENTIALITY AND PROVISION OF DOCUMENTS**

9.1 In providing to the Manager and/or the Funder any documents or information about the Claims and the Proceedings (including any advice from the Lawyers and/or counsel and/or Consultative Panel given to the Claimant), the Claimant does not intend to waive any Legal Privilege that may attach to such documents or information and any

advice given to the Claimant or provided to the Funder by the Lawyers or counsel or Consultative Panel will remain covered by Legal Privilege).

- 9.2 The Claimant will instruct the Lawyers to provide to the Manager and/or, if requested by the Manager, to the Funder a copy of any document obtained in the Proceedings by way of discovery, subpoena or any other coercive power of the CAT, subject to such disclosure not being in contravention of any law, rule of the CAT or regulation, or CAT order or any other agreed confidentiality regime with the Defendant(s).
- 9.3 The Parties agree that all Project Information is provided, acquired, exchanged or generated in circumstances where the Claimant is contemplating or conducting litigation against the Defendant(s). As a result, the Parties acknowledge that:
- (a) all the Project Information is confidential; and
  - (b) the Project Information may be subject to a claim of Legal Privilege by the Claimant,

unless any part of the Project Information is already in the public domain through no breach of this Agreement.

- 9.4 The Parties will maintain the confidentiality of, and any Legal Privilege attaching to, the Project Information and the Parties agree to maintain the confidentiality of all Other Confidential Information that is not in the public domain unless the disclosure of any part of that Project Information and/or Other Confidential Information is:
- (a) agreed in writing to be made by the Parties; or
  - (b) expressly authorised by this Agreement; or
  - (c) required by law, regulation, the rules of any recognised stock exchange or by a court of competent jurisdiction (in which case disclosure should only be to the minimum extent it is required to do so); or
  - (d) to the Manager; or
  - (e) to the Funder's or Manager's respective Affiliates or to the Claimant or any member of the Class and/or the directors, officers, advisors, insurers or ultimate investors (on a confidential basis) of the Funder or Manager or the Funder's or Manager's Affiliates, where such disclosure is for a purpose relating to the operation or evaluation or enforcement of this Agreement or any guarantee provided to the Claimant by the Guarantors and provided that the disclosing Party remains liable for any breach of confidentiality by that person in respect of the Project Information and Other Confidential Information disclosed to that person; or
  - (f) to such Party or the Class as may be ordered by the CAT; or
  - (g) to a court to the extent that such disclosure is necessary to enforce the Party's rights under this Agreement.

- 9.5 The Claimant consents to the disclosure by the Manager and/or Funder of Project Information to all service providers participating in the Project provided that any recipient must first be bound to keep such information strictly confidential.

- 9.6 Nothing in this Agreement shall restrict or limit or be deemed to restrict or limit the Elliott Group from engaging in transactions in securities of issuers directly or on behalf

of accounts that the Funder or its Affiliates manage while in possession of the Project Information.

- 9.7 Notwithstanding anything herein to the contrary, neither the Claimant nor any other person acting on its behalf shall provide the Funder, the Manager or the Elliott Group or their representatives with any information that it is aware constitutes material non-public information concerning any public company, unless prior thereto the Funder, Manager or relevant member of the Elliott Group (as applicable) expressly agrees in writing to the receipt by it of any such non-public information regarding such company.
- 9.8 Subject to clause 9.9, no Party shall make, or permit any person to make, any public announcement, communication or circular with reference to this Agreement and/or its terms (each an "**announcement**") without the prior written consent of both Parties. In any event, the Claimant undertakes not to disclose or divulge any pricing or other commercial information concerning this Agreement to any person except in accordance with sub-clauses (c), (e) and (f) of clause 9.4 above.
- 9.9 Either Party shall be permitted to make an announcement where required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange), or by any court or other authority of competent jurisdiction. If the Claimant is required to make any announcement, it shall, to the extent legally permitted, promptly notify the Managers. The Claimant shall take reasonable steps to seek to agree the contents of the announcement with the Manager before making it.

## **10. NO CHARGE OR OTHER ENCUMBRANCE**

- 10.1 The Claimant hereby assigns, with effect upon the making of a CPO by the CAT, to the Funder all of its right, title and interest in any Costs Award(s) and Resolution Sums as security for the discharge of its obligations under Clauses 8 and 12.6 of this Agreement (to the extent of the Funder's entitlements under this Agreement) and agrees that the Funder's entitlements shall at all times rank in priority to the interests of any third parties (unless otherwise expressly agreed in writing by the Funder).
- 10.2 The Claimant represents and warrants that, save as provided in clause 10.1 above, there is no interest, charge, lien or other encumbrance or right in, over or otherwise attaching to the Claims or rights, title or interest of the Claimant and the Class to any Resolution Sum; and, save as has been disclosed to the Funder in writing, there is no other funding agreement or arrangement in respect of the Claims and no creditor holds security over property of the Claimant that might interfere with his obligations under this Agreement.
- 10.3 The Claimant shall not dispose of, transfer, assign or cause, permit, assert or consent to any interest, charge, lien or other encumbrance or right in, over or otherwise attaching to the Claims or rights, title or interest of the Claimant and/or the Class to any Resolution Sum and Costs Award(s) after the Commencement Date, except with the prior written consent of the Funder, which consent may be withheld by the Funder in its absolute discretion.

## **11. DURATION OF AGREEMENT**

This Agreement comes into full force and effect on the date of execution hereof and, subject to rights of termination under clause 12 herein, continues in force until all Resolution Sums (if any) and Costs Award(s) have been fully disbursed in accordance with this Agreement.



## **12. TERMINATION**

### ***By Funder***

- 12.1 The Funder is entitled to terminate its funding obligations under clause 3.1 and/or this Agreement (in whole or in part) with respect to all of or some of the Claims:
- (a) upon giving not less than twenty-one (21) days' written notice to the Claimant if the Funder reasonably ceases to be satisfied about the merits of the Claims (or the relevant part of the Claims) and/or the Proceedings, such a view to be reached based on independent legal and expert advice that has been provided to the Funder; or
  - (b) upon giving not less than twenty-one (21) days' written notice to the Claimant if the Funder reasonably believes that the Claims (or relevant part of the Claims) and/or the Proceedings are no longer commercially viable for the Funder to fund because the Funder is unlikely to obtain at least a sum equivalent to the anticipated Project Costs for the Proceedings (as set out in the Approved Budget), multiplied by 5 as a return on its funding of the Proceedings, such a view to be reached based on independent legal and expert advice that has been provided to the Funder; or
  - (c) forthwith upon written notice to the Claimant, if the Claimant commits a material breach of this Agreement and does not remedy the breach within thirty (30) days after receiving written notice from the Funder requiring it to do so; or
  - (d) the Class certified under a CPO by the CAT is substantially narrower than the Class for which the CPO is sought such that the Claims and/or the Proceedings are no longer commercially viable as provided for in sub-paragraph (b) above, and/or the CAT otherwise disapproves, or provides any negative commentary regarding, the Claims (or relevant part of the Claims) and/or transactions contemplated by this Agreement or the terms hereof.

### ***By the Claimant***

- 12.2 The Claimant may terminate this Agreement forthwith by written notice to the Funder if the Funder commits a material breach of this Agreement and does not remedy the breach within sixty (60) days after receiving written notice from the Claimant requiring it to do so.

### ***General***

- 12.3 In the event that this Agreement is terminated pursuant to clause 12.1 or 12.2:
- (a) all obligations of the Funder under this Agreement shall cease upon the effective date of termination, save for:
    - (i) payment by the Funder of any outstanding Project Costs incurred up to the effective date of termination; and
    - (ii) payment of any Adverse Costs Order to the extent that it relates solely to costs which arise in, or are attributed to, the period beginning on the Commencement Date and ending on the effective date of termination, even where such costs are not quantified until after the effective date of termination; and
  - (b) the entitlements of the Funder under clause 8 of this Agreement shall continue save that, in respect of its entitlement to Commission, the Funder will be entitled

to such sum of Commission multiplied by that percentage which is equal to the Project Costs funded by the Funder as a proportion of the total costs funded by the Funder and any subsequent funders or by the Claimant as at the date of receipt of the Resolution Sum, in respect of which the Claimant undertakes to use his best endeavours to obtain approval by the CAT for the payment of such sums to the Claimant. Subject to such approvals and orders as may be made by the CAT, the Claimant undertakes to immediately pay to the Funder such sum by way of Commission.

- 12.4 Upon the receipt by the Funder in full of its entitlements under this Agreement, the property referred to in clause 10.1 shall be reassigned by the Funder to the Claimant.
- 12.5 Termination of this Agreement shall be without prejudice to the rights and remedies of the Parties arising out of any breach of this Agreement.
- 12.6 The Funder's written consent shall be required before any agreement, compromise, discontinuance, waiver, release, understanding or any other arrangement whatsoever (whether before or after any Proceedings have been commenced) where no money, no value or no benefit passes from or on behalf of the Defendant(s) to the Claimant and/or the Class is entered into in respect of the Claims or any aspect thereof. If any of the foregoing occur without the Funder's written consent, it shall be deemed to be a material breach for the purposes of this Agreement and the Funder shall be entitled to terminate this Agreement forthwith by written notice to the Claimant, whereupon the Claimant shall immediately reimburse on a full indemnity basis to the Funder all Project Costs the Funder has paid and/or is liable for under this Agreement and in the event of any award/judgment and/or agreement by which the Claimant and/or Class are entitled to any damages or other payment or benefit (of the kind described in the definition of the "Resolution Sum") thereafter, the Funder shall in addition be entitled to a sum equal to the Commission provided in clause 8.

### **13. FURTHER ASSURANCES**

- 13.1 The Parties will promptly sign all documents and do all things that either of them from time to time reasonably requires of the other to perform, perfect or complete the provisions of this Agreement or any transaction contemplated by it. The Parties will, save as otherwise expressly provided in this Agreement, not do or permit to be done anything likely to deprive any Party of the benefit for which the Party entered this Agreement.
- 13.2 If this Agreement or any part of it is annulled, avoided or held unenforceable, the Parties will forthwith do all things necessary, including without limitation signing any further or other agreement or instrument, to ensure that the Funder receives any remuneration, entitlement or other benefit to which this Agreement refers or which is contemplated by this Agreement.
- 13.3 The Claimant irrevocably agrees that production of a copy of this Agreement shall be conclusive evidence of the Claimant's respective obligations under this agreement. The Claimant will not seek any order from any court that may detrimentally affect the Funder's rights under this Agreement other than with the consent of the Funder or as arises out of any material breach by the Funder of this Agreement.

