

CASL MANAGEMENT PTY LIMITED

LPF LITIGATION FUNDING No.33 LIMITED

**EACH PLAINTIFF WHO HAS DELIVERED
A COMPLETED PARTICIPATION NOTICE AGREEMENT
TO LPF LITIGATION FUNDING No.33 LIMITED**

REPRESENTATIVE PLAINTIFF

**DEED FOR PROVISION OF SERVICES IN
RESPECT OF LITIGATION
(ASB LITIGATION)**

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DEED dated

2021

PARTIES

CASL MANAGEMENT PTY LIMITED (ACN 645 229 116) ("**CASL**") of Level 13, 115 Pitt Street, Sydney, NSW, Australia 2000

LPF LITIGATION FUNDING No.33 LIMITED (NZCN 8191864) ("**LPF**") having its registered office at Ecovis KGA Limited, Level 2, 5-7 Kingdon Street, Newmarket, Auckland, 1023, New Zealand

EACH PLAINTIFF WHO HAS DELIVERED A COMPLETED PARTICIPATION NOTICE AGREEMENT TO LPF (together, "**Plaintiffs**") and as between themselves individually

THE REPRESENTATIVE PLAINTIFF in their capacity as representative plaintiff

INTRODUCTION

- A. The Plaintiffs wish to pursue the Claims against ASB Bank Limited (**ASB**) in connection with losses incurred by the Plaintiffs arising from breaches by ASB of the Credit Contracts and Consumer Finance Act 2003 by its failure to make required disclosures under that Act.
- B. The Plaintiffs are unable to pursue the Claims without assistance. They have requested LPF's assistance, with the support of CASL, to fund the Plaintiffs' legal and expert team and with strategic advice to enable them to pursue and efficiently manage the Claim and to maximise their prospects of success.
- C. The Services Fee payable by the Plaintiffs to LPF in accordance with this Deed represents a commercial rate of return to LPF based on a number of factors, including the assessment on the quantum of the Claims, the expected resolution timeframes, the uncertainties and the risks involved in achieving success (or otherwise) in respect of the Claims, as well as consideration for the Project Investigation and other obligations of LPF under this agreement.
- D. LPF has agreed, on the terms and conditions set out in this Deed, to assist the Plaintiffs by providing certain services in relation to the Project as set out in this Deed, including:
 - (a) management and other expertise that will assist the Plaintiffs in managing and running the Proceedings and other aspects of the Claims; and
 - (b) funding the Project Costs, with the support of CASL.
- E. The Plaintiffs intend to be, and will be, the plaintiffs in the Proceedings. The Plaintiffs will not act individually, but will in all respects act through the Representative, who is appointed by this Deed to act on their behalf.
- F. It is also acknowledged that an application for an opt out order and common fund order will be made, with the intention that the Project Costs and Service Fee will be effectively shared by all plaintiffs to the Proceedings.
- G. It is anticipated that the Proceeding will be advanced together with a similar representative action against ANZ Bank Limited (**ANZ**) in connection with losses incurred by the plaintiffs in that action arising from breaches by ANZ of the Credit Contracts and Consumer Finance Act 2003 by its failure to make required disclosures under that Act, also funded

by LPF with assistance from CASL, with a similar deed to this Deed being entered into (**ANZ Deed**).

- H. It is acknowledged that advancing the Proceedings together with the ANZ Proceeding will result in substantial efficiencies and reduced Project Costs in relation to each proceeding.

AGREEMENT

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Deed:

“Adverse Costs Order” means any costs order made against the Plaintiffs or any of them in the Proceedings in favour of any of the Defendants and, as may be appropriate, in favour of any third party, except where and to the extent that liability for such costs arises out of the negligent acts or omission, misfeasance or acts in breach of this Deed by the Plaintiffs or any of the Lawyers.

“ASB” has the meaning given to that term in paragraph A of the introduction to this Deed.

“Appeal” means any appeal or appeals from a judgment or order in the Proceedings, or any appeal on a substantial interlocutory matter (i.e. one which is not purely procedural).

“ANZ Proceedings” means the ANZ proceedings referred to in paragraph G of the introduction and includes any application to a court for an order (including any opt out order and any order establishing the class for the claims against ANZ which are similar to the Claims against the Defendant, and any legal or dispute resolution proceeding or claim, approved by LPF in respect of the claims against, or dispute with defendants connected with the ANZ. The ANZ Proceedings include any Appeal for which funding is provided by LPF on terms substantially similar to the terms of this Deed.

“ATE Insurance” means After the Event Insurance against the risk of an adverse costs order.

“Bill Rate” means the average rate per annum (expressed as a percentage) as quoted on Reuters page BKBM (or any successor page displaying substantially the same information) under the heading FRA for bank accepted bills having a term of three months as fixed at 10.45 am on the first Working Day following the relevant due date (and on the first Working Day following the end of each succeeding one-month period after the due date thereafter).

“Budget” means the budget/estimate agreed between the Representative (on behalf of the Plaintiffs) and LPF from time to time.

“Claims” means the claim or claims the Plaintiffs have or may have against any of the Defendants or any other person, including the claims that are the subject of the Proceedings and any other claims which are related to or connected with such Proceedings.

“Collateral” has the meaning set out in Schedule 2.

“Combined Project Costs” has the meaning in clause 3.3(a).

“Condition” means the condition in clause 4.1.

“Costs Order” means any costs order made by a Court in favour of the Plaintiffs in the Proceedings.

“Deed” means this deed for the provision of services in respect of litigation and includes the schedules.

“Defendant” means ASB and/or any other defendants identified in the Proceedings from time to time.

“Expert” means:

- (a) in respect of clause 14 (General Disputes), the person or persons named in Schedule One or as otherwise appointed in accordance with clause 14.1(g) of this Deed;
- (b) in respect of clause 15 (Settlement), the person or persons named in Schedule One or as otherwise appointed in accordance with clause 15.7 of this Deed; and
- (c) in the case of a legal expert, a person who has not been at any time a Lawyer under this Agreement.

“Funding” means the Project Costs payments to be made under clause 3.2.

“General Dispute” means a dispute which arises out of or relates to this Deed or any Relevant Document but does not include a dispute in relation to clauses 3.5(a) (except for disputes arising in relation to clauses 3.5(a)(iii)), 12.1, 14.1(h) and 15.

“GST” means goods and service tax chargeable, or to which a person may be liable, under the GST Act, and any penalties, additional tax or interest payable in respect thereof.

“GST Act” means the Goods and Services Tax Act 1985.

“Lawyers” means any firm of solicitors or any barrister(s) appointed in accordance with clause 3.5 of this Deed to conduct the Proceedings on behalf of (or in connection with) the Plaintiffs.

“Participation Notice Agreement” means a “Participation Notice Agreement regarding Litigation Funding Arrangements” in the form approved by LPF for the purposes of the Proceedings.

“PC Sum” means the amount referred to in clause 5.1(a)(i)

“Proceedings” means any application to a court for an order (including any opt out order and any order establishing the class for the Claims) and any legal or dispute resolution proceeding or claim, approved by LPF in respect of the Plaintiffs’ claims against, or dispute with any of the Defendants. The Proceedings include any Appeal for which funding is provided in accordance with this Deed.

“Project” means providing the Services to assist the Plaintiffs to pursue the Claims and to where necessary file, and otherwise to manage and pursue the Proceedings to achieve resolution of the Claims in accordance with all applicable law, to meet the Plaintiffs’ aim of maximising settlement, judgment or other proceeds (net of costs) in an appropriately

expeditious manner (having due regard to all risks, potential outcomes and all other relevant matters).

“Project Costs” means all costs, disbursements and liabilities of any nature that are incurred or assumed (whether absolutely or contingently), or deemed in accordance with clause 3.3(a)(i) to be incurred or assumed, by the Plaintiffs, the Representative and/or LPF in relation to or in connection with this Deed, any Relevant Document, the Proceedings, the Claims or any Appeal, or any related or connected matter, from the date of this Deed, and that are approved by LPF in accordance with this Deed or any Relevant Document, as adjusted following any redistribution of Combined Project Costs in accordance with clause 3.3(a), including without limitation:

- (a) Court costs;
- (b) Lawyers’ fees and disbursements;
- (c) expert (whether expert witness or otherwise) and private investigator fees;
- (d) fees, costs and disbursements incurred by the Representative including for advisers, claims administrator, consultants or other persons engaged by the Representative in connection with the Proceedings;
- (e) costs associated with obtaining and maintaining ATE Insurance in connection with the Proceedings;
- (f) the provision of Security for Costs in any form acceptable to a Court (such amount being, for the avoidance of doubt, the higher of the applicable gross cash amount or the face value of such Security for Costs);
- (g) any monies payable for Adverse Costs Orders arising in the Proceedings or any Appeal, to the extent that these costs are not paid for under the ATE Insurance;
- (h) any enforcement costs payable to recover any amounts due to the Plaintiffs from any of the Defendants in connection with the Proceedings;
- (i) all of LPF’s out of pocket costs under or in connection with this Deed or any Relevant Document, including any enforcement of this Deed, and
- (j) any costs specified in Schedule One to this Deed,

but excluding (other than where actually paid by LPF) costs or expenses which result from any negligent act, or omission misfeasance by any of the Plaintiffs or the Lawyers, or any breach by the Plaintiffs, of this Deed or Relevant Document.

“Project Investigation” means the investigation described in clause 3.1 of this Deed.

“Relevant Documents” means this Deed, and each Security granted or given at any time by any person under or that relates to this Deed or its subject matter, and any consent, agreement, deed or document given in connection with this Deed, any such Security, or any such document or their subject matter.

“Representative” means the person or persons named as a party to this Deed in their capacity as the representative plaintiff, or such other Plaintiff nominated by LPF, in substitution for that person or persons who shall act as the representative plaintiff in connection with the Proceedings.

“Resolution” means when all or any part of the Resolution Sum is received and, where the Resolution Sum is received in parts, a “Resolution” occurs each time a part is received.

“Resolution Date” means the later of:

- (a) the date of receipt of the Resolution Sum by the Plaintiffs or the Lawyers, if any;
- (b) the date of receipt of any sum by the Plaintiffs or the Lawyers arising from finalisation of Proceedings, whether by way of ex gratia payment, settlement, judgment or otherwise; and
- (c) the expiration of the time for filing an Appeal, if no Appeal has been filed.

“Resolution Sum” means the aggregate gross amount of money, or the value of goods services or benefits, received by (or contributed to) the Plaintiffs (or any of them or any of their related persons) or the Lawyers or any other person on behalf of the Plaintiffs, in respect of or in connection with any of the Claims and/or Proceedings and/or other claims and/or proceedings related to substantially the same matters as the Claims and/or Proceedings (**“Other Claims”**), whether by way of ex-gratia payment, settlement, judgment, award, purchase of property, repair of property, payment or reimbursement of any costs, reinstatement of property, insurance or indemnity proceeds, credit to any account, reduction in loan balances, loan or interest payment holiday, forgiveness of loan or interest, improvement to credit terms or otherwise in respect of the Claims and/or the Proceedings and/or the Other Claims, including (without limitation) any interest, any other costs recovered pursuant to a Costs Order, any recovery of Security for Costs provided by LPF, any GST refund, whether received or accrued in one lump sum or in any series of payments, any refund of costs, and any amount paid or payable to the Plaintiff or Plaintiffs that is to be received or has been received wholly or in part as a result of the Claims or in connection with the Claims and/or Proceedings and/or Other Claims (or which in some way represents a financial benefit arising to them as a result of, or in connection with, such involvement).