### **14. ASSIGNMENT**

- 14.1 Save as provided in this Agreement, the Claimant shall not assign, novate or transfer this Agreement (or any of his rights and/or obligations) to any person without the Funder's prior written consent.

- 14.2 The Funder shall be entitled to assign, novate, transfer pledge or otherwise dispose (by way of security or otherwise) of all or any part of their rights, benefit, economic or beneficial interests, title and obligations under this Agreement without the consent of the Claimant, provided that (i) the Funder gives the Claimant forty-five (45) days' written notice of any proposed assignment, novation, transfer or pledge, (ii) upon the Claimant notifying the CAT of the Funder's proposal promptly following receipt of the notice by the Funder, the CAT raises no objection within the period of forty-five (45) days above and (iii) the guarantee of the Guarantors remains in full force and effect (and if required shall be restated by the Guarantors) or alternative security by way of guarantee or otherwise acceptable to the Claimant (acting reasonably) is delivered to the Claimant and such security is acceptable to the CAT.

## **15. PARTICIPATION**

- 15.1 The Funder may, in its absolute discretion, decide to share any of the financial risks of, and obligations under, this Agreement with one or more co-funders of the Funder's choice. For these purposes only, the Funder may provide any Project Information to a third party provided the Funder first ensures that the third party is required to keep such information strictly confidential and takes all reasonable steps to ensure that any Legal Privilege in respect of such information is maintained by it. In the event that the Funder enters into a co-funding, sub-participation or similar agreement, the Funder's entitlements and obligations under this Agreement shall remain unaffected to the extent not assigned, transferred or novated pursuant to clause 14.

## **16. KNOW YOUR CLIENT**

- 16.1 To assist in the fight against the funding of terrorism and money laundering activities, applicable law or regulations may require either of the Funder or the Manager to obtain, verify, and record information relating to the Claimant and take such other steps as may, from time to time, be required to be taken by the Terrorism Act 2000 (UK), the Proceeds of Crime Act 2002 (UK), the Money Laundering Regulations 2007 (UK), and any other applicable legislation and regulations. Accordingly, for the purposes of complying with such legislation (including, without limitation, complying with obligations in respect of customer identification, customer due diligence, record-keeping and reporting), either or both of the Funder and the Manager may ask for the name, address, date of birth, (for individuals), and/or other information and documents of the Claimant. The Claimant also agrees that either or both of the Funder and the Manager also may request and obtain certain information from third parties regarding the Claimant (if any).

## **17. DATA PROTECTION**

- 17.1 The Funder and the Manager may collect, use and disclose personal information about the Claimant and/or the members of the Class and agents that may constitute "personal information" ("**Personal Data**") under the General Data Protection Regulation, Regulation (EU) 2016/679 ("**EU GDPR**"), the EU GDPR as it forms part of the laws of the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019, the Data Protection Act 2018 (UK) (as amended) ("**Act**"). Without limiting the generality of the foregoing, the Personal Data may be used and disclosed by being shared, for the purposes described below, within the Funder or the Manager and/or to service providers in any country in which the Funder or the Manager conduct business. This may include some countries that do not provide the same statutory protection for Personal Data as applies under the Act and applicable data protection laws. The Personal Data may also be used for purposes including: administering the relationship under this Agreement;

compliance with any requirement of law or regulation; and the prevention of crimes and malpractice. The Personal Data may be disclosed by the Funder or the Manager or their service providers if permitted or compelled by applicable law, or in response to court orders, requests from regulators, government or law enforcement agencies.

- 17.2 For the avoidance of doubt, the Funder will be a data controller (as such term is defined in the EU GDPR) for the Personal Data it processes. The retention periods for Personal Data held by the Funder will depend on the purpose for which the Personal Data is collected and processed and, in certain circumstances, will be based on legal and regulatory requirements to retain information for a specified period and on the relevant limitation periods for taking legal action. Under the EU GDPR, data subjects have certain rights (which may be restricted in certain circumstances) in relation to their personal data including the right to access personal data held by the data controller, the right to rectification of personal data, the right to erasure of personal data, the right to data portability, the right to object to processing of personal data and the right to restrict processing of personal data. To exercise such rights, the Funder can be contacted using the contacts details set out at clause 19.6 below. Data subjects also have the right to lodge a complaint with the relevant supervisory authority, which in respect of the Funder is the Information Commissioner's Office (ICO) in London, England. Details of how to lodge a complaint can be found on the ICO website.

## **18. GOVERNING LAW AND DISPUTES**

- 18.1 This Agreement and any dispute or claim arising out of, or in connection with, it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of England and Wales.
- 18.2 For the purpose of any ancillary relief and subject to clause 18.3, each of the Parties irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Agreement or its subject matter or formation (including non-contractual disputes or claims).
- 18.3 Any dispute, controversy or claim in relation to or arising out of this Agreement, including any question about its existence, validity, meaning, performance or termination or the rights, duties and liabilities of any party to it shall be referred to and finally resolved by arbitration under the London Court of International Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three. The seat, or legal place, of arbitration shall be London. The language to be used in the arbitral proceedings shall be English.
- 18.4 Where in this Agreement provision is made for any matter to be referred to King's Counsel for determination the following provisions shall apply:
- (a) King's Counsel shall be independent of the Parties and shall be selected in consultation between the Lawyers, the Claimant, the Manager and the Funder.
  - (b) If the selection of King's Counsel cannot be agreed, then King's Counsel will be appointed by the Chairman of the Bar Council of England and Wales for that purpose.
  - (c) King's Counsel will take into account in rendering his or her determination the provisions of this Agreement and in particular the Overarching Purpose.
  - (d) The opinion of King's Counsel will be final and binding on both the Claimant and the Funder. King's Counsel may proceed as he or she sees fit to inform himself or herself before delivering his or her opinion.

- (e) The fees of King's Counsel shall be funded as Project Costs. Each of the Parties shall bear their own costs of any reference to King's Counsel for determination; and King's Counsel shall be granted the power to determine the apportionment of the Parties' costs associated with the reference for determination.

## **19. NOTICES AND COMMUNICATION**

- 19.1 All notices given under this Agreement must be in writing and must be served personally, by post or by email.
- 19.2 The Parties agree that the most efficient way for them to communicate with each other is by email and that, wherever possible, written communications between them will be by email.
- 19.3 The Manager will, at the Commencement Date and subsequently if necessary, provide the Claimant with the email address of the Manager's personnel involved in the Project. All notices and other communications the Claimant needs to serve on or have with the Manager and/or the Funder may be communicated to this email address or, if any email to that address is unsuccessful, to the email address specified in sub-clause 19.6.
- 19.4 The Claimant will, at the Commencement Date, provide the Manager with an email address for the Claimant and will immediately notify the Manager of any change to that email address.
- 19.5 The Parties agree that, for the duration of this Agreement, they will take all reasonable steps to ensure that their respective email addresses remain fully operational, allow unimpeded access to each party's inbox for the emails of the other party, and are checked on each business day.
- 19.6 The address for service of the Funder is:  
  
Innsworth Capital Limited  
44 Esplanade  
St Helier  
Jersey  
JE4 9WG  
  
Attention: Chris Bowden  
  
Email: InnsworthJersey@Intertrustgroup.com
- 19.7 The address for service of the Claimant is included in Schedule 1.
- 19.8 The contact details for the Manager are:

Innsworth Advisors Limited  
1 Chancery Lane  
London  
WC2A 1LF  
United Kingdom

Attention: Ian Garrard

Phone: +44 20 3750 1300

Email: IGarrard@innsworth.com

- 19.9 Notices shall be deemed to be received on the day after they are posted and on the day they are transmitted by facsimile or email (unless the sender receives notification that the transmission was unsuccessful). If either Party receives notification that an email or facsimile transmission to the other Party's notified address was unsuccessful, the Party must make all reasonable efforts to contact the other Party by telephone or mail. Neither Party shall be responsible to the other for any loss or damage of any nature arising out of any failure to notify or communicate with the other Party if the Party attempting to make the notification or communication has fully complied with all of the provisions of clause 19.

## **20. ACKNOWLEDGEMENT AND EXCLUSION OF LIABILITY**

- 20.1 By signing this Agreement, the Claimant acknowledges that the Claimant has sought and obtained independent legal advice and that he understands the nature and extent of his rights and obligations under this Agreement.
- 20.2 Save for the enforcement by the Claimant of the Funder's obligations to provide the funding stipulated in this Agreement and/or the Guarantor's obligations under the guarantees provided by the Guarantors, the Funder, the Manager, the Guarantors and each of their respective officers, directors, employees, shareholders, partners, representatives, consultants and agents (together the "Funder Parties") shall not be liable for any claims, liabilities, damages, losses, costs or expenses of any kind whether incurred as direct or consequential losses (together "Losses") of the Claimant arising out of any breach of this Agreement by the Funder or any other cause of action arising in relation to this Agreement or in connection with the Claims howsoever arising (including negligence), unless and only to the extent that such Losses are due to the fraud or wilful misconduct of the Funder.

## **21. ENTIRE AGREEMENT**

- 21.1 This Agreement, as varied from time to time, (together with any documents referred to in it) constitute the entire agreement between the Parties and, save for the Appeals Funding Agreement and its terms (which shall remain in full force and effect), supersede and extinguish all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations, arrangements and understandings between them, whether written or oral, relating to their subject matter.
- 21.2 Each Party acknowledges that in entering into this Agreement (and any documents referred to in it), it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement or those documents.
- 21.3 Without prejudice to the foregoing, the Claimant acknowledges and agrees that the Funder and the Manager have made no promise, representation or warranty as to the expected outcome of the Claims (in respect of their merit or the quantum of the Claims) in respect of which the Claimant shall rely exclusively on the advice of the Lawyers. The Claimant confirms that the Funder and the Manager have not assumed any duty of care or other form of legal responsibility for information provided by the Funder or the Manager in connection with the Claims, including any estimates of quantum/loss prepared by the Manager.
- 21.4 Nothing in this clause shall limit or exclude any liability for fraud.

**22. NO PARTNERSHIP; NO AGENCY**

- 22.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership between the Parties or between the Claimant and the Manager or constitute any Party the agent of another Party or the Manager the agent of the Claimant.

**23. AMENDMENTS AND WAIVERS**

- 23.1 No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 23.2 A waiver of any right or remedy under this Agreement or by law is only effective if it is given in writing and is signed by the person waiving such right or remedy. Any such waiver shall apply only to the circumstances for which it is given and shall not be deemed a waiver of any subsequent breach or default.
- 23.3 A failure or delay by any person to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.
- 23.4 No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 23.5 A person that waives any right or remedy provided under this Agreement or by law in relation to one person or takes or fails to take any action against that person, does not affect its rights or remedies in relation to any other person.