“Security for Costs” means the higher of any gross cash amount or the face value of any security approved or accepted by a Court in the Proceedings or agreed by LPF as security for the Defendants’ costs and, as may be appropriate, for any third party, that arises on or after the date of this Deed.

“Securities” means the securities referred to in clause 7, and any other securities entered into under or in relation to this Deed.

“Services” means the Project Investigation and provision of the Funding.

“Services Fee” means the fee calculated as specified in Schedule One of this Deed and payable in accordance with the terms of this Deed.

“Trust Account” means the trust account of the applicable lawyers referred to in clause 5.4(b) or in clause 3.6.

“Working Day” means a day on which registered banks are open for business in Auckland, New Zealand.

1.2 **Definitions and interpretation:** In this Deed, unless the context otherwise requires:

- (a) headings are to be ignored;
- (b) “including” and similar words do not imply any limitation;

- (c) references to any form of law are references to New Zealand law, including as amended or re-enacted at any time or from time to time;
- (d) references to a party or a person includes any form of entity and their respective successors, assigns and representatives;
- (e) singular includes plural and vice versa and references to a gender covers all the genders;
- (f) monetary amounts are in NZ dollars;
- (g) New Zealand time and dates apply, and any reference to “month” or “monthly” means, respectively, calendar month or calendar monthly;
- (h) any word or expression cognate with a definition in this Deed has a meaning corresponding to the definition;
- (i) references to sections, clauses, schedules or other identifiers are to those in this Deed;
- (j) references to a document or agreement includes it as varied, novated or replaced;
- (k) each schedule and any other attachment is part of this Deed;
- (l) “written” and “in writing” include any means of reproducing words, figures or symbols in a tangible and visible form;
- (m) LPF shall not be taken to or deemed to have agreed to anything unless it has done so in writing;
- (n) the obligations of each Plaintiff are several and not joint; and
- (o) subject to clause 1.2(n) above, an obligation on more than one party binds those parties severally.

2. PLAINTIFFS’ PARTICIPATION AND THE REPRESENTATIVE

2.1 **Becoming a Plaintiff:** A person shall become a Plaintiff under this Deed, and thereby obtain rights under and assume obligations under this Deed, by delivering to LPF a Participation Notice Agreement completed and signed by that Plaintiff. A person shall not be a Plaintiff until this has been completed to the satisfaction of LPF (acting reasonably). Without limiting the Plaintiffs’ rights under clause 12.3, each Plaintiff shall use its commercially reasonable endeavours to maintain its interest in the Proceedings.

2.2 **Representative Plaintiff:** Each Plaintiff acknowledges that the Representative has the full, exclusive and irrevocable authority to represent the Plaintiffs in all matters relating to:

- (a) the conduct and settlement of the Claims and any and all other claims that the Plaintiffs have or may in the future have against any persons in relation to the matters at issue in the Claims, whether or not a party to the Claims and the related proceedings and whether or not any such claim is known as at the date of this Deed; and
- (b) this Deed,

including (without limitation) the full, exclusive and irrevocable authority to:

- (c) negotiate and effect a settlement of the Claims on such terms as the Representative in its sole discretion decides;
- (d) bind all of the Plaintiffs and each of them to the terms of any settlement of the Claims;
- (e) enter into arrangements with LPF in accordance with or pursuant to this Deed, and exercise all rights and powers of the Plaintiffs under any such arrangements or under any other arrangement entered into between the Plaintiffs (or any of them) and LPF; and
- (f) in the event of termination of the funding arrangements referred to in this Deed for any reason, enter into arrangements with any funder other than LPF for the purpose of funding the Claims and exercise all rights and powers of the Plaintiffs under any such arrangements.

For the avoidance of doubt:

- (g) where a matter is to be “agreed” or done by the Plaintiffs under this Deed or any ancillary document, it shall be (and shall be deemed to be) agreed or done on their behalf solely by the Representative; and
- (h) any notice or advice to the Representative constitutes a notice or advice to each of the Plaintiffs.

3. **SERVICES: PROJECT INVESTIGATION AND FUNDING**

3.1 **Project Investigation:**

- (a) LPF agrees to provide to the Plaintiffs such investigative, management and other expertise in respect of the Claims and the Proceedings as LPF and the Plaintiffs (acting through the Representative) may agree from time to time to assist the Plaintiffs in pursuing the Claims to resolution, on the terms and conditions set out in this Deed, and which in any event (and without limitation) shall include:
 - (i) advice on strategy;
 - (ii) assistance in quantifying the losses suffered by the Plaintiffs;
 - (iii) assistance in bringing the Claims to final judgment in a speedy and rational manner;
 - (iv) selection and retention of service providers relevant to the Proceedings, for example Lawyers, accountants and expert witnesses;
 - (v) assistance in considering the advice of the Lawyers; and
 - (vi) facilitating non-litigious means of resolving the Claims,

and the Plaintiffs (acting through the Representative) will consult fully with LPF on all such matters.
- (b) In addition to the matters under clause 3.1(a), the Plaintiffs acknowledge that LPF has an interest in the outcome of the Proceedings, and if LPF so elects in order to protect its investment in the outcome, the Plaintiffs consent to LPF:
 - (i) investigating the evidentiary basis for the Claims (documentary and oral);

- (ii) collating material documents and obtaining copies of statements;
- (iii) investigating the capacity of the Defendants and/or any relevant third party (including the directors of any Defendants) to meet any award or order made against them relating to the Claims;
- (iv) investigating the interest of the Defendants and/or any relevant third party to resolve the Claims by non-litigious means;
- (v) investigating any other matter that LPF reasonably determines is relevant to the Claims or the Proceedings; and
- (vi) designing and assisting in implementation of any process for the resolution of the Claims, other than through legal proceedings,

provided that LPF must provide to the Plaintiffs (acting through the Representative) a copy of all documents and any information obtained pursuant to this clause, or a summary of such matters.

- (c) The Plaintiffs will provide to LPF and the Representative, or will procure the provision to LPF and the Representative of:
 - (i) all legal and other advice that they receive or arrange in respect of and/or relating to the Claims, the Proceedings, this Deed or any Relevant Document;
 - (ii) evidence of the losses suffered by the Plaintiffs in connection with the breach by ASB of the Credit Contracts and Consumer Finance Act 2003 by failure to make required disclosures and their financial records and other records relevant to such losses; and
 - (iii) such information and documentation and further assistance as LPF or the Representative may reasonably request in order to conduct the Project Investigation.

Any such information and documentation so provided remains the exclusive property of the Plaintiffs and will not be used by LPF or the Representative for any purpose other than for the performance of their obligations under or in connection with this Deed or any Relevant Document (and including for enforcement purposes).

- (d) The Plaintiffs and the Representative hereby authorise LPF to seek and obtain any information and documentation which LPF reasonably believes may be relevant to the Claims from the Lawyers and from any person or entity, in furtherance of LPF assisting the Plaintiffs under or in connection with this Deed. LPF must provide the Representative (on behalf of the Plaintiffs) with a copy of all documents and any information obtained pursuant to this clause 3.1(d). The Plaintiffs and the Representative consent to LPF providing a copy of this Deed to third parties who request evidence of the authority granted to LPF pursuant to this sub-clause or elsewhere in this Deed, or alternatively the Representative (on behalf of the Plaintiffs) will, at the request of LPF, provide a letter of due authority.
- (e) Without derogating from anything else in this clause 3.1, LPF may use the information derived in undertaking the Project Investigation:
 - (i) to assist the Plaintiffs and the plaintiffs to the ANZ Proceedings with the preparation or prosecution of any proceedings to which this Deed or the ANZ Deed applies;

- (ii) to monitor its actual and potential obligations under this Deed and the ANZ Deed;
- (iii) to review whether it provides or continues to provide funding in respect of the Claims or funds any Appeal;
- (iv) to review whether it provides or continues to provide funding in connection with the ANZ Proceedings, in respect of which the Project Costs are shared in accordance with clause 3.3;
- (v) to enter into funding arrangements with CASL or any other person for the co-funding of the Project Costs;
- (vi) to obtain legal or financial advice, or financial services, in connection with or in support of its performance of this Deed;
- (vii) to obtain and maintain ATE Insurance in connection with the Proceedings; and
- (viii) in any alternative resolution implemented under clause 3.1(b)(vi).

3.2 Funding: Payment of Project Costs

- (a) In consideration of the Plaintiffs and the Representative entering into this Deed and agreeing to pay the Services Fee to LPF on the terms set out in this Deed, LPF hereby agrees to pay such Project Costs as are agreed by it from time to time, in advance, in writing, provided that no further agreement of LPF shall be necessary in relation to any Adverse Costs Order (which shall be included in the Project Costs and be LPF's sole responsibility).
- (b) Each payment of Project Costs that has been approved under sub-clause (a) shall be made to the Lawyers or to the Representative or to the Plaintiffs, within 20 Working Days of receipt of written notification requesting payment, and the recipient shall disburse (and may only disburse) the same in accordance with the written directions of LPF accompanying the payment, provided that (unless otherwise agreed in writing by LPF, such amounts may only be used to pay the particular invoice or invoices approved by LPF and in respect of which LPF is making payment to the recipient). A notification requiring payment shall in each case be supported with copies of substantiating invoices and details of:
 - (i) the dates on which the relevant work was carried out; and
 - (ii) the hours worked, and the rates per hour for each relevant individual,
 together with such other documentation and information as requested by LPF.
- (c) The Representative shall obtain estimates in respect of Project Costs in advance of the relevant Project Costs being incurred in a form and with such detail as may be requested by LPF from time to time.
- (d) If there is a dispute in connection with a request under sub-clause (b), the relevant parties must meet within a period of 5 Working Days of receipt of that request and endeavour to resolve the dispute. If after 5 Working Days after that meeting the relevant parties are still in dispute about whether the nature of a cost or expense is a Project Cost or any other matter, that dispute must be resolved in accordance with clause 14. LPF is not required to pay any amount in dispute unless and to the extent the person adjudicating the dispute pursuant to clause 14 has already decided the dispute against LPF.

- (e) LPF will provide the Representative with regular and timely updates of the Project Costs that have been paid by LPF in connection with this Deed.

3.3 Funding: Sharing of Project Costs

- (a) The Plaintiffs have agreed, for their benefit and, for the benefit of the plaintiffs in the ANZ Proceeding, to share the aggregate Project Costs for the Proceedings, and the project costs as defined in the ANZ Deed and applicable to the ANZ Proceedings, (together **Combined Project Costs**) on the following terms:
 - (i) The Combined Project Costs incurred or assumed in relation to both the Proceedings and the ANZ Proceedings will be divided, and deemed to be incurred or assumed, evenly between the Proceedings and the ANZ Proceedings, with the exception of significant readily identifiable costs which the Lawyers confirm relate to material tasks clearly connected to either the Proceedings or the ANZ Proceedings to the exclusion of the other (for example, discovery or interlocutory hearings relating to only ASB), which costs shall be allocated entirely to the Plaintiffs or to the plaintiffs to the ANZ Proceedings (as applicable).
 - (ii) Following the final conclusion of the Proceeding or the ANZ Proceedings, and notwithstanding subclause 3.3(a)(i), LPF or the Representative may within 10 Working Days request that the allocation of Combined Project Costs between the Proceedings and the ANZ Proceedings be reviewed by giving written notice to that effect to LPF and to the representative plaintiff under the ANZ Deed.
 - (iii) If, within 10 Working Days of the giving of such written notice, an agreement as to the allocation of the Combined Project Costs between the Proceedings and the ANZ Proceedings is not reached between LPF, the Representative and the representative plaintiff under the ANZ Deed, then any of them may refer to matter to the Expert for determination.
 - (iv) Clauses 14.1(d), (f), (g) and (h) shall apply *mutatis mutandis* to the Expert determination process and bind LPF, the Plaintiffs and the plaintiffs to the ANZ Proceedings, as if they were parties to the same Deed. The costs of the Expert shall be borne as Combined Project Costs in equal proportions between the Proceeding and the ANZ Proceeding unless the Expert decides that different proportions are appropriate given the determination of the Expert.
- (b) In consideration of, and subject to, the plaintiffs to the ANZ Proceedings agreeing to be bound by this clause 3.3, the Plaintiffs agree to be bound by the equivalent provisions in the ANZ Deed to the provisions of this clause 3.3.
- (c) For the purposes of the Contracts and Commercial Law Act 2017 this clause 3.3 is for the benefit of, and is intended to be enforceable by the parties (other than CASL) to the ANZ Deed.

3.4 **Control:** All final decisions in respect of the continuance of the Proceedings and the management of the Proceedings and the Claims shall be decisions for the Plaintiffs (acting through the Representative) and not LPF, except in relation to settlement matters or any proposed discontinuance of the Proceedings, to which clause 15 applies.

3.5 Lawyers:

- (a) The Plaintiffs and LPF agree that:

- (i) the Lawyer or Lawyers appointed in relation to the Claims and the Proceedings shall in the first instance be such firm or firms of solicitors and/or barrister(s) named in Schedule One of this Deed;
 - (ii) LPF may by written notice to the Representative require the Plaintiffs (acting through the Representative) to terminate the appointment of any Lawyer in relation to the Claims and the Proceedings if LPF has concerns regarding the Lawyer's preparation or advancement of the Proceedings, the level of legal costs charged by the Lawyer and/or the performance or conduct of the Lawyer;
 - (iii) LPF may at any time by notice in writing to the Representative require the Plaintiffs (acting through the Representative) to appoint one or more replacement or additional Lawyers nominated by LPF. Such appointment shall be conditional on the approval of the Representative, provided that the Representative may not unreasonably withhold or delay its approval. In the event that the Representative does not approve the appointment notified by LPF, the matter shall be dealt with as a General Dispute in accordance with clause 14. Pending determination or resolution of the General Dispute, the Plaintiffs (acting through the Representative) shall appoint the replacement or additional Lawyers notified by LPF promptly following the receipt of LPF's notice.
 - (iv) the Lawyer or Lawyers may be retained without recourse to the Plaintiffs but, for the avoidance of doubt, the Lawyers' fees shall form part of the Project Costs.
- (b) LPF may seek from the Lawyers an irrevocable covenant in writing in favour of LPF (in a form reasonably acceptable to LPF) that:
- (i) they will comply with the provisions of this Deed, so far as those provisions apply or relate to them, including clauses 3.2(b), 5.4, 10.1(c), 10.2, 10.6, 10.8, 10.9, 12.1(b)(iii), 12.2(b)(v) and 15.3;
 - (ii) they will act in relation to the Proceedings and, if appointed pursuant to the ANZ Deed, the ANZ Proceedings only, and will not act for the Plaintiffs or the Representative in respect of any dispute under or in respect of this Deed, the ANZ Deed or any Relevant Document under either of this Deed or the ANZ Deed or otherwise, except for advising on the execution versions of the same prior to execution;
 - (iii) they acknowledge LPF's rights and interests in the Proceedings as reflected in the terms of this Deed;
 - (iv) they will not seek to recover from the Plaintiffs any of their fees that comprise Project Costs which are payable by LPF;
 - (v) they will provide to LPF copies of all advice to, and correspondence with, the Plaintiffs and the Representative, in connection with the Proceedings and the Claims; and
 - (vi) if removed under clause 3.5(a) above, they shall not continue to act or accept any new instructions from any person on any matter associated with or relating to this Deed (including, for the avoidance of doubt, sub-paragraph (ii) above), any Relevant Document, the Claims or the Proceedings.

The Plaintiffs (acting through the Representative) shall provide to LPF such assistance as LPF reasonably requires to obtain the covenant referred to above.

- (c) If LPF nominates additional or substitute Lawyers under clause 3.5(a) above, or requires any Lawyers to cease acting under clause 3.5(a) above, then the Plaintiffs (acting through the Representative) will immediately act on written instructions from LPF to effect the appointment and/or removal.

3.6 **Lawyers holding funds in trust:** At LPF's election, and notwithstanding any other provision of this Deed, the proceeds of any Resolution Sum (including any partial Resolution Sum) shall be paid into the Trust Account of such firm of solicitors as may be nominated by LPF from time to time. If LPF exercises its rights under this clause 3.6, then:

- (a) such solicitors shall be required to sign an undertaking in such form as is required by LPF (acting reasonably) to comply with clauses 5.4(b) to (f); and
- (b) such amount shall only be paid by such solicitors from their Trust Account in accordance with an unconditional and irrevocable written instruction signed by LPF and by the Representative (acting on behalf of the Plaintiffs).

4. **CONDITION, CONSENT AND REQUIREMENTS ON SIGNING**

4.1 **Condition:** LPF's obligation to provide Funding under this Deed is conditional upon approval by the board of LPF Group Limited to the arrangements set out in this Deed and the terms of this Deed but, for the avoidance of doubt:

- (a) if the Condition is not satisfied or waived in accordance with the provisions of clause 4.2, by the date referred to in clause 4.2, then LPF's obligation to provide Funding shall apply until and unless this Deed is avoided by LPF in accordance with clause 4.4; and
- (b) none of the other obligations of LPF, the Plaintiffs and the Representative are conditional upon the Condition being satisfied or waived, including payment of Project Costs and the Services Fee, should there be a Resolution prior to the satisfaction or waiver of the Condition.

4.2 **Satisfaction of condition:** The date for satisfaction of the Condition shall be 20 Working Days after the date of this Deed (or such later date or dates as LPF agrees or LPF elects in its discretion acting in good faith where there is a reasonable prospect of reasonable satisfaction of those Conditions). LPF shall not be required to provide any reasons to the Plaintiffs or the Representative if a Condition is not satisfied. If requested by LPF, the Plaintiffs must provide LPF with all reasonable assistance and access to advisers, other relevant parties and documents to facilitate satisfaction of the Conditions.

4.3 **Waiver:** The Condition has been included for the benefit of LPF and may only be waived by notice in writing to the Representative by LPF.

4.4 **Avoidance rights:** This Deed is voidable by written notice given by LPF at its election if the Condition is not fulfilled, or waived in accordance with the provisions of clause 4.2, by the date referred to in clause 4.2 and, if this Deed is so avoided, it will be of no further force or effect and all parties shall be released from their obligations under this Deed. For the avoidance of doubt, unless and until LPF gives a notice of avoidance under this clause, this Deed shall remain in full force and effect.

4.5 **Continuation of non-Funding obligations:** In consideration of, amongst other things:

- (a) LPF signing this Deed and assuming its immediate obligations under it; and
- (b) the improvement in the Plaintiffs' position by signing this Deed, and the value to them of having secured the Services to be provided by LPF,

the Plaintiffs agree, for the avoidance of doubt, that if they reach a Resolution prior to the Condition having been satisfied or waived by LPF, LPF shall remain entitled to receive the amounts payable under clause 5, with the intent that the Condition applies only to the funding obligation of LPF, and not its other rights or obligations under this Deed.

4.6 **Consents:** The Plaintiffs:

- (a) agree that all moneys payable to LPF under or in connection with this Deed shall be paid prior to any moneys payable to the Plaintiffs directly or indirectly in connection with the Claims or the Proceedings; and
- (b) agree that any rights to payment that the Plaintiffs have in respect of such matters shall be subordinated in all respects in point of priority and right of repayment to the rights to payment in full of all moneys due and owing to LPF under or in connection with this Deed;

and the Plaintiffs shall not contest or dispute LPF's priority in terms of this clause 4.6.

4.7 **Requirements on signing:** On or before signing of this Deed, the Plaintiffs shall deliver to LPF:

- (a) the written covenant from the Lawyers referred to in clause 3.5(b);
- (b) a copy of all information (whether in electronic form or hard copy) containing all of the information currently held by the Plaintiffs in relation to the Claims and the Proceedings (which shall be used by LPF only for the purposes of this Deed);
- (c) a certificate from the Representative that the Representative, on behalf of the Plaintiffs, has received independent legal advice on this Deed, the Participation Notice Agreement, and the Securities and will provide a copy of such advice to each potential Plaintiff;
- (d) the Securities; and
- (e) such other documents or information as reasonably requested by LPF prior to such signing.

5. **APPLICATION OF THE RESOLUTION SUM**

5.1 **LPF's entitlements:** In consideration of the provision of the Services by LPF, and subject to clause 5.9, upon a Resolution occurring LPF shall on the Resolution Date and subject to any Court order:

- (a) be paid:
 - (i) an amount equivalent to the aggregate of the Project Costs paid or payable in accordance with clause 3.2(a); and
 - (ii) any amounts otherwise paid by or due to LPF under or in connection with this Deed or any Relevant Document; and
- (b) be paid the Services Fee,

provided that any Project Costs that have been approved by LPF under clause 3.2(a), but which have not been paid by LPF at the time of such payments, will not be required to be repaid to LPF in accordance with sub-clause (a) above.

5.2 **Services Fee:** The Plaintiffs acknowledge and agree that the Services Fee represents a commercial rate of return on the Project Costs paid by LPF based on LPF's and the Plaintiffs' respective assessments of the quantum of the Claims, the expected resolution timeframes, the uncertainties and the risks involved in achieving success (or otherwise including adverse costs) in respect of the Claims as well as consideration for the Project Investigation and other obligations of LPF under this Deed.

5.3 **No liability where no Resolution in Plaintiffs' favour:** If there is no Resolution in favour of the Plaintiffs in accordance with this Deed, then subject to clause 5.9, none of the Plaintiffs will have any liability make payment of the PC Sum unless the Plaintiffs, the Representative or the Lawyers, or any of their respective representatives, have materially misled or deceived LPF in respect of any aspect of the Proceedings or the Claims or their likelihood of success (in which case the PC Sum is payable in full only by those Plaintiffs who have materially misled or deceived LPF, whether directly or through the Representative), provided that:

- (a) any amount received by the Plaintiffs in relation to or in connection with any aspect of the Claims or the Proceedings, for any reason and at any time, must be applied to pay the PC Sum until it has been paid in full; and
- (b) any GST refunds paid under clause 6.2(c) (where applicable) must continue to be paid to LPF in payment of the PC Sum,

and, for the avoidance of doubt, neither the Services Fee nor the PC Sum will, except as otherwise provided for in this clause 5.3, become payable, due or owing by the Plaintiffs to LPF unless and until Resolution.