**24. SEVERANCE**

- 24.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision pursuant to this clause shall not affect the validity and enforceability of the rest of this Agreement.

**25. SURVIVAL**

- 25.1 This Agreement and the rights and obligations under it (other than obligations that have already been fully performed), unless otherwise expressly provided for in this Agreement, remain in full force after the Agreement is terminated.

**26. THIRD PARTY RIGHTS**

- 26.1 Except as provided for in clause 26.3, a person who is not a Party shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 26.2 Notwithstanding clause 26.3, the rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.
- 26.3 The Parties agree that:
- (a) each of Funder Parties may enforce and rely on the terms of this clause 26.3, clause 20 and any of their other respective rights under any other provision of this Agreement;

- (b) the Guarantors may enforce and rely on the terms of this clause 26.3, clauses 19 and 20 and any of their rights or entitlements under any other provision of this Agreement; and
- (c) the Manager may enforce and rely on the terms of this clause 26.3, clauses 19 and 20 and any of its other rights or entitlements under any other provision of this Agreement.

**27. COUNTERPARTS**

- 27.1 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

**28. LANGUAGE**

- 28.1 If this Agreement is translated into any language other than English, the English language version shall prevail.



**The Claimant**

SIGNED by

**Professor Andreas Stephan**



**The Funder**

EXECUTED by

**INNSWORTH CAPITAL LIMITED**



Signature of Director

**SCHEDULE 1**  
**CLAIMANT AND PARTICULARS**

<b><u>Commencement Date</u></b>
7 June 2024
<b><u>Name of Claimant (full legal name)</u></b>
Professor Andreas Stephan
<b><u>Address (registered office) and contact details</u></b>
<div style="background-color: black; width: 100%; height: 1.2em;"></div>
<b><u>Address for service / notices (if different to the registered address)</u></b>
<ul style="list-style-type: none"> <li>• For the attention of Damien Geradin (Partner)</li> <li>• Geradin Partners Limited</li> <li>• 14-18 Copthall Avenue, London EC2R 7DJ</li> <li>• dgeradin@geradinpartners.com</li> </ul>
<b><u>Include details of main contact(s) and email address</u></b>
See above.
<b><u>(If applicable) Name of authorised representative and contact details</u></b>
N/A
<b><u>Lawyers (of Claimant) – name and main contact details</u></b>
<p>Damien Geradin, Partner, dgeradin@geradinpartners.com, (+32) 471 179525, Geradin Partners Limited, 14-18 Copthall Avenue, London EC2R 7DJ</p> <p>Kieron Beale KC, kieronbeal@blackstonechambers.com, Blackstone Chambers, Blackstone House, Temple, London, EC4Y 9BW</p> <p>Daniel Carall-Green, dcg@fountaincourt.co.uk; and Hannah Bernstein, hpb@fountaincourt.co.uk, Fountain Court Chambers, Fountain Court, Temple, London, EC4Y 9DH</p>
<b><u>Name of Defendant(s) (full legal title)</u></b>
Amazon.com, Inc., Amazon Europe Core S.à.r.l., Amazon Services Europe S.à.r.l., Amazon EU S.à.r.l., Amazon UK Services Ltd and Amazon Payments UK Ltd.
<b><u>Claim(s)</u></b>
As set out in the Claim Form the Claims are for loss and damage caused by Amazon's breach of statutory duty, and in particular by its infringements of Article 102 of the Treaty on the Functioning of the European Union (up to 31 December 2020) and section 18 of the Competition Act of 1998. The Claimant seeks to commence opt-out collective proceedings under section 47B of the Competition Act 1998.

## SCHEDULE 2 CONSULTATIVE PANEL – TERMS OF REFERENCE

### 1. Background to the Proposed Collective Proceedings

- 1.1 Professor Andreas Stephan (the “**Proposed Class Representative**”) has instructed Geradin Partners Limited (“**Geradin**”) to prepare a standalone opt-out collective action against Amazon.com, Inc., Amazon Europe Core S.à.r.l., Amazon Services Europe S.à.r.l., Amazon EU S.à.r.l., Amazon UK Services Limited and Amazon Payments UK Limited (the “**Defendants**”) in relation to the Defendants’ breach of statutory duty and its infringements of Article 102 of the Treaty on the Functioning of the European Union and section 18 of the Competition Act of 1998 (the “**Proposed Collective Proceedings**”).
- 1.2 The Proposed Collective Proceedings will seek damages for losses suffered as a result of the Defendants’ behaviour. The specific class of parties falling within the scope of the claim (the “**Class**”) is proposed to be defined as “All UK-domiciled Sellers that used Amazon’s e-commerce marketplace services to reach customers in the UK within the Relevant Period” and the harm arising from the behaviour will be finally quantified in the course of the Proposed Collective Proceedings. After success at trial or settlement, the damages will be distributed amongst the Class members using a distribution method approved by the Competition Appeal Tribunal.
- 1.3 The Proposed Collective Proceedings is being funded by a third party litigation funder, Innsworth Capital Limited, in accordance with a litigation funding agreement (“**Funding Agreement**”) executed between Innsworth Capital Limited (“**Innsworth**”) and the Proposed Class Representative.

### 2. The role of the Consultative Panel

- 2.1. The Proposed Class Representative will be applying for a Collective Proceedings Order from the Competition Appeal Tribunal permitting him, as class representative, to bring opt-out collective proceedings against the Defendants.
- 2.2. All decisions regarding the conduct of the litigation, the instructions given to legal advisers and experts, and any decision regarding whether to propose a settlement to the Competition Appeal Tribunal, are for the Proposed Class Representative only, if he is approved to act as the class representative, subject to the terms of the Funding Agreement. The Proposed Class Representative has decided that it would assist him in fulfilling his duties and obligations to the Class, and in ensuring that he is always acting fairly and adequately in the interests of all Class members, and of benefit to the Class as a whole, if he had the benefit of advice from a panel of individuals with particular experience concerning large scale commercial litigation, competition law, economics, and the relevant industry (the “**Consultative Panel**”). The Class represented by the Proposed Class Representative may gain confidence from the fact that, before taking important decisions, the Proposed Class Representative will have the opportunity to take soundings from a group of experts on the issues under consideration.
- 2.3. The role of the Consultative Panel will be to assist the Proposed Class Representative to further his objective to act in the best interests of the Class when carrying out his role as class representative throughout the Proposed Collective Proceedings and in a manner consistent with the terms of the Funding Agreement. The nature of such assistance will be at the Proposed Class Representative’s discretion but is likely to include participating in telephone and in-person conferences with the Proposed Class

Representative and, if appropriate, the Funder and/or Managers from time to time throughout the duration of the Proposed Collective Proceedings and commenting on documents produced for the purposes of the Proposed Collective Proceedings.

- (a) may seek assistance from individual Consultative Panel members (as opposed to the Consultative Panel as a whole) as he sees fit;
- (b) is under no obligation to follow or accept the advice of the Consultative Panel (or any members thereof); and
- (c) will share with the Funder and/or Managers the substance of any advice provided by the Consultative Panel or individual members of the Consultative Panel to him.

The Proposed Class Representative will hold at least two meetings per calendar year of the Consultative Panel at times to be arranged dependent upon the status of the proceedings.

- 2.4. Panel members will be reimbursed for their time spent serving as a member of the Consultative Panel at the rates set out in individual retainer letters, non-confidential versions of which are annexed to these Terms of Reference.
- 2.5. Should the Proposed Class Representative decide to sound out the Consultative Panel, the views of the members will be advisory only, and members of the Consultative Panel will carry no liability in relation to the views expressed.
- 2.6. As the role of the Consultative Panel will relate to ongoing litigation, all matters discussed within the Consultative Panel will remain confidential and subject to legal privilege at all times. Accordingly, each member will undertake not to disclose the fact of or the contents of those discussion with any third party outside the Consultative Panel (and Geradin, as the Proposed Class Representatives legal representatives for the proceedings) and Funder/Managers.
- 2.7. Each member of the Consultative Panel will sign a confidentiality agreement reflecting these terms of reference.
- 2.8. The Proposed Class Representative is responsible for appointing and removing members of the Consultative Panel and may do so at his sole discretion.
- 2.9. Members of the Consultative Panel will serve on the Consultative Panel for as long as they wish and may resign at any time by notice to the Proposed Class Representative and Geradin.
- 2.10. Should there be a need for any documents to be created for the Consultative Panel in order to update them on the proceedings, these will be prepared by Geradin and sent by them or the Proposed Class Representative to the members. To avoid the risk of creating any potentially disclosable documents, the Consultative Panel members will not annotate or comment in writing on any such documents, and will treat such documents as confidential in accordance with paragraph 2.7 above.

### **3. Consultative Panel members**

The members of the Consultive Group are currently as follows:

- 3.1. Lord Neuberger of Abbotsbury

Lord Neuberger is the former President of the United Kingdom Supreme Court. Lord Neuberger was called to the Bar in 1975 and was appointed Queen's Counsel in 1987. He was appointed a High Court Judge, sitting in the Chancery Division, in 1996, and was made Supervisory Chancery Judge for Midland, Wales and Chester and Western Circuits from 2001. In 2004, he was made a Lord Justice of Appeal, and a Privy Counsellor. In the same year, he was appointed Judge in charge of IT and modernisation. In 2007 he was promoted to be a Law Lord and became a peer. He was appointed Master of the Rolls in 2009. In 2012, he became the President of the United Kingdom Supreme Court, a position from which he retired in 2017. In 2017, he started practising as an arbitrator and legal expert from One Essex Court.

In addition to his legal career, Lord Neuberger is an honorary Fellow of the Royal Society, and an honorary member of the Royal Institution of Chartered Surveyors. He also chairs the High Level Panel of Legal Experts on Media Freedom. He was on the Board of the University of the Arts London from 2001 to 2010, and was a trustee, and then chairman, of the Schizophrenia Trust from 2000 to 2012. He is a trustee of MHRUK, a mental health research funding trust, and of Prisoners Abroad, and patron of Sapere, a children's educational trust. He was chair of the Magna Carta Trust 2009-2012. He chaired an investigation for the Bar Council into widening access to the barrister profession in 2006-2007, and also served on the panel on fair access to the professions in 2008-2009.

### 3.2. Sue Prevezer KC

Sue Prevezer KC is a senior barrister with over 30 years' experience in commercial litigation at every level of the UK judicial system and in international arbitration. Sue has sat as a Deputy High Court Judge in the Chancery Division of the High Court and conducts arbitrations, as sole, co-arbitrator and chair under all the major arbitral institutions.

She is admitted to the Bar in both the Cayman and the BVI.

Sue is also a CEDR accredited mediator, and since joining Brick Court Chambers, has been mediating large commercial disputes across various sectors, including commercial, banking and finance (including digital currency disputes), company law, insurance and re-insurance, IP, competition, employment and construction disputes.

Sue is a Non-Executive Director of S4 Capital Plc (a digital technology company run by Sir Martin Sorrell) and of Bloc Ventures Ltd (a deep technology company). She is also a director on the Board of the Hampstead Theatre and the Chair of the Trustees of the Freud Museum.

Prior to joining Brick Court, Sue was the co-managing partner of the London Office of Quinn Emanuel Urquhart & Sullivan LLP and, dual qualified as solicitor and barrister, assisted clients across numerous sectors, including banking, insolvency, restructuring, insurance, financial services, general commercial law and IP.

### 3.3. Stephen Robertson

Stephen Robertson is the former director general of the British Retail Consortium (the BRC), a position he served in for five years. The BRC is a trade association which campaigns on behalf of the retail industry with an aim of creating a favourable economic

and policy environment for retail businesses.

He is currently acting as Chairman of Retail Economics, an independent economics consultancy and is a Non-Executive Director at Timpson and Clipper Retail Logistics plc.

Prior to holding these positions, Mr Robertson had three decades of experience in the retail industry as Marketing Director at B&Q, Group Managing Director at Screwfix and director of communications at Kingfisher.

Signed: \_\_\_\_\_ Print

Name: \_\_\_\_\_

Date: \_\_\_\_\_

### **SCHEDULE 3 COMMISSION**

The Commission shall be an amount equal to the sum of:

- i. Project Costs funded by the Funder to the relevant date of Settlement or Judgment, less any costs recovered by the Claimant and paid to the Funder pursuant to Clauses 8.1 and 8.2;  
  
and
- ii. an amount equal to the Total Commitment multiplied by the applicable factor below:  
  
x3 where the date of Judgment or Settlement is on or after the Commencement Date  
  
x6, where the date of Judgment or Settlement is on or after the provision of the first tranche of substantive disclosure by the Defendants  
  
x8, where the date of Judgment or Settlement is on or after Judgment or Settlement is on or after the filing by the Defendants of witness evidence on substantive trial issues  
  
x10, where the date of Judgment or Settlement is on or after the filing by the Defendants of expert evidence on substantive trial issues  
  
x12, where the date of Judgment or Settlement follows the commencement of substantive trial  
  
x14, where the date of Judgment or Settlement occurs at any time from 31 December 2028.

For the above purposes, the term “Judgment” means a final judgment by which Damages are awarded in resolution of the Proceedings.

#### **SCHEDULE 4 APPROVED BUDGET**

The following budget shall be read and construed in accordance with, and to give effect to, the Funding Agreement and is at all times subject to the Standard Lawyers Terms.

The following provisions constitute terms of the Funding Agreement.

Any fees, disbursements and expenses to be funded in accordance with the Funding Agreement will be drawn against the applicable category of the Approved Budget shown below and accordingly be recorded in the budget tracker (per Standard Lawyers Terms) against the applicable category. No fees, disbursements and expenses will be drawn against any other category in the Approved Budget, except with the prior written approval of the Funder.

The Claimant shall be entitled to carry forward any unused budget from sub-phases to be applied against overage for later sub-phases and phases. However, Claimant shall not be entitled to draw down before the start of a sub-phase or phase any budget associated with that sub-phase or phase.

The Claimant shall not be entitled to carry forward any unused budget from the Carriage and Jurisdiction sub-phases.

If there is any unused budget, this shall be applied before making use of Contingencies A and B specified in the Approved Budget.

Contingency A is intended for a potential CPO appeal and shall be released for use in the sole and absolute discretion of the Funder. Contingency B is a general contingency and is available in the event of circumstances that were not reasonably foreseeable at the time of entry into this Funding Agreement.

In addition to and separate from the Approved Budget below, the parties agree that Project Costs of £2,961,849 (including VAT where applicable) have been incurred in the preparation of this claim prior to the Commencement Date. These Project Costs shall count towards the limit expressed in clause 3.1(a)(i)

Sums for ATE shown in the Approved Budget are for upfront premia for ATE insurance policies and constitute Project Costs, but are within the sole control of the Funder and outside the scope of the Approved Budget. They are included for information only. Any increase in the cost of the ATE Insurance shall be treated as an increase in the Approved Budget.

The Approved Budget reflects the Lawyers' discounted CFA rates of 30% pre-certification and 25% post-certification for Geradin Partners Limited and 10% for Counsel.

All figures are inclusive of VAT.



**Privileged and Confidential**

Approved Budget - Amazon		Carriage Hearing (potentially a two-day hearing)		Jurisdiction Hearing (potentially a two-day hearing)	From claim filing to CPO decision			CPO to first instance judgment/settlement								Contingencies	
INVOICE BREAKDOWN	TOTAL COSTS				Pre-CPO CMC	Evidence for approval hearing	Approval hearing	CMC	Further pleadings	Disclosure	Witness statements	Expert report	Trial of Common issues	Distribution of damages	Settlement discussions	Contingency A - Appeal on CPO/Claimant services	Contingency B - general contingency
SOLICITORS																	
Geradin Partners	6,195,000	£300,000	£360,000	270,000	270,000	324,000	270,000	585,000	675,000	630,000	81,000	450,000	450,000	450,000	540,000	540,000	
TOTAL SOLICITORS COSTS	6,195,000	£300,000	£360,000	270,000	270,000	324,000	270,000	585,000	675,000	630,000	81,000	450,000	450,000	450,000	540,000	540,000	
COUNSEL																	
Counsel	6,259,200	£300,000	£300,000	162,000	54,000	324,000	162,000	216,000	162,000	172,800	194,400	3,888,000	54,000	54,000	108,000	108,000	
TOTAL COUNSEL COSTS	6,259,200	£300,000	£300,000	162,000	54,000	324,000	162,000	216,000	162,000	172,800	194,400	3,888,000	54,000	54,000	108,000	108,000	
EXPERTS / DISBURSEMENTS																	
Economist	3,812,841	£300,000	£180,000	64,600	129,200	131,125	64,600	64,600	698,700	72,676	749,950	524,601	84,600	116,900	315,646	315,646	
Industry expert	264,000	£12,000	£12,000	12,000	12,000	12,000	12,000	12,000	12,000	24,000	12,000	60,000	12,000	0	30,000	30,000	
TOTAL EXPERT COSTS	4,076,841	£312,000	£192,000	76,600	141,200	143,125	76,600	76,600	710,700	96,676	761,950	584,601	96,600	116,900	345,646	345,646	
OTHER																	
Claimant administration services	1,170,000			90,000	90,000	90,000	60,000	60,000	60,000	60,000	120,000	120,000	60,000	120,000	120,000	120,000	
PR Agency	244,800			72,000			129,600						43,200				
Disclosure provider	1,296,000								1,296,000								
Class rep	318,000	£12,000	£12,000	30,000	30,000	30,000	30,000	20,000	20,000	20,000	20,000	30,000	30,000	34,000			
Class rep advisory panel	294,000			30,000	30,000	30,000		20,000	20,000	20,000	20,000	30,000	30,000	34,000			
Other	259,200	£6,000	£66,000				172,800						14,400				
Insurance premiums	3,750,000			750,000			3,000,000										
TOTAL OTHER COSTS	7,332,000	18,000	78,000	972,000	150,000	150,000	3,422,400	100,000	1,396,000	100,000	160,000	180,000	177,600	188,000	120,000	120,000	
GRAND TOTAL	23,863,041	930,000	930,000	1,480,600	615,200	941,125	3,931,000	977,600	2,943,700	999,476	1,197,350	5,102,601	778,200	808,900	1,113,646	1,113,646	
		Pre-CPO phase total		CPO phase total			Merits phase total										
		1,860,000		3,036,925			16,738,825										

**SCHEDULE 5  
FORM OF CLAIMANT'S CERTIFICATE**

I, Professor Andreas Stephan, confirm that I have reviewed the attached invoices to ensure compliance with the Agreement including billing guidelines; and that the fees, disbursements and expenses included within the attached invoices submitted for funding have been incurred in accordance with the Agreement and are within the Approved Budget; and that I am not aware of any circumstances that would cause an increase to the Approved Budget (save as already notified in writing by me to the Funder).

**The Claimant**

SIGNED by

.....

Date.....

## **SCHEDULE 6 STANDARD LAWYER TERMS**

**THIS AGREEMENT** is made the [       ] day of [       ] 2024

### **BETWEEN**

1. Geradin Partners Limited (Company No. 13314141) of 37 Warren Street, London, W1T 6AD ("the **Lawyers**"); and
2. Innsworth Capital Limited (Registration No. 125002) of 44 Esplanade, St Helier, Jersey, JE4 9WG ("**Funder**").

### **RECITALS**

- A. The Claimant has entered into or proposes to enter into the Funding Agreement.
- B. The Lawyers have been appointed to provide services to and for the benefit of the Claimant and the Lawyers propose to accept such appointment subject to the terms and conditions set out in the Standard Lawyers Terms.
- C. The Lawyers are aware of the contents of the Funding Agreement and agree to act consistently at all times with, and in accordance with, the terms of the Funding Agreement.

### **1. DEFINITIONS**

- 1.1 Save where indicated in these Standard Terms, the defined terms in the Funding Agreement will bear the same meaning when used in these Standard Terms; and the following terms shall bear the following meanings:-

"**Agreed Hourly Rates**" means the hourly rates set out in clause 2.2.

"**Counsel**" means barristers named in clause 2.2.2 below and/or such other barristers as the Lawyers may instruct pursuant to these Standard Terms or the Funding Agreement.

"**Counsel Agreed Hourly Rates**" means the hourly rates set out in clause 2.2.2.

"**Funding Agreement**" means the Litigation Funding Agreement between the Claimant and the Funder, as the same may be amended and/or supplemented from time to time.

"**Standard Terms**" means the terms and conditions set out in this Agreement.

### **2. APPOINTMENT OF THE LAWYERS**

- 2.1 The Lawyers will:

2.1.1 act consistently with the terms of the Funding Agreement; and

2.1.2 do all things which the Funding Agreement contemplates the Lawyers will do.

Without prejudice to the foregoing, the Lawyers hereby acknowledge the Claimant's instructions and directions set out in clause 4 of the Funding Agreement and the letter of instruction provided by the Claimant relating thereto in the form of Schedule 7; and agree to abide by and act promptly to give effect to such instructions and directions.