5.4 **Directions to Lawyers:** The Plaintiffs and the Representative (acting on irrevocable authority from the Plaintiffs) unconditionally and irrevocably direct (with the intent that this direction may be relied on by the Lawyers), that:

- (a) payment of all Resolution Sums be made to the Lawyers or, as applicable under clause 3.6;
- (b) such recipient Lawyers are to immediately pay any Resolution Sum into a separate interest bearing trust account without deduction to be disbursed only in accordance with this Deed;
- (c) any interest earned on those funds shall form part of the final Resolution Sum, and be paid to the relevant parties in accordance with their respective entitlements;
- (d) such recipient Lawyers hold the amounts payable to LPF under clause 5.1 on trust for LPF and/or any third party directed by LPF in writing, to be paid solely to LPF, or as LPF otherwise directs, in cleared funds and without deduction or set-off in accordance with this clause 5 (other than the deduction of applicable withholding or other taxes, and any Project Costs that LPF directs to be paid from such amount, including any bank fees or solicitor's charges in respect of holding the relevant funds on trust account disbursing them);
- (e) the balance of any Resolution Sums (being the amount of any Resolution Sums, less the amount to be held on trust for LPF under sub-clause (d)) shall be held on trust by the Lawyers for the Plaintiffs jointly (rather than for any individual Plaintiff) and the Lawyers may record that holding in their Trust Account records in a manner that is considered to be administratively practical; and,
- (f) such recipient Lawyers shall not pay any part of the Resolution Sum to any person until all amounts due and owing to LPF under this Deed have been paid in full.

5.5 Non-monetary payments:

- (a) Neither the Plaintiffs nor the Representative will accept the Resolution Sum or any part of it in non-monetary form unless the Plaintiffs (acting through the Representative) and LPF agree otherwise. If any part or all of the Resolution Sum is not money, the Plaintiffs (acting through the Representative) will, as soon as the part or all of the Resolution Sum is received, consult with LPF and agree a reasonable market value of the non-monetary component, and once agreed, pay an amount equal to that sum to the Lawyers for deposit in the Trust Account.
- (b) If a reasonable market value cannot be agreed between the Plaintiffs (acting through the Representative) and LPF, then failing agreement on how to proceed, the matter shall (on the application of either party) be referred to the Expert for a determination as to amount or a determination that the non-monetary component be immediately put up for sale (as they see fit). On such determination the relevant amount or proceeds shall be paid to the Lawyers for deposit in the Trust Account.

5.6 Misdirected payments: If, notwithstanding clause 5.4, the Plaintiffs or the Representative directly or indirectly receive all or any part of the Resolution Sum, the Plaintiffs or the Representative (as the case may be) will pay the same immediately to the Lawyers, together with the reasonable market value of any non-monetary component of the Resolution Sum received, such amount to be immediately paid by the Lawyers into the Trust Account and dealt with strictly in accordance with the terms of this Deed.

5.7 Authority for payment:

- (a) The Plaintiffs and the Representative unconditionally and irrevocably authorise the Lawyers or any other solicitors nominated by LPF under clause 3.6 to forthwith pay out of the Trust Account referred to in clause 5.4(b) or 3.6, as applicable, all amounts owing to LPF under this clause 5 and otherwise under or in connection with this Deed.
- (b) All payments to LPF shall be made free and clear of any set off, withholding or deduction of any nature whatsoever, unless such set off, withholding or deduction is required at law or is directed in writing by LPF (for example, a direction to pay certain Project Costs).

5.8 Default interest:

- (a) If any amount payable under this Deed is not paid to LPF by the due date for payment (the "**Due Date**"), the Plaintiffs shall pay on demand to LPF interest (both before and after any judgment) at the Bill Rate plus 5% per annum calculated daily (but not cumulatively) on the amount unpaid from and including the Due Date until payment (including payment of the default interest) is made in full, such amount to be capitalised monthly.
- (b) This provision is without prejudice to any of LPF's other rights, powers and remedies under this Deed, at law or otherwise in respect of a default in failing to pay the overdue amount.

5.9 Partial settlements: If and to the extent any Resolution Sum is received by or on behalf of the Plaintiffs, but the Claims and/or Proceedings are not fully and finally Resolved, then:

- (a) such partial Resolution Sum shall be immediately applied to pay any amount payable to LPF under clause 5.1(a), to the extent of such amount payable under such clause;

- (b) at LPF's election, such partial Resolution Sum shall be paid to LPF to the extent of its Services Fee earned on that partial Resolution Sum (calculated, for this purpose, as if it were the final Resolution Sum); and
- (c) the balance of such partial Resolution Sum, if any, shall be held on trust by the Lawyers until such time as the Claims and/or Proceedings are fully and finally Resolved and LPF's entitlements under this Deed are fully determined, at which time they shall be disbursed in accordance with this Deed.

If LPF has elected to receive a payment under sub-clause (b), then when the final Resolution Sum has been received, the final Services Fee shall be calculated in accordance with this Deed (as if no partial Resolution Sum had already been paid to LPF under sub-clause (b) of this clause 5.9), and the amount payable in that regard to LPF under clause 5.1(b) shall have deducted from it the amount paid under sub-clause (b) of this clause 5.9.

5.10 **Limitation:** Notwithstanding any provision of this clause 5, and except where clause 5.8 applies, the Plaintiffs will not be required to pay any amount to LPF that is (or may be) in excess of the Resolution Sum.

6. GST

6.1 **General:** All amounts payable under this Deed to LPF are exclusive of GST (if any).

6.2 GST returns and refunds:

- (a) The Plaintiffs confirm that they are not registered for GST and on that basis all payments in this Deed will be plus GST.
- (b) Should the Plaintiffs become registered for GST, the Plaintiffs shall use reasonable endeavours to make, or procure to be made, due and timely applications to the Inland Revenue Department for any refunds that can properly be made of all GST amounts paid in respect of Project Costs.
- (c) Immediately on receipt of any GST refund by any of the Plaintiffs, the recipient party shall pay the full amount of such GST refund to LPF.

6.3 **Adjustments:** Any payment to LPF under clause 6.2(c) shall:

- (a) reduce the amount payable under clause 5.1(a); and
- (b) not reduce the amount of Project Costs for the purposes of calculation of Resolution Sum or otherwise under this Deed.

7. SECURITY

7.1 **General and specific security:** In consideration of LPF entering into this Deed at the request of the Plaintiffs, and to secure payment of the amounts due to LPF under this Deed and performance by the Plaintiffs of their obligations under this Deed, the Plaintiffs grant to LPF a security interest on the terms set out in Schedule Two.

7.2 **Priority:** The Securities are to constitute first ranking securities in respect of the collateral described in such Securities at all times prior to the date on which LPF has been paid in full for all amounts owing to it or which may become owing to it under this Deed or any Securities, provided that if any person has or asserts a prior ranking security interest in any such collateral then:

- (a) the Plaintiffs shall immediately notify LPF in writing of that fact and all details of the claim;
- (b) LPF shall be entitled to be involved in any discussions with that person; and
- (c) LPF may suspend the payment of all further Project Costs until such time as it (acting reasonably) is satisfied that it (and not any other person) holds such a first ranking security interest, and in such respect LPF may require further security arrangements to be entered into in respect of the Collateral including a Deed of Priority and/or an additional security agreement from the Plaintiffs (in each case in a form acceptable to LPF (acting reasonably)).

7.3 **Releases:** LPF undertakes to release the Securities immediately following the Resolution Date, provided that LPF's entitlements to any Resolution Sum or any other amount payable to LPF pursuant to this Deed have been fully satisfied and all of the Plaintiffs' obligations under this Deed and all Relevant Documents have been satisfied in full and may not be challenged under any applicable law.

7.4 **Further security:** The Plaintiffs shall not grant any further security interest over the right, title and interest in the Collateral to any party, without first obtaining the written consent of LPF. Such consent may include a requirement that such other party enters into a deed of priority and subordination with LPF (in a form that is satisfactory to LPF) to ensure that LPF's security interests rank with the priority required by LPF and that any power of enforcement exercised by LPF (including the appointment of a receiver) will take full precedence over any such power exercised by the new securityholder.

8. APPEALS

8.1 Appeal by Plaintiffs

- (a) If there is a final judgment in the Proceedings which is not in favour of the Plaintiffs, then the Plaintiffs (acting through the Representative) shall advise LPF as soon as practicable after such judgment is rendered as to whether they wish an Appeal to be lodged, and if the Plaintiffs:
 - (i) wish that to occur, then LPF will as soon as practicable thereafter advise the Plaintiffs (through the Representative) whether it will provide Services in respect of the Appeal; or
 - (ii) do not wish that to occur, but LPF believes that it should do so, then the matter shall be referred for determination under clause 14.1.
- (b) LPF agrees to provide the Services in connection with any Appeal to which it consents under sub-clause (a)(i) or which is determined to be made under sub-clause (a)(ii).

8.2 Appeal by Defendant:

- (a) If there is a final judgment in the Proceedings in favour of the Plaintiffs and any Defendant (including third party Defendants) appeals, then the Plaintiffs (acting through the Representative) shall advise LPF as soon as practicable after such Appeal is lodged as to whether they wish to defend such Appeal, and if the Plaintiffs:
 - (i) wish that to occur, then LPF will as soon as practicable thereafter advise the Plaintiffs (through the Representative) whether it will provide Services in respect of the Appeal; or

- (ii) do not wish that to occur, but LPF believes that it should do so, then the matter shall be referred for determination under clause 14.1.
 - (b) LPF agrees to provide the Services in connection with any Appeal to which it consents under sub-clause (a)(i) or which is determined to be made under sub-clause (a)(ii) .
- 8.3 **Termination:** If LPF elects not to provide the Services under clause 8.1(a)(i), or clause 8.2(a)(i), in respect of any Appeal that does take place, then the Plaintiffs (acting through the Representative) may terminate this Deed by notice in writing to LPF, in which case the Plaintiffs:
- (a) will not be required to pay the Services Fee that might otherwise become payable relevant to the Appeal at issue; but
 - (b) will remain liable to pay any Services Fee arising from settled matters not subject to any Appeal, and to pay the PC Sum from any Resolution Sum.

9. WARRANTIES

9.1 **General warranties:** Each Plaintiff warrants and represents to LPF that:

- (a) this Deed creates obligations which are legally binding on it and are enforceable against it in accordance with the terms of this Deed;
- (b) neither the execution nor delivery of this Deed, nor the exercise of any right or the performance or observance of any obligation under this Deed, nor any of the transactions contemplated hereby, will:
 - (i) violate or contravene any law, regulation, order or decree to which it is bound or subject;
 - (ii) conflict with, or result in the breach of, any agreement, document, arrangement, obligation or duty to which they are a party or by which it or any of its assets may be bound or subject; or
 - (iii) where any Plaintiff is a company or trust, violate any of the documents constituting it or cause any limitation on any of its powers, or on the right or ability of its directors or trustees to exercise those powers, to be exceeded, and will not result in the creation or imposition of, or any obligation to create or impose, any encumbrance on any of its property, assets or revenues (except any such encumbrance created pursuant to this Deed); and
- (c) to the extent required, if any, all consents, licences, approvals, authorisations and exemptions of any person (including any governmental or other regulatory authority, bureau or agency) required for, or in connection with, the validity, performance or enforceability of this Deed have been obtained and are in full force and effect and any condition contained therein, or otherwise applicable thereto, has been complied with.

9.2 **Additional warranties by the Plaintiffs:** Each Plaintiff warrants and represents to LPF, as of the date of this Deed and as of each date hereafter during the term of this Deed, that:

- (a) it is one of the legal and rightful plaintiffs in any Proceedings or any Appeal;

- (b) there is no person holding any form of security interest, charge, lien, encumbrance or other form of adverse interest of any nature whatsoever over the Collateral of that Plaintiff or any of its related parties that would be adverse in any way to the interests of LPF, including to LPF's interest in receiving payment of the PC Sum and the Services Fee;
- (c) it has not and will not cause, permit or assert any form of security interest, charge, lien, encumbrance or other form of adverse interest of any nature whatsoever to attach to the Collateral, the Services Fee, or LPF's interest in receiving payment of the PC Sum;
- (d) it has the right to make any sale under clause 13.1(b)(ii) and to make the payments referred to in clause 5.1, and no person other than the Plaintiffs or LPF (by virtue of this Deed) have any interest of any nature in the Claim, the Proceedings or the Resolution Sum, that is in any way derived from the Plaintiffs;
- (e) there is no information in their custody, possession or control that is materially relevant to the decision of LPF to enter into this Deed, the outcome of the Proceedings or any Appeal, or the potential for any judgment sum to be recovered, which has not been disclosed in writing to LPF; and
- (f) all information which has been given by or on their behalf to LPF or any director, agent, professional adviser or other representative of LPF in respect of the Claims and the Proceedings is and was (when given) true, complete and accurate in all material respects.

For the avoidance of doubt, LPF, the Plaintiffs and the Representative acknowledge and agree that no representation or warranty is provided by the Plaintiffs or the Representative as to the merits of the Proceedings or the Claims.

9.3 **Reliance:** The Plaintiffs acknowledge that LPF has relied upon the truth and accuracy of the warranties contained in this clause 9 and, without limitation, the completeness and correctness of the information provided to LPF in entering into this Deed and will continue to rely on the truth and accuracy of the warranties and the completeness and correctness of the information in performing its obligations pursuant to this Deed.

9.4 **No merger:** The warranties set out in this clause 9 do not merge on any transfer under clause 13.1(b)(ii) but continue to operate thereafter.

9.5 **Indemnity:** The Plaintiffs indemnify LPF against all claims, costs (including legal costs on a solicitor and own-client basis), damages, expenses and losses and proceedings arising out of or in connection with any breach by the Plaintiffs of this Deed or the Securities, including the costs of enforcing its rights under this Deed and those Securities.

10. INFORMATION AND CONDUCT OF PROCEEDINGS

10.1 **Status:** The Plaintiffs and the Representative undertake to conduct the Proceedings fully and to the best of their ability, and will:

- (a) keep LPF fully advised of the progress and status of the Proceedings or any Appeal, at such intervals as LPF may request (and, daily during trial);
- (b) consult with and consider the views of LPF in relation to all material issues arising from the conduct and/or progress of the Proceedings or any Appeal, including without limitation any settlement or resolution of the same, provided that all final decisions in respect of such matters shall (subject to clause 15) be decisions for the Plaintiffs (acting through the Representative) and not for LPF; and

- (c) provide and instruct the Lawyers to provide such information from time to time to LPF as may reasonably be required in relation to the Proceedings or any Appeal, it being acknowledged and accepted by LPF, the Plaintiffs and the Representative for all purposes that the Plaintiffs (acting through the Representative) (and no other person) will instruct the Lawyers.

10.2 **Provision of information:** If, after the date of this Deed, any of the Plaintiffs or the Representative become aware of any information which has or may have a material impact on the Claims, the Proceedings, any Appeal or the potential for any Resolution Sum to be recovered, the Plaintiffs or the Representative (as the case may be) will immediately inform LPF of that fact in writing and provide LPF with that information. The Plaintiffs and the Representative will instruct the Lawyers to immediately disclose in writing to LPF (with a copy to the Representative) any information of which they similarly become aware at any time.

10.3 **General obligations:**

- (a) The Plaintiffs and the Representative will keep and preserve any information or documents relating to any of the Defendants, the Proceedings and/or the Claims that they have in their possession, custody or control.
- (b) The Plaintiffs and the Representative, at their own cost, will provide to the Lawyers, upon request, all documents and information in the possession, control or power of the Plaintiffs or the Representative respectively, relevant to the Claims and the Proceedings or any Appeal.
- (c) The Plaintiffs and the Representative, will at their own cost:
 - (i) provide to the Lawyers, upon request, all written statements of evidence relevant to them in relation to the Claims;
 - (ii) where applicable, attend upon the Court to give evidence in relation to the Claims;
 - (iii) provide all reasonable assistance to the Lawyers and other relevant parties in relation to the Claims,
 - (iv) provide all reasonable assistance and support to the Lawyers and other relevant parties in relation to any application for a common fund order in connection with the Claims or the Proceedings or any Appeal,

and shall procure that their directors, owners and officers do the same.
- (d) The Plaintiffs and the Representative will ensure that the Lawyers act promptly and with due expedience, in carrying out their instructions and duties in relation to the Claim and the Proceedings.
- (e) The Plaintiffs and the Representative hereby unconditionally and irrevocably authorise the Lawyers (with the intent that the Lawyers rely on such authority) to provide the information and documents described in clause 10.3(c)(i) to the Defendants and any third party the subject of an order of the Court, if ordered to do so by a Court in the Proceedings relevant to the Claims.
- (f) Each Plaintiff and the Representative:
 - (i) shall immediately notify LPF if the Plaintiff or member of the Representative is requested or required to disclose any information relating to the negotiation, terms or performance of its obligations under this Deed and, if so requested

by LPF, will take such steps as may reasonably be available to prevent disclosure of such parts of the information as LPF may require; and

- (ii) shall not disclose to any person, save for its legal and financial advisers for the purpose of obtaining confidential legal or financial advice, or LPF, any information:
 - a) to which this clause 10.3 applies; or
 - b) to which legal professional privilege or obligations of confidence attach; or
 - c) which is or may be protected from disclosure by reason that disclosure would or may provide the Defendants with a strategic or tactical advantage in any Proceeding,

save in accordance with advice from the Lawyers for the purpose of the prosecution of those Proceedings or the prior written consent of LPF (if the information was provided by it), or the Lawyers (if the information was provided by them). The obligations in this sub-clause (f) are continuing obligations.

10.4 **Communication with Defendants:** The Plaintiffs and the Representative shall not during the term of this Deed:

- (a) have any communication with any Defendant or, in the case of any Defendant which is not a natural person, its officers, employees or agents, in relation to the Claims or any compromise of the Claims, other than through the Lawyers or upon receipt of the Lawyers' reasonable advice in relation to the same; or
- (b) disclose to any of the Defendants or, in the case of any Defendant which is not a natural person, their officers, employees or agents any information or documents provided by the Plaintiffs to the Lawyers or LPF in relation to the Claims under this Deed.

10.5 **Privilege:** In providing LPF with any information or documents in respect of the Claim and/or the Proceedings, the Plaintiffs do not waive any legal professional privilege that may attach to such documents or information. LPF agrees that such information and documents are and will be provided to it in circumstances where the Plaintiffs are contemplating, participating in or conducting litigation against the Defendants.

10.6 **Legal advice:** Without limiting clause 2.4, the Plaintiffs and the Representative:

- (a) authorise LPF to request from the Lawyers, that any material opinion in writing issued to the Plaintiffs or the Representative by the Lawyers or a barrister retained by them on or after the date of this Deed, as to the merits or any other aspect of the Claim or a proposed Claim, or steps within such Claim, or in respect of any possible settlement or settlements or other resolution proposed, shall be addressed also to LPF;
- (b) authorise LPF to request from the Lawyers, that any material oral opinion provided by the Lawyers or a barrister retained by them is immediately confirmed in writing by the provider of the opinion and addressed also to LPF.

10.7 **No adverse orders:** The Plaintiffs and the Representative must obtain the prior written consent of LPF (which may be given or withheld at LPF's sole discretion) prior to applying for any Court order during the course of the Proceedings and term of this Deed that may detrimentally affect LPF's rights under this Deed or its ability to enforce this Deed.

10.8 **Meetings:** The Plaintiffs and the Representative irrevocably and unconditionally authorise the Lawyers (and other counsel or advisers) to meet with LPF and its advisers on LPF's reasonable request at all times.

10.9 **Reports:** The Plaintiffs and the Representative irrevocably and unconditionally authorise the Lawyers to provide to LPF, on a calendar monthly basis, a written report on:

- (a) the progress of the Claims and the Proceedings in the preceding calendar month, and anticipated future steps and material timelines and dates;
- (b) a comparison of actual costs paid against approved Project Costs; and
- (c) actual costs and estimates against Budget, together with updated estimates,

and such reports shall have such a scope as LPF may reasonably specify from time to time and should be provided within 5 Working Days of the end of each month.

10.10 **Project costs and Resolution Sum:** The Plaintiffs and the Representative agree to use their reasonable endeavours to minimise the quantum of Project Costs and to maximise and pursue recovery of the Resolution Sum in a timely manner consistent with the professional and diligent prosecution of the Proceedings by the Plaintiffs.

11. TERM

11.1 **Continues until terminated:** Subject to clause 12, this Deed will continue until all obligations by the parties pursuant to this Deed have been satisfied, and all amounts payable to LPF under this Deed have been paid in full.

12. TERMINATION

12.1 **Termination by LPF without cause:**

- (a) LPF is entitled, at its sole discretion, if it has made an assessment (based on the advice of its legal advisors) that the costs and risks involved in funding the Claims and the Proceedings are no longer acceptable to LPF, to terminate its obligations under this Deed, other than accrued obligations under sub-clause (b), by giving 5 Working Days' written notice to the Representative (on behalf of the Plaintiffs) that the Deed and LPF's obligations are terminated.
- (b) If LPF terminates its obligations pursuant to clause 12.1(a), then:
 - (i) LPF remains liable for accrued Project Costs that have been approved under this Deed for the period up to and including the date of termination (excluding, without limitation, any accrued obligation to provide any further Security for Costs);
 - (ii) LPF remains liable for any Adverse Costs Order, unless the Plaintiffs continue the Proceedings following the termination, in which event the Plaintiffs shall be solely liable for any Adverse Costs Order from the date of termination;
 - (iii) LPF remains entitled to receive payment of the PC Sum (which shall be equivalent to Project Costs incurred up to and including the date of termination) pursuant to clause 5.1(a) from any Resolution Sum (and the Plaintiffs (acting through the Representative) and the Lawyers will notify LPF upon receipt of any Resolution Sum);
 - (iv) if they wish to continue the Claim or Proceedings, the Plaintiffs shall immediately provide replacement security for any Security for Costs that has

been provided by LPF, and shall procure full reimbursement or full release (as the case may be) to LPF of all Security for Costs provided under this Deed;

- (v) the Plaintiffs will not be required to pay the Services Fee under clause 5.1(b); and
 - (vi) the Plaintiffs (acting through the Representative) and the Lawyers will notify LPF immediately upon any Resolution and upon receipt of any Resolution Sum.
- (c) The obligations in this clause survive any termination of this Deed.