- 2.2 The following rates shall apply, according to the following seniority banding, to the provision of the services by the Lawyers to the Claimant:

<b>Fee-earner category (including post qualification experience, where applicable)</b>	<b>Basic Hourly rate</b>
Senior Partner	████
Partner	████
Of Counsel	████
Senior Associate (5 years plus)	████
Associate (2-4 years)	████
Junior Associate (NQ-1 year)	████
Paralegal	Such rate as is agreed on a case by case basis in consultation with the Funder.

- 2.2.1 The fee-earners employed by the Lawyers who will provide the services to the Claimant and their applicable banding as at the date hereof are as follows:-

Damien Geradin	Senior Partner
David Gallagher	Partner
Stijn Huijts	Partner
Anthony Ojukwu	Of Counsel
Gina Sternberg	Associate
Sukriti Jaiswal	Associate
Katerina Dres	Junior Associate
Konstantinos Pantelidis	Junior Associate
Oliver Montgomery	Junior Associate
Etienne Perrin	Junior Associate

The fee-earner rate bands above will apply to all fee-earners provided by the Lawyers irrespective of their office/location. Fee-earner bands will be determined by the date of qualification as a solicitor in England & Wales or as otherwise agreed by the Managers where the relevant fee-earner is not a qualified solicitor in England & Wales.

- 2.2.2 The barristers retained for the Proceedings as at the date hereof and their basic hourly rates are as follows:

Kieron Beale KC [REDACTED]

Daniel Carall-Green [REDACTED]

Hannah Bernstein [REDACTED]

2.2.3 The experts retained for the Proceedings as at the date hereof and their hourly rates or fees are as follows:

George Houpis [REDACTED]

Dave Foster [REDACTED]

Martin Duckworth [REDACTED]

James Baker [REDACTED]

Yulia Kossykh [REDACTED]

Tom Ovington [REDACTED]

Ellie Monaghan [REDACTED]

Alex Latti [REDACTED]

David Fabricius [REDACTED]

Joe Regan-Stansfield [REDACTED]

Sumaiya Rahman [REDACTED]

Jed Fletcher [REDACTED]

Joe Dunhill [REDACTED]

Rohin Mittal [REDACTED]

Alicia Camplejohn [REDACTED]

Alexi Meghir [REDACTED]

Andreas Thoma [REDACTED]

- 2.2.4 The fees and expenses of any fee-earners, consultants or other suppliers whose rates are not agreed above will only be funded as Project Costs if the same are approved by the Funder in writing in advance. Approval of any additional fee-earners, consultants or other suppliers shall not affect the Approved Budget nor the conditional fee agreements set out in clauses 4.4 and 4.5 of these Standard Lawyer Terms except with the express written agreement of the Funder, acting in its sole and absolute discretion.
- 2.2.5 The Lawyers will ensure, in so far as it is within their control, that there is continuity in the fee-earners, barristers and experts assigned to the conduct of the Proceedings. Any change to the foregoing personnel set out in clause 2.2.1 to clause 2.2.3 inclusive requires the prior written approval of the Manager (not to be unreasonably withheld or delayed). Any fee-earner assigned to the Proceedings will be allocated to the applicable band/category and applicable hourly rates set out above.
- 2.2.6 All of the Lawyers' rates above shall remain fixed from the Commencement Date until the third anniversary thereof, and shall thereafter be subject only to annual indexation at a rate equal to the lower of (i) the consumer price index applicable over the preceding year ending 31 December and (ii) 5%, unless otherwise agreed in advance by the Funder (at its sole and absolute discretion). Any change to the agreed hourly rates shall not affect the Approved Budget nor the conditional fee arrangements set out in clause 4.4 of these Standard Lawyer Terms except with the express written agreement of the Funder, acting in its sole and absolute discretion.

### **3. THE LAWYERS' OBLIGATIONS**

- 3.1 The Lawyers will ensure that they fully comply at all times with the Claimant's instructions, subject to any overriding duty to the Court or professional conduct rules, including those set out in clause 4 of the Funding Agreement.
- 3.2 Pursuant to the Claimant's instructions in clause 4 of the Funding Agreement, the Lawyers will keep the Claimant and the Manager fully informed of all matters concerning the Claims and the Proceedings, including any mediation and settlement discussions.
- 3.3 If, after the date of the Funding Agreement, the Lawyers become aware of any information which has or may have a material impact on the Claims, the Proceedings, or the potential for any judgement sum to be recovered, the Lawyers will immediately inform the Claimant and the Manager of that information.
- 3.4 The Lawyers acknowledge that the Manager may request from the Claimant pursuant to the Funding Agreement updated written advice on the Claims or any aspect thereof, and subject to compliance with clause 9 of the Funding Agreement the Lawyers agree to provide the same to the Claimant, with a copy to the Manager.
- 3.5 The Lawyers will provide a weekly report, at the end of each week to which the report refers, to the Claimant copied to the Manager, which:

- 3.5.1 identifies any change to the previous weekly report and any significant developments in relation to the Claims and the Proceedings (including in relation to any possible Settlement);
- 3.5.2 reviews all issues relevant to liability and quantum; and costs (including any actual or potential Cost Orders) at the relevant point in time;
- 3.5.3 provides advice in respect of any proposed changes to the prospects of success;
- 3.5.4 sets out the anticipated next steps and milestones;
- 3.5.5 provides an estimate of the likely future costs to the conclusion of the Proceedings.

#### **4. COSTS AND DISBURSEMENTS**

- 4.1 Except as set out below and/or as separately agreed with regard to any fixed fee(s), capped fee(s), conditional fee(s) or otherwise, the Lawyers will charge for their services provided by reference to the time spent at the hourly rates set out in clause 2.2 and utilise the personnel notified pursuant to clause 2. Detailed time records must be kept to facilitate time details being provided in accordance with clause 5 of these Standard Lawyers Terms.
- 4.2 No fee(s) will be charged by the Lawyers for any fee-earners, barristers or experts other than those set out in clauses 2.2.1 to 2.2.3 inclusive or otherwise approved by the Manager pursuant to clause 2.2.4 without the prior written consent of the Manager.
- 4.3 Notwithstanding the above, the Lawyers will not invoice fees and/or disbursements and/or expenses that are not itemised in the Approved Budget, and, in respect of their time costs, will not charge more than is indicated in the Approved Budget for work in the relevant line-item category, without the Manager's express prior written agreement. Furthermore, the Lawyers acknowledge and accept the risks of the application of any applicable cap and/or limit that is set out in these Standard Lawyers Terms with respect to their fees, disbursements and expenses; and shall not charge for any sums in excess of such caps and/or limits.
- 4.4 The Lawyers have agreed with the Claimant to provide their services pursuant to a conditional fee arrangement in the form appended at Annex 1, which shall apply throughout the Proceedings until their resolution and there shall be no variation to the arrangement without the prior express agreement of the Funder (acting in its sole and absolute discretion).
  - (a) If the Funder agrees to increase the Approved Budget in accordance with the Funding Agreement, the Lawyers acknowledge and agree that:
    - (i) the discounts for each phase shall apply to any increase to any work for that particular phase; and
    - (ii) the caps on make whole and uplift payments set out in this clause 4.4 shall continue at their original level, absent the agreement of the Funder acting in its sole and absolute discretion.
- 4.5 The Lawyers have agreed with the Claimant that Counsel shall provide their services pursuant to a conditional fee arrangement in the form appended at Annex 2, which shall apply throughout the Proceedings until their resolution and there shall be no

variation to the arrangement without the prior express agreement of the Funder (acting in its sole and absolute discretion).

- (a) If the Funder agrees to increase the Approved Budget in accordance with the Funding Agreement, the Lawyers will seek the acknowledgment and agreement of Counsel that:
  - (i) the discounts for each phase shall apply to any increase to any work for that particular phase; and
  - (ii) the caps on make whole and uplift payments set out in this clause 4.5 shall continue at their original level, absent the agreement of the Funder acting in its sole and absolute discretion.
  - (iii) the caps on make whole and uplift payments set out in this clause 4.4 shall continue at their original level, absent the agreement of the Funder acting in its sole and absolute discretion.
- (b) All sums, caps, make whole payments and uplifts referred to in this clause 4.5 apply to Counsel in aggregate, not individually. In the event that the Lawyers instruct new or replacement counsel pursuant to clause 2.2, the Lawyers undertake to seek to agree terms of instruction with new counsel such that all sums, caps, make whole payments and uplifts referred to in this clause 4.5 shall continue unchanged, save with the express consent of the Funder, acting in its sole and absolute discretion.

4.6 The Lawyers will issue invoices which comply with the requirements set out in Schedule 1 (Billing guidelines).

## **5. INVOICES**

5.1 The Lawyers will render monthly invoices made out to the Claimant with a copy to the Manager by the 12th day of each month, accompanied by:

- 5.1.1 The details contemplated by clause 5.5 of these Standard Terms;
- 5.1.2 A summary of the tasks performed in respect of which time was incurred with those tasks identified as activities within the Approved Budget;
- 5.1.3 A record of all cumulative fees, disbursements and expenses against each phase of the Approved Budget (in Excel format or similar);
- 5.1.4 Invoices from barristers and experts and for any other disbursements;
- 5.1.5 A copy of the invoice to the Claimant in excel format; and
- 5.1.6 Confirmation that the invoices and disbursement invoices comply with the billing guidelines set out in the schedule to these Standard Lawyers Terms.

The Lawyers will also provide an estimate of the likely fees, disbursements and expenses to be incurred and billed in respect of the next month.

5.2 The monetary details in the monthly invoices will include (where the applicable fee(s) are based on hourly rates in full or by reason of any conditional fee(s)) a charge for the time detailed at the hourly rates set out in clause 2.1 including any VAT (if chargeable).