12.2 Termination by LPF for cause:

- (a) If:
- (i) a court does not make an opt-out order in relation to the Claims in terms which are satisfactory in all respects to LPF in its sole discretion; or
 - (ii) a court does not make a common fund order or other equalisation order in relation to the Claims in terms which are satisfactory in all respects to LPF in its sole discretion; or
 - (iii) a court determines that the Services Fee chargeable by LPF would exceed the aggregate fee that would be payable to any other litigation funder that actually funds proceedings relating to a claim against the Defendant similar to the Claims for the same period, had that litigation funder provided services to the Plaintiffs that are equivalent to the Services and otherwise on the same terms as set out in this Deed; or
 - (iv) any of the Plaintiffs, or the Representative, commit a breach of this Deed or there is a breach by any person (other than LPF) of any agreement related to or connected with this Deed, including without limitation the Securities; or
 - (v) there are persistent and recurring breaches of the type referred to in sub-clause (iv) even though they are individually remedied or are committed by different Plaintiffs; or
 - (vi) an event occurs which LPF considers (acting reasonably) has had or may reasonably be expected to have a material adverse effect on the Claim or the Proceedings, any material aspect of the Claim or the Proceedings, or the Plaintiffs as a group, and following which LPF determines not to continue to provide Funding in accordance with this Deed. Without limiting LPF's rights under this sub-clause (vi), the Plaintiffs acknowledge and agree that LPF will consider an event to have a material adverse effect on the Claim or the Proceeding if, in LPF's reasonable opinion, such event represents or may represent more than 20% of the monetary value of the Claim or the Proceedings;

and, in respect of any breach referred to in sub-clause (a)(iv) or event referred to in sub-clause (a)(vi), that is capable of remedy, the relevant Plaintiff does not remedy the breach within 20 Working Days after receiving written notice from LPF requiring it to do so, LPF may terminate this Deed forthwith by written notice and/or may immediately exercise its enforcement and other rights under the Securities.

- (b) If this Deed is terminated by LPF pursuant to this clause 12.2, then:

- (i) where the termination is by reason of any of the matters referred to in clause 12.2(a)(i) – (iii) or clause 12.2(a)(vi), LPF remains liable for:
 - a) accrued Project Costs that have been approved under this Deed for the period up to and including the date of termination (excluding, without limitation, any accrued obligation to provide any further Security for Costs);
 - b) any Adverse Costs Order, unless the Plaintiffs continue the Proceedings following the termination, in which event the Plaintiffs shall be solely liable for any Adverse Costs Order from the date of termination;
- (ii) where the termination is by reason of any of the matters referred to in clause 12.2(a)(iv) or clause 12.2(a)(v), clause 12.2(b)(i) will apply, with the exception that those Plaintiffs or Representative who have caused the breach or breaches giving rise to termination in accordance with clause 12.2(a)(iv) or clause 12.2(a)(v) shall (without limiting LPF's entitlement under clause 12.2(b)(iii)) be required to pay the PC Sum (being equivalent to Project Costs incurred up to and including the date of termination) to LPF;
- (iii) LPF shall remain entitled to payment of the PC Sum (being equivalent to Project Costs incurred up to and including the date of termination) pursuant to clause 5.1(a) from any Resolution Sum;
- (iv) if they wish to continue the Claim or Proceedings, the Plaintiffs (acting through the Representative) shall immediately provide replacement security for any Security for Costs that has been provided by LPF, and shall procure full reimbursement or full release (as the case may be) to LPF of all Security for Costs provided under this Deed;
- (v) LPF shall remain entitled to receive 100% of the Services Fee pursuant to clause 5.1(b) from any Resolution Sum (by way of liquidated damages) until the Plaintiff has complied with its obligations under sub-clause (iii), and 50% thereafter; and
- (vi) the Representative (on behalf of the Plaintiffs) and the Lawyers will notify LPF immediately upon any Resolution and upon receipt of any Resolution Sum.

12.3 Termination by the Plaintiffs:

- (a) If LPF commits a material breach of this Deed and does not remedy the breach within 20 Working Days after receiving written notice from the Plaintiffs (acting through the Representative) requiring it to do so, the Plaintiffs (acting through the Representative) may terminate this Deed forthwith by written notice to LPF. A breach that is alleged by the Plaintiffs but disputed by LPF for any reason shall not be a breach or be a material breach unless:
 - (i) the Expert (on application by either party, and acting as an independent and impartial expert, with its costs shared equally by LPF and the Plaintiffs) has determined that the relevant matter does constitute a material breach of this Deed; and
 - (ii) LPF does not agree to remedy such breach within 10 Working Days of that determination.
- (b) If this Deed is terminated by the Plaintiffs (acting through the Representative) pursuant to clause 12.3(a), then:

- (i) LPF remains liable for the accrued obligations for Project Costs that have been approved under this Deed for the period up to and including the date of termination (including, without limitation, any then accrued obligation to provide Security for Costs);
 - (ii) LPF remains entitled to payment of the PC Sum (being equivalent to Project Costs incurred up to and including the date of termination) pursuant to clause 5.1(a) from any Resolution Sum (and the Plaintiffs (acting through the Representative) and the Lawyers will notify LPF upon receipt of any Resolution Sum); and
 - (iii) the Plaintiffs will not be required to pay the Services Fee under clause 5.1(b).
- (c) Each Plaintiff shall be entitled, with the prior written consent of the Representative and of LPF, in each case not to be unreasonably withheld, to withdraw from the Proceedings and terminate its rights and obligations under this Deed and any corresponding Participation Notice Agreement executed by such Plaintiff by giving 60 Working Days' written notice to LPF and the Representative. If a Plaintiff exercises its right under this sub-clause (c), then with respect to that Plaintiff (but without otherwise affecting the rights and obligations of any other party under this Deed):
- (i) LPF remains liable for the accrued obligations for Project Costs for the period up to and including the date of termination (including, without limitation, any then accrued obligation to provide Security for Costs);
 - (ii) LPF remains entitled to payment of the PC Sum (being equivalent to Project Costs incurred up to and including the date of termination) pursuant to clause 5.1(a) from any Resolution Sum; and
 - (iii) to the extent that Plaintiff receives any Resolution Sum that Plaintiff is required to pay the Services Fee in accordance with clause 5.1(b).

13. SEVERANCE, RESTRICTION AND LIMITATION

13.1 **Determinations:** If any part of this Deed is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable (including on grounds of public policy) or, if and to the extent there is, after the date of this Deed, any change in law (including any changes in statutory or common law, or rules of any applicable Court) affecting the performance or enforceability of this Deed (or any aspect of it), then:

- (a) such determination shall not impair the enforceability of the remaining parts of this Deed which shall remain in full force and effect; and
- (b) the Plaintiffs and the Representative will at LPF's election:
 - (i) immediately do all things necessary or requested by LPF, including (without limitation) executing any further or other deed or instrument, to ensure that LPF receives (to the extent permitted by law) any remuneration, entitlement or other benefit to which this Deed refers or is contemplated by this Deed (including, without limitation, the payment of the PC Sum and the Services Fee), provided that such actions are not illegal, reflect the essential nature of the commercial bargain under this Deed, and do not impose upon the Plaintiffs any material obligations not provided for (or contemplated by) this Deed; or
 - (ii) on notice from LPF sell to LPF for the sum of \$1.00 that portion of the Resolution Sum equal to the entitlements of LPF under this Deed, with such

sale to have effect immediately prior to receipt of that Resolution Sum (or part thereof), provided that LPF has and continues to comply with its material obligations under this Deed.

13.2 **No contrary orders:** The Plaintiffs and the Representative, will not, and will procure that no associated party of the Plaintiffs will, challenge the legality, validity or enforceability or otherwise of this Deed or seek any order from any court during the course of the Proceedings or term of this Deed.

13.3 **Limitation:** LPF's liability in respect of any matter related to this Deed (whether in contract, tort, equity or otherwise) shall be limited to an amount equal at any time to the accrued Project Costs that it has agreed to pay at that time.

14. **DISPUTES**

14.1 **General Disputes:** If a General Dispute arises, the parties to this Deed or any Relevant Document and to the dispute expressly agree to settle the dispute in accordance with the following procedure:

- (a) A party claiming that a dispute has arisen, must give written notice to the other Party to the dispute specifying the nature of the dispute.
- (b) On receipt of the notice specified in clause 14.1(a), the parties to the dispute must within 5 Working Days of receipt of such notice seek to resolve the dispute through good faith negotiations.
- (c) If the dispute is not resolved within such 5 Working Days, or within such further period as the parties agree, then the dispute shall be referred for determination by the Expert.
- (d) The Expert's determination shall be conducted in accordance with procedures determined and notified by the Expert, provided that:
 - (i) each party shall be entitled to submit questions to the Expert for determination in relation to the dispute as it sees fit;
 - (ii) LPF, the Plaintiffs and the Lawyers will co-operatively and expeditiously brief the Expert and shall comply with any timetable directions from the Expert.
- (e) The costs of the Expert shall be borne by LPF, provided that if the Expert determines that the dispute raised by the Plaintiffs is vexatious or that Plaintiffs have acted unreasonably in relation to the matter in dispute, then:
 - (i) the costs of the Expert shall be borne by the parties in such shares as the Expert shall determine;
 - (ii) in the case of LPF's share of the Expert's costs, that share shall constitute Project Costs; and
 - (iii) if LPF elects to pay the Expert's costs in full, the amount paid on behalf of the Plaintiffs shall (irrespective of payment) be included in the Project Costs (including for the purposes of calculating the Services Fee).
- (f) The decision of the Expert, unless otherwise agreed in writing by LPF and the Plaintiffs (or the Representative on behalf of the Plaintiffs), will be final and binding on the Plaintiffs and LPF, and the parties shall immediately do all acts and things necessary or reasonably appropriate to implement that decision. No party may challenge any such decision.

- (g) If the Expert named in Schedule One is unable or unwilling to act, then the Expert shall be such other suitably qualified independent person (who shall be a Queens Counsel and/or senior financial advisor (as applicable)) nominated by a party in writing and agreed between the Plaintiffs (acting through the Representative) and LPF. If the parties fail to agree on the appointment of the replacement Expert within two Working Days of the nomination, the replacement Expert shall be a suitably qualified independent person appointed by LPF.
- (h) Pending the resolution of a General Dispute in accordance with this clause 14.1, the parties shall continue to perform all their respective obligations under this Deed, unless otherwise agreed between the parties in writing.

15. SETTLEMENT

- 15.1 **Settlement endeavours:** The Plaintiffs and the Representative will use their reasonable endeavours to maximise the Resolution Sum (net of costs) in an appropriately expeditious manner (having due regard to all risks, potential outcomes and all other relevant matters) including, without limitation, engaging in settlement discussions. LPF may request the Representative (on behalf of the Plaintiffs) to make or accept an offer of settlement for the Claim but the Representative is not obliged to do so.
- 15.2 **Restrictions:** In recognition of the fact that LPF has an interest in the Resolution Sum and the efficient and effective prosecution of the Proceedings, neither the Plaintiffs nor the Representative may not make or accept an offer of settlement for the Claim or discontinue the Proceedings (or any aspect thereof), without prior notification to LPF and without LPF's prior written consent.
- 15.3 **Notice of negotiation:** The Plaintiffs and the Representative will, and irrevocably and unconditionally authorise LPF to require the Lawyers to, give reasonable prior written notice to LPF of any meetings or communications with any of the other parties to the Proceedings or any other party, including any insurer of the other parties to the Proceedings, for the purpose of discussion or negotiation of any settlement of the Claim, or discontinuance of the Proceedings (or any aspect thereof), and the Plaintiffs and the Representative consent to a representative of LPF being present at any such meetings (including formal mediation) or approving such communications.
- 15.4 **Disputes:** Any decision as to the making or acceptance of an offer of settlement on the Claim, or discontinuance of the Proceedings (or any aspect thereof), must be agreed by LPF and the Representative (on behalf of the Plaintiffs). If the Representative and LPF do not agree within 2 Working Days of receipt of the offer on the making or acceptance of such an offer, on any other matter related to settlement or on any matter related to any discontinuance, or if LPF requires any matter relating to settlement or a discontinuance to be referred to dispute resolution, then the issue will be determined in accordance with clauses 15.5 and 15.7.
- 15.5 **Disputes procedure:** In respect of any matter referred for a determination under this clause the parties acknowledge and agree that time is of the essence and:
 - (a) the Expert shall determine the dispute in accordance with this clause and such rules as it sees fit to impose on the parties in relation to the dispute (including, without limitation, in respect of timetable that is consistent with the timeframes set out in this clause 15.5);
 - (b) each party shall be entitled to submit questions to the Expert for determination in relation to the dispute as it sees fit, including (without limitation) as to minimum settlement amounts, settlement strategies and timeframes, who should conduct settlement negotiations, and amounts that must/should be accepted, and whether or not a discontinuance should occur (and on what basis) . All questions must be

submitted within 2 Working Days of the appointment of the Expert. No questions or issues will be considered by the Expert that are received after the 2 Working Day period for submission of questions;

- (c) LPF, the Representative (on behalf of the Plaintiffs) and the Lawyers will cooperatively and expeditiously brief the Expert in a timely manner and in any event not later than 3 Working Days after the submission of questions pursuant to clause (b) above, and shall comply with any timetable and process directions from the Expert. Either party may engage its own counsel or advisers who may attend any such briefing of the Expert;
- (d) the Expert may instruct a Queens Counsel and/or such other relevant industry expert to be an adviser to the Expert, provided the such adviser is first approved by the Representative (on behalf of the Plaintiffs) and LPF in writing (each acting reasonably). In the event the parties cannot agree, the final decision in respect of the adviser shall be LPF's;
- (e) the Expert shall act as an independent and impartial party;
- (f) unless an alternative timeline is agreed between the parties in writing, the Expert shall give its decision within 2 Working Days of the completion of briefing in (c) above;
- (g) the costs of the Expert shall be borne by LPF, provided that if the Expert determines that the dispute raised by the Plaintiffs is vexatious or that Plaintiffs have acted unreasonably in relation to the matter in dispute, then:
 - (i) the costs of the Expert shall be borne by the parties in such shares as the Expert shall determine;
 - (ii) in the case of LPF's share of the Expert's costs, that share shall constitute Project Costs; and
 - (iii) if LPF elects to pay the Expert's costs in full, the amount paid on behalf of the Plaintiffs shall (irrespective of payment) be included in the Project Costs (including for the purposes of calculating the Services Fee); and
- (h) the decision of the Expert, unless otherwise agreed in writing by LPF and the Representative (on behalf of the Plaintiffs), will be final and binding on the Plaintiffs, the Representative and LPF, and the parties shall immediately do all acts and things necessary or reasonably appropriate to implement that decision. No party may challenge any such decision.

15.6 **Considerations:** In making its determination, the Expert shall consider the matters on the basis of an economically rational self-funded plaintiff that does not have third party funding in the nature of the funding provided by LPF pursuant to this Deed, and may proceed as they consider fit in their discretion before forming and delivering their opinion, but any such determination shall include the following considerations:

- (a) the strengths and weaknesses of the Claims;
- (b) the degree of difficulty and the costs to be incurred in recovering an amount greater than the amount of the offer received;
- (c) the time required to obtain a final resolution of the Claims;
- (d) the quantum of the Claims and any difficulties which might exist in proving that quantum;

- (e) the recoverability of a judgment sum from the Defendant(s), including any third party Defendant(s);
- (f) the extent to which further Project Costs incurred in the proceeding are likely to be recoverable from the Defendant(s), including any third party Defendant(s);
- (g) the amount of budgeted Project Costs yet to be funded and available to pursue the Claim; and
- (h) any other matter that the Expert considers relevant.

15.7 **No liability:** The Expert shall have no liability to any party arising out of the determination.

15.8 **Replacement Expert:** If the Expert named in Schedule One is unable or unwilling to act, then the Expert shall be such other suitably qualified independent person (who shall be a Queen's Counsel or senior financial advisor (as applicable)) nominated by any party in writing and agreed between the Representative (on behalf of the Plaintiffs) and LPF. If the parties fail to agree on the appointment of the replacement Expert within two Working Days of the nomination, the replacement Expert shall be an independent Queens Counsel or other suitably qualified independent expert appointed by LPF.

16. NOTICES

16.1 **Notices:** Every notice to be given under, or in connection with, this Deed shall be given in writing by:

- (a) personal delivery; or
- (b) electronic mail, and shall be deemed to be given at the time recorded by the computer system from which the electronic mail was sent as the time that the electronic mail was transmitted provided that no error message is received by the sender within one hour to the effect that the email address is wrong or such message was unable to be sent to the intended recipient;

to the addresses specified below, or if a written notice of change of address is given, then to the new address.

16.2 **LPF:** The address for service of LPF is:

LPF Litigation Funding No.33 Limited
 C/- LPF Group Limited
 Level 6
 70 Shortland Street
 PO Box 1177
 Auckland 1140
 Email: jj@lpfgroup.co.nz

16.3 **Plaintiff:** The address for service for all Plaintiffs is:

The Representative for the ASB Claimants
 C/- Russell Legal
 Email: scott.russell@russelllegal.co.nz
 provided that as described in clause 2.2(h) any notice to the Representative constitutes a notice or advice to each and all Plaintiffs.

17. GENERAL

17.1 **Third party beneficiary rights:** Except as expressly provided for in this Deed, nothing in this Deed creates, or is intended to create, third party beneficiary rights in favour of any person who is not a party to this Deed.

17.2 **Obligations of confidentiality:** Each party shall at all times keep confidential, treat as privileged, and not directly or indirectly make, or allow any disclosure or use to be made of, the subject matter, or any provision of, this Deed or any information relating to any provision, or the subject matter, of this Deed, or any information directly or indirectly obtained from the other party under or in connection with this Deed, except to the extent:

- (a) required by law, including as to the existence of this Deed and the identity of LPF and its amenability to the jurisdiction of the New Zealand Courts;
- (b) necessary to obtain the benefit of, or to carry out any obligations under, this Deed;
- (c) that LPF, the Plaintiffs and the Representative otherwise agree in writing, which agreement shall not be unreasonably withheld or delayed;
- (d) that disclosure is expressly permitted under this Deed;
- (e) that the information is or becomes publicly available without breach by either party of its confidentiality obligations under this clause or at law;
- (f) in the case of the Plaintiffs, the fact that LPF is funding the Claims (but not the terms thereof), provided that the form of disclosure has the prior written approval of LPF; or
- (g) in the case of LPF, to its shareholder, its shareholder's investors and its advisors.

17.3 **Relationship between the parties:** Nothing in this Deed shall create, constitute or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the parties. No party shall have any authority to act for, or to incur any obligation on behalf of the other party, except as expressly provided in this Deed.

17.4 **Variation and waiver:**

- (a) This Deed may only be varied in writing signed by the Representative (on behalf of the Plaintiffs and in its own capacity) and LPF.
- (b) No waiver of any breach, or failure to enforce any provision, of this Deed at any time by any party shall in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance with the provisions of this Deed.

17.5 **Assignment:** None of the Plaintiffs shall, directly or indirectly, assign, transfer or otherwise dispose of any of their rights or interests in, or obligations or liabilities under, this Deed, except with the prior written consent of LPF. The Plaintiffs acknowledge and agree that as a condition of its consent, LPF may require (among other things) the assignor Plaintiff and the proposed assignee to have entered into, and delivered to LPF, a deed of accession in a form approved by LPF (acting reasonably) in writing. A change of control of a Plaintiff of any nature (whether through shareholding interests or directors, trustees or otherwise), shall constitute an assignment that is subject to the requirements of this clause.

17.6 Approvals

- (a) Where the consent, approval or agreement of LPF is required pursuant to this Deed, unless expressly stated otherwise, such consent, approval or agreement may be given or withheld at the sole and absolute discretion of LPF.
- (b) Where the consent, approval or agreement of the Plaintiffs or the Representative is required pursuant to this Deed, unless expressly stated otherwise, such consent, approval or agreement shall not be unreasonably withheld or delayed.

17.7 Further assurances:

- (a) Each party shall from time to time on request by the other party execute and deliver all documents and do all other acts and things, which are necessary or reasonably required to give full force and effect to the provisions of, and arrangements contemplated by, this Deed.
- (b) Without limitation, each party must, on receipt of a written request by LPF, execute all documents and do all things that LPF may require for perfecting its entitlement to receive the payments referred to in clause 5.1 or title under clause 13.1(b)(ii) and/or granting to LPF the rights and powers pursuant to this Deed. All costs of the parties acting under this clause shall be paid by LPF and shall be Project Costs.

17.8 No deduction or set-off: All payments required to be made to LPF pursuant to this Deed must be made in cleared and immediately available funds and without deduction, set-off or counterclaim.

17.9 Several liability: The Plaintiffs are severally (and not jointly) liable for the performance of their applicable obligations under this Deed and under any Security.

17.10 Limitation of Liability for Trustees: The liability of any independent trustee of any trust which is or becomes a party to this Deed shall be limited to the assets of the trust from time to time. A trustee will be an independent trustee for the purposes of this clause if he, she or it is not a beneficiary or the settlor of the relevant trust.

17.11 Good faith: LPF, the Plaintiffs and the Representative shall act in good faith towards each other in respect of all dealings and matters under, or in connection with, this Deed.

17.12 Costs: Except as expressly provided elsewhere in this Deed, the parties shall each bear their own costs and expenses incurred in connection with the preparation, negotiation and implementation of this Deed and any documentation pertaining thereto (it being understood and agreed that LPF's costs are Project Costs).

17.13 Counterparts: This Deed may be signed in any number of counterparts, including facsimile and electronic copies, all of which will together constitute one and the same instrument, and any party may execute this Deed by signing any such counterpart.

17.14 Entire agreement: As of the date of this Deed, this Deed and the Securities constitute the entire agreement and understanding (express and implied) between LPF, the Plaintiffs and the Representative relating to the subject matter of this Deed and supersedes and cancels all previous agreements and understandings between LPF, the Plaintiffs and the Representative, whether they be written or oral.