- 5.3 Provided that the Funder is obliged to pay such costs, disbursements and expenses pursuant to the Funding Agreement and that the same are within the Approved Budget, the Funder will pay:
- 5.3.1 The reasonable fees of the Lawyers incurred during the duration of the Funding Agreement for the sole purpose of prosecuting the Proceedings; and
  - 5.3.2 The reasonable disbursements and expenses incurred during the term of the Funding Agreement for the sole purpose of prosecuting the Proceedings.
- 5.4 Provided invoices from the Lawyers comply with these Standard Lawyers Terms, the Funder will pay them within thirty (30) days from the end of the month in which the Lawyers' invoice together with the supporting documentation including Claimant's Certificate is received by the Managers.
- 5.5 Where an hourly rate is applicable, the time details for fees of the Lawyers must be on a separate document to each invoice and must include, for each time entry:
- 5.5.1 the date upon which the time was spent;
  - 5.5.2 which solicitor or paralegal spent the time; and
  - 5.5.3 the time spent in six-minute units or such other unit of time as is agreed by the Manager.
- 5.6 The Lawyers acknowledge and accept that pursuant to clause 4.4 of the Funding Agreement, the Funder may at its discretion require the Claimant to, where available, require that the Lawyers submit any one or more of their invoices to assessment under the Solicitors Act, and the Lawyers shall provide promptly all such documentation and information pertaining to the invoiced costs subject to the assessment as may be requested by the Managers. Each of the Lawyers and the Funder shall bear their own costs of any assessment, subject to any contrary inter partes order in respect of costs made by the court. Authorised representatives of the Lawyers and the Manager together with the Claimant shall attend a meeting on the first Tuesday of each quarter (unless otherwise agreed) following the Commencement Date to review the invoiced costs to that date and the projected costs of the next 3 months, with a view to ensuring that all costs, subject always to the Approved Budget are being managed efficiently and in a manner consistent with the Overarching Purpose. Any party attending may invite a costs assessor and/or costs counsel (the costs of which will be at the expense of the inviting party). Each meeting shall be minuted.
- 5.7 In the event that the Funder or the Manager on its behalf disputes all or any part of the Lawyers' invoice, then it will inform the Lawyers of such dispute within thirty (30) days of the receipt of the invoice together with supporting documentation (including Claimant's Certificate) and the Lawyers shall promptly issue a credit note for the disputed amount referencing the original invoice. The Funder will pay the amount not disputed within thirty (30) days of notifying the Lawyers of the dispute. The parties shall co-operate to resolve the dispute to the parties' mutual satisfaction.
- 5.8 In the event that the Funder/the Manager and the Lawyers are unable to settle the dispute in line with clause 5.7 the matter shall be referred to King's Counsel who shall be independent of the parties and shall be selected in consultation between the Lawyers and the Manager and Funder. If the selection of King's Counsel cannot be agreed, then King's Counsel will be appointed by the Chairman of the Bar Council of England and Wales for that purpose.

- 5.9 The determination of King's Counsel shall be final and binding.
- 5.10 The fees of King's Counsel shall be Project Costs; each of the parties shall bear their own costs of the referral (which shall not be funded as Project Costs); and King's Counsel shall be granted the power to determine the apportionment of the parties' costs associated with the referral.

## **6. PRIORITIES, LIEN AND INSURANCE**

- 6.1 The Lawyers agree that they are not entitled to claim a lien in respect of documents in their possession relevant to the Proceedings if there are no fees payable pursuant to clause 5.3.
- 6.2 The Lawyers will maintain professional indemnity insurance in an amount of at least £3 million for the duration of these Standard Lawyers Terms plus three years (or for such higher amount and/or longer duration as may be agreed).
- 6.3 The Lawyers will provide evidence of the insurance to the Manager on the Manager's request from time to time.

## **7. TERMINATION OF APPOINTMENT**

- 7.1 The Lawyers may terminate their appointment by the Claimant on fourteen (14) days' written notice to the Claimant and copied to the Manager, in the following circumstances:
  - 7.1.1 If the Funder fails to pay any fees or disbursements in aggregate at any time in excess of £200,000 in accordance with the terms of the Funding Agreement or these Standard Terms, other than any amount that is the subject of dispute under clause 5.7, after the Funder has been given ninety (90) days' written notice to do so; or
  - 7.1.2 If the Funding Agreement is terminated.
- 7.2 If the Lawyers' appointment is terminated pursuant to either clause 7.1 above or clause 12 of the Funding Agreement, the Lawyers remain liable for their obligations under these Standard Terms accrued to the date of termination of their appointment, but thereafter all obligations and entitlements of the Lawyers cease except:
  - 7.2.1 The obligations placed on them in clause 8 of the Funding Agreement, where the Lawyers are not replaced by other solicitors to provide the services; and
  - 7.2.2 Those entitlements under clause 5 (in respect of services performed up to the date of termination) unless the termination of the Lawyers arises out of professional misconduct or negligence of the Lawyers.

## **8. ADDRESS FOR SERVICE**

- 8.1 The Funder's address for service is as set out in the Funding Agreement.
- 8.2 The Lawyers address for service is the address identified above (in identifying the parties to these Standard Terms) or as otherwise notified to the Manager in writing if that address changes.

## **9. VARIATION**

- 9.1 These Standard Lawyers Terms may only be varied in writing signed by the parties.

## **10. GOVERNING LAW**

- 10.1 These Standard Lawyers Terms are to be construed in accordance with and governed by the laws of England and Wales, including in relation to any non-contractual rights of the Parties.
- 10.2 Any dispute or complaint that the Manager and/or Funder may have with the Lawyers' performance of their obligations under these Standard Lawyers Terms (including, for the avoidance of doubt, matters concerning reporting, provision of information, incurring of costs and invoicing) may be referred to Damien Geradin with whom the Manager will then communicate in relation to the dispute or complaint, and they will seek to resolve the matter.
- 10.3 Unless otherwise stated any dispute, controversy or claim in relation to or arising out of the Standard Lawyers Terms, including any question about its existence, validity, meaning, performance or termination or the rights, duties and liabilities of any party to it shall be referred to and finally resolved by arbitration under the London Court of International Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three. Each party shall nominate one arbitrator and the chairperson shall be nominated by the two party-nominated arbitrators. The seat, or legal place, of arbitration shall be London. The language to be used in the arbitral proceedings shall be English.

## **11. GENERAL PROVISIONS**

- 11.1 If any provision of these Standard Lawyers Terms, or its application to any person or circumstances, is or is held to be invalid, illegal, void or unenforceable, the remaining provisions are not affected, and each remaining provision is valid and enforceable to the full extent permitted by law.
- 11.2 These Standard Lawyers Terms may be executed in any number of counterparts, each of which when executed and delivered to the other party is an original and all of which together shall be deemed to constitute one and the same agreement.
- 11.3 A person who is not a party to these Standard Lawyers Terms shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Standard Lawyers Terms.

### **SIGNED**

By .....

Name:

Title: Partner

Date: 2024

### **SIGNED**

by Innsworth Capital Limited: .....

Name:

Title: Director

Date: 2024

**Annex 1 to Standard Lawyers' Terms  
Lawyers' Conditional Fee Arrangement**

**Annex 2 to Standard Lawyers' Terms  
Counsel's Conditional Fee Arrangement**

## Schedule 1

### Billing Guidelines

1. Unless otherwise agreed in advance in writing by the Funder, the Lawyers will not raise any invoice amounts (and will not permit third party service providers to charge) for the categories of cost below. If any such costs are incurred, these are at the Lawyers risk.
2. Specific costs which are not permitted:
  - 2.1 Administrative costs or work of an administrative nature (whether carried out by a fee-earner or a non-fee earner), including:
    - (a) Arranging meetings or telephone calls
    - (b) Attending to or arranging photocopying, printing, collation of bundles or other documents,
    - (c) Delivering or collecting documents.
    - (d) Any other work of an administrative nature which could be carried out by a non-fee earner.
  - 2.2 Internal reproduction costs.
  - 2.3 External reproduction costs except where bundles are required in order to comply with court directions and there is no in-house capability to produce the bundles required.
  - 2.4 Internal training time, including training on document review or document management platforms or systems (e.g. Relativity, Opus 2).
  - 2.5 Reading in time, familiarisation time, handover activities and time spent reviewing general correspondence and emails on the matter which does not relate to a specific activity conducted by the fee-earner and is part of the general updating in the matter. For example:
    - (a) Fee Earner A reads correspondence on the matter in relation to a workstream to which Fee Earner A is not allocated, and nor does Fee Earner A need to take any action. This time should be recorded to the matter under a non-billable time code.
  - 2.6 Billing including: time entry, preparation of bills, review of internal and external invoices, responding to any queries or challenges in relation to bills and disbursements (whether internal or external).
  - 2.7 Any (i) sustenance, (ii) transport outside working hours and (iii) any other activities which are typically included with the overhead of the Lawyers, counsel or suppliers (as applicable).
  - 2.8 External travel costs unless agreed by the Funder in writing in advance.
3. **Hearing attendance:**
  - 3.1 The Lawyers shall consult with the Managers regarding the proposed attendees at upcoming hearings. The fee earners for whom time may be charged for attendance at hearings will be agreed with the Funder (acting reasonably) in advance.

**4. Time recording requirements:**

4.1 J-codes (a Uniform Task-Based Management System (UTBMS) code set which has been specially adapted for use by litigators in England and Wales) must be used such that each time entry records the task and activity. The J-Codes shall correspond to the different phases of the Approved Budget and this shall be agreed with the Manager before the issuance of any invoice to the Claimant in accordance with Clause 5 of the LFA.

4.2 A separate time entry shall be made for each separate task and activity.

4.3 Time narratives must provide enough detail to permit the reviewer to understand what work was conducted why it was necessary. Time entries which are overly brief and lack sufficient detail will be rejected for payment, for example:

“Attending to [X document]”

“Work on [X] document”.

“Attending [X] meeting”.

“Discussing [X] with [Y] person”.

4.4 In relation to internal discussions and meetings:

- (a) Where multiple fee-earners record different amounts of time for an internal discussion or meeting, the lowest of the entries will be assumed to be the correct entry.
- (b) If multiple workstreams are discussed, then the time-entry should be split according to the task code/activity.

**SCHEDULE 7  
FORM OF GUARANTEE**

**Litigation Funding Agreement Guarantee**

Dated [                      ] 2024

**ELLIOTT ASSOCIATES, L.P.**  
as a Guarantor

-AND-

**ELLIOTT INTERNATIONAL, L.P.**  
as a Guarantor

-AND-

**Professor Andreas Stephan**  
as Beneficiary



## **TABLE OF CONTENTS**

	Page
1. DEFINITIONS AND INTERPRETATION .....	54
2. GUARANTEE AND INDEMNITY OF PRIMARY GUARANTOR.....	55
3. PAYMENTS.....	57
4. CHANGE OF PARTIES .....	57
5. PARTIAL INVALIDITY .....	57
6. AMENDMENTS.....	57
7. COUNTERPARTS.....	57
8. ENTIRE AGREEMENT .....	57
9. NOTICES .....	58
10. GOVERNING LAW AND JURISDICTION.....	58

**THIS GUARANTEE** is dated [        ] 2024

**BETWEEN:**

- (1) **ELLIOTT ASSOCIATES, L.P.**, a limited partnership formed under the laws of the state of Delaware, USA, with registration number 2099701 and whose registered office is at c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, USA (**Elliott Associates**);
- (2) **ELLIOTT INTERNATIONAL, L.P.**, an exempted limited liability partnership registered in the Cayman Islands with registration number CR-10177 and whose registered office is at c/o Maples Corporate Services Limited, P.O. Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands (**Elliott International**);
- (3) Professor Andreas Stephan of [REDACTED] (**Beneficiary**).

**RECITALS**

- (A) By a litigation funding agreement made between the Beneficiary and Innsworth Capital Limited (Innsworth) on or around the date of this agreement (the Litigation Funding Agreement), Innsworth and the Beneficiary have, subject to the terms of the Litigation Funding Agreement, assumed certain obligations to each other.
- (B) In connection with the Litigation Funding Agreement, the Guarantors enter into this agreement (the Agreement).

**THIS DEED WITNESSES**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, the following definitions apply:

**Business Day** means a day other than a Saturday, Sunday, or a public holiday in London, the Cayman Islands and New York;

**Guaranteed Obligations** means, at any time, the obligations of Innsworth to the Beneficiary to pay amounts which are then due and payable under or in connection with the Litigation Funding Agreement, including obligations created under any amendments, supplements or restatements of the Litigation Funding Agreement;

**Guarantors** means Elliott Associates and Elliott International, and “Guarantor” means any one of them;

**Party** means a party to this Agreement;

**1.2 Interpretation**

- (a) Unless a contrary indication appears, any reference in this Agreement to:
  - (i) The “Litigation Funding Agreement” or any other agreement or instrument is a reference to that Litigation Funding Agreement or other agreement or instrument as amended, supplemented, extended or restated; and
  - (ii) A “person” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint

venture, consortium or partnership (whether or not having separate legal personality).

- (b) Clause headings are for ease of reference only.

### **1.3 Third Party Rights**

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

## **2. GUARANTEE AND INDEMNITY OF PRIMARY GUARANTOR**

### **2.1 Guarantee and Indemnity**

The Guarantors irrevocably:

- (a) Guarantee to the Beneficiary punctual performance by Innsworth of the Guaranteed Obligations;
- (b) Undertake with the Beneficiary that whenever Innsworth does not pay any amount of the Guaranteed Obligations within five (5) Business Days of that amount becoming due and payable (subject to any applicable grace periods), the Guarantors shall immediately on demand pay an amount equal to the amount of Guaranteed Obligations which are unpaid by Innsworth as if it was the principal obligor; and
- (c) Agree with the Beneficiary that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligations, indemnify the Beneficiary immediately on demand against any cost, loss or liability it incurs as a result of Innsworth not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under the Litigation Funding Agreement on the date when it would have been due. The aggregate amount payable by the Guarantors under this indemnity will not exceed the amount it would have had to pay under this clause 2 if the amount claimed had been recoverable on the basis of a guarantee.

### **2.2 Continuing Guarantee**

The Guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by Innsworth under the Litigation Funding Agreement, regardless of any intermediate payment or discharge in whole or in part.

### **2.3 Waiver of Defences**

The obligations of the Guarantors under this clause 2 will not be affected by an act, omission, matter or thing which, but for this clause 2, would reduce, release or prejudice any of the Guarantor's obligations under this clause 2 (without limitation and whether or not know to it or the Beneficiary) including:

- (a) Any time, waiver or consent granted to, or composition with, Innsworth;
- (b) The release of Innsworth under the terms of any composition or arrangement with any creditor of Innsworth;
- (c) The taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, Innsworth;

- (d) Any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (e) Any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of Innsworth;
- (f) Any amendment, supplement, extension restatement (however fundamental and whether or not more onerous) or replacement of the Litigation Funding Agreement;
- (g) Any unenforceability, illegality or invalidity of any obligation of any person under the Litigation Funding Agreement; or
- (h) Any insolvency or similar proceedings.

## **2.4 Guarantor Intent**

Without prejudice to the generality of clause 2.3 (*Waiver of Defences*), the Guarantors expressly confirm that they intend that the Guarantee shall extend from time to time to any (however fundamental) version, increase, extension or addition of or to the Litigation Funding Agreement.

## **2.5 Deferral of Primary Guarantor's Rights**

Until the amounts which be or become due and payable by Innsworth under or in connection with then Litigation Funding Agreement have been irrevocably paid in full and unless the Beneficiary otherwise directs, the Guarantors will not exercise any rights which they may have by reason of performance by them of their obligations under the Guarantee or by reason of any amount being payable, or liability arising, under this clause 2:

- (a) To be indemnified by Innsworth;
- (b) To take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Litigation Funding Agreement;
- (c) To bring legal or other proceedings for an order requiring Innsworth to make any payment, or perform any obligation, in respect of which the Guarantors have given a guarantee, undertaking or indemnity under clause 2.1 (*Guarantee and Indemnity of Guarantors*) in favour of the Beneficiary; and/or
- (d) To claim or prove as a creditor of Innsworth in competition with the Beneficiary in respect of the payment of the Guaranteed Obligations owed to the Beneficiary.

If the Guarantors receive any benefit, payment or distribution in relation to such rights they shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Beneficiary by Innsworth under or in connection with the Litigation Funding Agreement to be repaid in full on trust for the Beneficiary and shall promptly pay or transfer the same to the Beneficiary or as the Beneficiary may direct for application in accordance with the terms of this Agreement.

## **2.6 Limitation of the Guarantors' Obligations**

- (a) The Guarantors do not have any further obligations or liabilities in respect of the Guaranteed Obligations other than as set out in this Agreement, and the

Guarantors shall not have any liability for the obligations owed by any other person to the Beneficiary in respect of the Litigation Funding Agreement.

- (b) After the date of this Agreement, the Guarantors shall not have any obligation to provide any additional or updated information, representations, warranties or agreements, or to notify the Beneficiary of any updated information, unless required to do so either by applicable law, by applicable regulation, or by any court order. In each such case, the Beneficiary will provide notice to the Guarantors, and assuming it is so required, the Guarantors may, in its discretion, provide any such additional or updated information directly to the relevant legal or regulatory authority.

## **2.7 Discharge of the corresponding Guaranteed Obligations**

Immediately upon the Guarantors paying an amount to the Beneficiary pursuant to clause 2.1 (*Guarantee and Indemnity*) (a Paid Amount), the corresponding Guaranteed Obligations whose non-payment by Innsworth triggered the payment of the Paid Amount by the Guarantor will be deemed to have been immediately and irrevocably performed and satisfied in full by Innsworth.

## **3. PAYMENTS**

All payments under or pursuant to this Agreement (including damages in respect of breaches hereof) shall be made in the same manner and currency as the underlying manner and currency of the applicable Guaranteed Obligations.

## **4. CHANGE OF PARTIES**

No Party may assign any of its rights or transfer any of its rights or obligations under this Agreement without the prior written consent of all the Parties to this Agreement.

## **5. PARTIAL INVALIDITY**

If, at any time, any provision of this Agreement becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## **6. AMENDMENTS**

No amendments or waiver of any provision of this Agreement and no consent to any departure by a Guarantor therefrom shall in any event be effective unless the same shall be in writing and signed or approved in writing by all the Parties to this agreement, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

## **7. COUNTERPARTS**

This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

## **8. ENTIRE AGREEMENT**

- 8.1 This Agreement, together with the documents referred to in it, constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and supersedes any prior drafts, agreements, undertakings, representations, warranties

and arrangements of any nature, whether in writing or oral, relating to such subject matter.

- 8.2 Each Party acknowledges and represents that it has not relied on or been induced to enter into this Agreement by any representation, warranty or undertaking other than those expressly set out in this Agreement.

## **9. NOTICES**

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax, letter or electronic communication to the relevant Party's address set out at the beginning of this Agreement.

## **10. GOVERNING LAW AND JURISDICTION**

### **10.1 Governing Law**

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

### **10.2 Disputes**

Any dispute, controversy or claim in relation to or arising out of this Agreement, including any question about its existence, validity, meaning, performance or termination or the rights, duties and liabilities of any party to it shall be referred to and finally resolved by arbitration under the London Court of International Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three. The seat, or legal place, of arbitration shall be London. The language to be used in the arbitral proceedings shall be English.

IN WITNESS WHEREOF the Guarantors have executed this Agreement and the Beneficiary has executed this Agreement with the intention that it be delivered the day and year first before written.

**EXECUTION PAGE**

**ELLIOTT ASSOCIATES, L.P.**

By: Elliott Investment Management L.P., as attorney in fact

By: \_\_\_\_\_  
Name: Elliot Greenberg  
Title Vice President

**ELLIOTT INTERNATIONAL, L.P.**

By: Hambledon, Inc., its General Partner

By: Elliott Investment Management L.P., as attorney in fact

By: \_\_\_\_\_  
Name: Elliot Greenberg  
Title: Vice President

**The Beneficiary**

**SIGNED and DELIVERED**

by Professor Andreas Stephan

..... Signature

in the presence of

..... Signature of witness

..... Print name of witness

..... Address of witness

**SCHEDULE 8  
FORM OF INSTRUCTION BY CLAIMANT**

To: Geradin Partners Limited

Date: 7 June 2024

Dear Sirs

**Antitrust action against Amazon on behalf of third party sellers**

**Litigation Funding Agreement dated 7 June 2024 ("Funding Agreement")**

Terms used in this letter shall bear the same meaning ascribed to them in the Funding Agreement.

I, Professor Andreas Stephan, the Claimant in the above matter, hereby irrevocably instruct your firm and direct that, subject to any direction or approval given by the Competition Appeal Tribunal, any and all Resolution Sums in connection with the Claims and/or Proceedings shall be applied in accordance with the provisions of clause 8 of the Funding Agreement.

Yours faithfully,



Professor Andreas Stephan



Innsworth Capital Limited  
44 Esplanade  
St Helier  
Jersey  
JE4 9WG

By email to: [REDACTED]

Professor Andreas Stephan  
[REDACTED]

12 June 2024

Dear Professor Stephan,

**Stephan v Amazon.Com, Inc. and others ("Proceedings")**

We refer to the litigation funding agreement in respect of the Proceedings between you and Innsworth Capital Limited ("**ICL**") dated 7 June 2024 (the "**LFA**").

This letter records our agreement that the amendment to the LFA attached to this letter, as Exhibit "A" (which has been agreed and executed between us), is conditional upon and will only come into effect upon written notice to you by ICL in the form set out in Exhibit "B" attached to this letter at any time, following legislation coming into force which has the effect of reversing the PACCAR judgment or as otherwise may be agreed in writing between you and ICL.

Please confirm that you agree to the terms above by countersigning this letter and returning a copy to ICL by email to [REDACTED]

Yours faithfully

[REDACTED]  
**Innsworth Capital Limited**

**By:** Michaela Harrison-Gray

**Title:** Director

**Email:** [REDACTED]

**Encs.:** Amendment to LFA (A); Form of Notice (B)

**Agreed by:**

**Signed:** ..... [REDACTED] ..

**Date:** .....12 June 2024.....

**EXHIBIT A**

## AMENDMENT AGREEMENT

This agreement ("**Agreement**") is made this       day of [] between:

(i) **PROFESSOR ANDREAS STEPHAN** of [REDACTED] (the "**Claimant**");

and

(ii) **INNSWORTH CAPITAL LIMITED** of 44 Esplanade, St Helier, Jersey, JE4 9WG (with company number 125002) (the "**Funder**"),

together the "**Parties**" and each one a "**Party**".

### WHEREAS:

- (A) The Parties entered into a litigation funding agreement dated [] in relation to the proposed collective proceedings by the Claimant against Amazon.Com, Inc. and other related entities before the Competition Appeal Tribunal in London, England (the "**LFA**");
- (B) The Parties wish to amend the LFA as set out in this Agreement.

### AMENDMENT

1. In accordance with clause 23.1 of the LFA, the Parties agree that the LFA be amended with effect from the Commencement Date (as defined in the LFA) as follows:-

#### Schedule 3 to the LFA

Replace the current text with the following:

"Schedule 3"

"The Commission shall be calculated as follows:

The higher of (a) a sum equal to a multiple of x4 applied to the Project Costs funded by the Funder (inclusive of any modification or increase to the Approved Budget in accordance with the terms of this Agreement) and (b) a sum equal to 35% of the Damages.

In the event that the Approved Budget is increased in accordance with this Agreement, the rate of Commission above shall be increased by the application of the stated percentage below:

Increase to the Approved Budget as a % of the original Approved Budget as at the Commencement Date	Addition to the % rate of Commission
0.01-5%	1%
>5%-10%	2.5%
>10%	5%

In the event of an appeal, Commission shall be increased by 5%."

**Miscellaneous**

2. Clause 11 (Duration of Agreement), clause 12 (Termination), clause 13 (Further Assurances), clause 14 (Assignment), clause 18 (Governing Law and Disputes), clause 20 (Acknowledgement and Exclusion of Liability), clause 21 (Entire Agreement), clause 24 (Severance), clause 26 (Third Party Rights), clause 27 (Counterparts) and clause 28 (Language) of the LFA shall apply to this Agreement *mutatis mutandis* as if set out in full and so that references in those provisions to "this Agreement" shall be construed as references to this Agreement.

**The Claimant**

SIGNED by

**PROFESSOR ANDREAS STEPHAN**

---

**The Funder**

EXECUTED by

**INNSWORTH CAPITAL LIMITED**

---

**Name:**

**Title: Director**

**EXHIBIT B**  
**FORM OF NOTICE**

Innsworth Capital Limited  
44 Esplanade  
St Helier  
Jersey  
JE4 9WG

By email to: [REDACTED]



[ ] 202[ ]

Dear Professor Stephan,

**Stephan v Amazon.Com, Inc. and others ("Proceedings")**

Notice of effectiveness of Amendment (attached hereto)

We refer to the litigation funding agreement in respect of the Proceedings between you and Innsworth Capital Limited ("**ICL**") dated 7 June 2024 (the "**LFA**"), and to the Amendment thereto, a copy of which is attached to this notice ("**Amendment**").

By and upon the date of this notice, the Amendment comes into full force and effect.

Yours faithfully

**Innsworth Capital Limited**

**By:**

**Title: Director**

## AMENDMENT AGREEMENT

This agreement ("**Agreement**") is made this 12th day of June 2024 between:

(i) **PROFESSOR ANDREAS STEPHAN** of [REDACTED] (the "**Claimant**");

and

(ii) **INNSWORTH CAPITAL LIMITED** of 44 Esplanade, St Helier, Jersey, JE4 9WG (with company number 125002) (the "**Funder**"),

together the "**Parties**" and each one a "**Party**".

### WHEREAS:

(A) The Parties entered into a litigation funding agreement dated [] in relation to the proposed collective proceedings by the Claimant against Amazon.Com, Inc. and other related entities before the Competition Appeal Tribunal in London, England (the "**LFA**");

(B) The Parties wish to amend the LFA as set out in this Agreement.

### AMENDMENT

1. In accordance with clause 23.1 of the LFA, the Parties agree that the LFA be amended with effect from the Commencement Date (as defined in the LFA) as follows:-

#### Schedule 3 to the LFA

Replace the current text with the following:

"Schedule 3"

"The Commission shall be calculated as follows:

The higher of (a) a sum equal to a multiple of x4 applied to the Project Costs funded by the Funder (inclusive of any modification or increase to the Approved Budget in accordance with the terms of this Agreement) and (b) a sum equal to 35% of the Damages.

In the event that the Approved Budget is increased in accordance with this Agreement, the rate of Commission above shall be increased by the application of the stated percentage below:

Increase to the Approved Budget as a % of the original Approved Budget as at the Commencement Date	Addition to the % rate of Commission
0.01-5%	1%
>5%-10%	2.5%
>10%	5%

In the event of an appeal, Commission shall be increased by 5%."

**Miscellaneous**

2. Clause 11 (Duration of Agreement), clause 12 (Termination), clause 13 (Further Assurances), clause 14 (Assignment), clause 18 (Governing Law and Disputes), clause 20 (Acknowledgement and Exclusion of Liability), clause 21 (Entire Agreement), clause 24 (Severance), clause 26 (Third Party Rights), clause 27 (Counterparts) and clause 28 (Language) of the LFA shall apply to this Agreement *mutatis mutandis* as if set out in full and so that references in those provisions to "this Agreement" shall be construed as references to this Agreement.

**The Claimant**

SIGNED by

**PROFESSOR ANDREAS STEPHAN**



**The Funder**

EXECUTED by

**INNSWORTH CAPITAL LIMITED**



**Name:** Michaela Harrison-Gray

**Title:** Director

## AMENDMENT AGREEMENT

This agreement ("**Agreement**") is made this 14 day of November 2024 between:

(i) **PROFESSOR ANDREAS STEPHAN** of [REDACTED] (the "**Claimant**");

and

(ii) **INNSWORTH CAPITAL LIMITED** of 44 Esplanade, St Helier, Jersey, JE4 9WG (with company number 125002) (the "**Funder**"),

together the "**Parties**" and each one a "**Party**".

### WHEREAS:

- (A) The Parties entered into a litigation funding agreement dated 7 June 2024 in relation to the proposed collective proceedings by the Claimant against Amazon.Com, Inc. and other related entities before the Competition Appeal Tribunal in London, England (the "**LFA**");
- (B) The Parties wish to amend the LFA as set out in this Agreement.

### AMENDMENTS

- 1. In accordance with clause 23.1 of the LFA, the Parties agree that the LFA be amended with effect from the Commencement Date (as defined in the LFA) as follows:-

- 1.1 Schedule 3 to the LFA

Replace the current text with the following:

"Schedule 3

#### COMMISSION

The Commission shall be an amount equal to the sum of:

- i. Project Costs funded by the Funder to the relevant date of Settlement or Judgment, less any costs recovered by the Claimant and paid to the Funder pursuant to Clauses 8.1 and 8.2;  
and
- ii. an amount equal to the Project Costs multiplied by the applicable factor below:
  - x3 where the date of Judgment or Settlement is on or after the Commencement Date
  - x3.5, where the date of Judgment or Settlement occurs at any time from the issuance of the CPO
  - x4, where the date of Judgment or Settlement is on or after the provision of the first tranche of substantive disclosure by the Defendants
  - x5, where the date of Judgment or Settlement is on or after Judgment or Settlement is on or after the filing by the Defendants of witness evidence on substantive trial issues



x6, where the date of Judgment or Settlement is on or after the filing by the Defendants of expert evidence on substantive trial issues

x9, where the date of Judgment or Settlement follows the commencement of substantive trial

For the above purposes, the term "Judgment" means a final judgment by which Damages are awarded in resolution of the Proceedings."

1.2 Clause 8.6 of the LFA

The following text shall be added:

"Any entitlement under this Clause 8 to Project Costs, Commission, Deferred Base Fees and Success Fees and ATE deferred premium will be payable out of undistributed damages, unless otherwise agreed at the relevant time as a term of a Settlement agreed between all parties (to the extent permissible at law) and approved by the CAT.

The sums provided for in respect of the Funder's Commission are subject to such approvals and orders as may be made by the CAT."

1.3 Clause 12.1 of the LFA shall be substituted by the following:

"12.1 The Funder is entitled to terminate its funding obligations under clause 3.1 and/or this Agreement (in whole or in part) with respect to all of or some of the Claims:

(a) upon giving not less than twenty-one (21) days' written notice to the Claimant if the Funder reasonably ceases to be satisfied about the merits of the Claims (or the relevant part of the Claims) and/or the Proceedings, such a view to be reached based on independent legal and expert advice that has been provided to the Funder; or

(b) upon giving not less than twenty-one (21) days' written notice to the Claimant if the Funder reasonably believes that the Claims (or relevant part of the Claims) and/or the Proceedings are no longer commercially viable for the Funder to fund because the Funder is unlikely to obtain at least a sum equivalent to the anticipated Project Costs for the Proceedings (as set out in the Approved Budget), multiplied by 3 as a return on its funding of the Proceedings, such a view to be reached based on independent legal and expert advice that has been provided to the Funder; or

(c) forthwith upon written notice to the Claimant, if the Claimant commits a material breach of this Agreement and does not remedy the breach within thirty (30) days after receiving written notice from the Funder requiring it to do so;

and in the event of any dispute between the Claimant and the Funder in respect of termination pursuant to the foregoing, the matter shall be determined in accordance with Clause 18.4, and pending any referral and determination under Clause 18.4, the effectiveness of the notice given pursuant to any of the foregoing will be suspended."

## **Miscellaneous**

2. Clause 11 (Duration of Agreement), clause 12 (Termination), clause 13 (Further Assurances), clause 14 (Assignment), clause 18 (Governing Law and Disputes), clause 20 (Acknowledgement and Exclusion of Liability), clause 21 (Entire Agreement), clause 24 (Severance), clause 26 (Third Party Rights), clause 27 (Counterparts) and clause 28 (Language) of the LFA shall apply to this Agreement *mutatis mutandis* as if set out in full and so that references in those provisions to "this Agreement" shall be construed as references to this Agreement.

**The Claimant**

SIGNED by

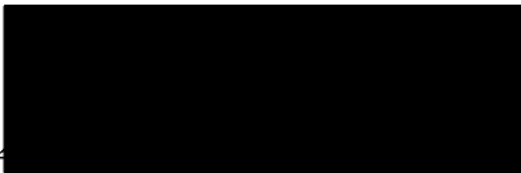
**PROFESSOR ANDREAS STEPHAN**



**The Funder**

EXECUTED by

**INNSWORTH CAPITAL LIMITED**



Name: *JAMES DEVINE*

Title: Director