17.15 **Governing law:** This Deed shall be governed by, and construed in accordance with, the laws of New Zealand. Each of the parties unconditionally and irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters arising out of this Deed and waives any right it may have to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.

17.16 **Continuing obligations:** The obligations in this clause 17 and all accrued payment obligations under this Deed (including under clause 12) are continuing obligations and survive any termination of this Deed and any withdrawal from the Proceedings by any Plaintiff in accordance with this Deed.

SIGNED AS A DEED

SIGNED by CASL MANAGEMENT PTY LIMITED in the presence of:

Director – Stuart Price

Signature of witness

Name of witness

Occupation

City/town of residence

SIGNED by LPF LITIGATION FUNDING No.33 LIMITED in the presence of:

Director – Philip Newland

Signature of witness

Name of witness

Occupation

City/town of residence

SIGNED on behalf of each Plaintiff who has delivered a completed Participation Notice Agreement to LPF No.33 Limited by the Representative in the presence of:

Signature

Signature of witness

Name

Name of witness

Occupation

City/town of residence

SIGNED by the Representative in their capacity as the Representative in the presence of:

Signature

Signature of witness

Name

Name of witness

Occupation

City/town of residence

SCHEDULE ONE

Lawyers	<p>Davey Salmon, Mills Lane Chambers</p> <p>Ali van Ammers, Mills Lane Chambers</p> <p>Russell Legal</p>								
Services Fee	<p>The Services Fee shall be a sum equivalent to:</p> <table border="1" data-bbox="660 703 1385 1326"> <tr> <td data-bbox="660 703 1027 846">If Project Costs are less than \$1m and the Resolution Sum is less than \$10m</td> <td data-bbox="1027 703 1385 846">21% of the Resolution Sum</td> </tr> <tr> <td data-bbox="660 846 1027 990">If Project Costs are less than \$1m and the Resolution Sum is equal to or greater than \$10m</td> <td data-bbox="1027 846 1385 990">16% of the Resolution Sum</td> </tr> <tr> <td data-bbox="660 990 1027 1142">If Project Costs are equal to or greater than \$1m and the Resolution Sum is less than \$10m</td> <td data-bbox="1027 990 1385 1142">23.5% of the Resolution Sum</td> </tr> <tr> <td data-bbox="660 1142 1027 1326">If Project Costs are equal to or greater than \$1m and the Resolution Sum is equal to or greater than \$10m</td> <td data-bbox="1027 1142 1385 1326">20% of the Resolution Sum</td> </tr> </table> <p>provided, however, that:</p> <ul style="list-style-type: none"> (a) the Services Fee shall increase by an amount equivalent to 2.5% of the Resolution Sum in the event that LPF provides the Services in respect of any Appeal; (b) in no event shall the Service Fee payable to LPF exceed 50% of the amount equal to the Resolution Sum less the Project Costs; and (c) in no event shall the Services Fee payable to LPF exceed the aggregate fee that would be payable to any other litigation funder that actually funds proceedings relating to a claim against the Defendant similar to the Claims for the same period, had that litigation funder provided services to the Plaintiffs that are equivalent to the Services 	If Project Costs are less than \$1m and the Resolution Sum is less than \$10m	21% of the Resolution Sum	If Project Costs are less than \$1m and the Resolution Sum is equal to or greater than \$10m	16% of the Resolution Sum	If Project Costs are equal to or greater than \$1m and the Resolution Sum is less than \$10m	23.5% of the Resolution Sum	If Project Costs are equal to or greater than \$1m and the Resolution Sum is equal to or greater than \$10m	20% of the Resolution Sum
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If Project Costs are equal to or greater than \$1m and the Resolution Sum is equal to or greater than \$10m	20% of the Resolution Sum								

	and otherwise on the same terms as set out in this Deed.
Expert Clause 14 (General Dispute)	Bruce Gray QC
Expert Clause 15 (Settlement Dispute)	Bruce Gray QC

SCHEDULE TWO
SECURITY TERMS

1. DETAILS OF DEBTOR (“DEBTOR”)

The Plaintiff named in this Deed.

2. DETAILS OF SECURITYHOLDER (“SECURITYHOLDER”)

ORGANISATION (Company, Trust, Incorporated Society etc)	
Organisation name:	LPF LITIGATION FUNDING No.33 LIMITED
Organisation type:	Company registered in New Zealand
Registration number:	8191864
Email address:	"jj@lpfgroup.co.nz
Contact telephone:	09 367 7719
Contact address:	Level 6, 70 Shortland Street, Auckland

PERSON FOR WHOM ACTING	
First name:	Jonathan
Middle names:	Neil
Last name:	Woodhams
Date of birth:	27 January 1972
Email address:	jj@lpfgroup.co.nz
Contact telephone:	09 367 7719
Contact address:	Level 6, 70 Shortland Street, Auckland

3. COLLATERAL

The following specified personal property (“**Collateral**”):

- (a) the Resolution Sum under the Deed and any other amounts payable by the Defendants to or for the Debtor from, and all direct and indirect interests of any Debtor in, the Proceedings (as each such term is defined in the Deed) and/or any other related proceedings that are approved for funding by LPF for the purposes of the Deed including any appeal or appeals from a judgement or order in the Proceedings;
- (b) all documentation of any nature whatsoever owned by, in the possession of, or controlled by, the Debtor (whether on paper or in an electronic information storage and retrieval system or in any other storage medium) relating to, referring to, or connected with, the Proceedings (including, without limitation, legal advice, confidential documents and documents which may be subject to privilege); and
- (c) all other present and future assets of the Debtor that arise as a consequence of, and that relate to, the Proceedings.

SECURITY AGREEMENT PROVISIONS

1. INTERPRETATION

1.1 **Definitions:** In this Schedule capitalised terms used that are not defined have the meanings given to them in this Deed and otherwise, unless the context otherwise requires:

“Business Day” means a day on which registered banks are open for business in New Zealand.

“Collateral” means the Personal Property described as Collateral at the beginning of this deed, and a reference to “Collateral” includes any part of it.

“Debtor” includes the successors of the Debtor.

“Event of Default” means any of the events specified in clause 7.1.

“Investigator” means any person (whether an officer of the Debtor or not) appointed to act as an investigator of the Debtor’s affairs.

“Manager” means every director, officer or authorised agent of the Securityholder, and every employee of the Securityholder whose title includes the word “manager”.

“Moneys Secured” means all moneys (of whatever nature) that the Debtor (whether alone or with any other person) currently is, or at any time becomes, actually or contingently liable to pay to the Securityholder (whether alone or with any other person) pursuant to this deed or any other Relevant Document.

“Personal Property” has the meaning given to that term in the PPSA and a reference to “Personal Property” includes any part of it.

“Potential Event of Default” means the occurrence of any event which is, or which with the passing of time or the giving of notice or both may become, an Event of Default.

“PPSA” means the Personal Property Securities Act 1999.

“Receiver” means a receiver, or receiver and manager, appointed by the Securityholder pursuant to this deed.

“Relevant Person” means a person (other than the Debtor or the Securityholder) who is a party to any Relevant Document, and any assignee or successor of such a person, and where a company includes a subsidiary and a related company.

“Rights” means all:

- (a) distributions;
- (b) options or rights to take up any securities of any nature;
- (c) all other rights, money or securities (as defined in the Securities Act 1978) of any nature, attributable to, or arising from, any investment securities,

in each case as relates to the Collateral, and includes all proceeds and documents of title relating to any Rights.

“Securityholder” includes the successors and assigns of the Securityholder.

“Specified Interest Rate” means the aggregate of 2% per annum and the per annum interest rate which the Securityholder determines as being its cost from time to time of funding the amount in respect of which the Specified Interest Rate is to be applied under this deed.

“Transfer” means, in relation to any Investment Securities or Rights, a change or transfer of ownership form duly signed by the Debtor with the name of the transferee, date and consideration left blank, but otherwise, if appropriate, in proper form for registration by the relevant issuer of the investment securities or Rights.

1.2 **References:** In this Schedule, unless the context otherwise requires:

“assets” of any person includes all present and future assets, undertakings, revenues (including any right to receive revenues), rights, benefits, choses in action, and if applicable, uncalled capital;

An **“authorisation”** includes:

- (a) any consent, authorisation, registration, filing, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a governmental agency; or
- (b) in relation to anything that will be proscribed or restricted in whole or part by law if a governmental agency intervenes or acts in any way within a specified period after lodgment, filing, registration or notification, the expiry of such period without such intervention or action;

“borrowed money” includes any indebtedness for or in respect of money borrowed or raised (whether or not for cash consideration) by whatever means (including the drawing, acceptance, endorsement or discounting of bills of exchange), or for the deferred purchase price of assets or services, and any liability under any financial lease or under any interest rate or currency swap, futures contract, option contract, forward exchange contract, or forward rate agreement;

“capital” in respect of a company includes any share premium;

“clause” is a reference to a clause of this Schedule;

“Default” includes breach, failure to comply, or failure to do, however caused, whether voluntary or involuntary and whether within or beyond any person’s control;

“Disposal” includes any sale, assignment, exchange, transfer, bailment, loan, lease, licence, waiver, compromise, release, or surrender of any right or interest, and includes parting with possession, or the granting of any option, right or interest whatever and **“Dispose”** means to make a disposal;

The **“dissolution”** of any person includes the bankruptcy or liquidation of that person, and any equivalent procedure under the law of any jurisdiction in which that person is incorporated, domiciled or resident or carries on business or has assets;

“governmental agency” includes any government or any governmental, semi-governmental or judicial entity or authority, or legislative body, or any person or body charged with the administration of any Law;

“indebtedness” includes any obligation (whether present or future, actual or contingent, secured or unsecured, as principal or surety or otherwise) for the payment or repayment of money;

“laws” means all applicable statutes, regulations, bylaws, orders in council, judgments and decrees. It includes common or customary law, of any relevant jurisdiction and any other measure that has the force of law. It also includes any environmental and building law;

“material adverse effect” means something that has a material adverse effect on a person’s financial condition or a person’s ability to conform or comply with its obligations under this deed or any of the Relevant Documents;

“person” includes an individual, firm, company, corporation, unincorporated body of persons, organisation or trust, and any state, government or governmental agency, in each case whether or not having separate legal personality;

“related company” means a company within the meaning of section 2(3) of the Companies Act 1993;

“security” includes a guarantee or indemnity, a security interest, any interest in any land of a security nature, and a mortgage, charge, lien or pledge;

“tax” includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature and whatever called, imposed or levied by any governmental agency, together with any interest, penalty, charge, fee or other amount imposed or made on or in respect of any of the foregoing and **“taxation”** shall be construed accordingly;

“upon demand” means upon demand in writing signed by the Securityholder, any Manager, or any solicitor of the Securityholder;

“written” and **“in writing”** include all means of reproducing words in a tangible and permanently visible form.

1.3 **General:** Unless otherwise stated or the context requires otherwise, this Schedule shall be construed as follows:

- (a) the headings in this deed appear for convenience only and do not affect the interpretation of this deed;
- (b) singular words include the plural and vice versa. Words referring to any gender include the other genders. Words referring to individuals include companies and other corporations and vice versa;
- (c) references to a statute, regulation, order, bylaw or other legislation are references to that statute, regulation, order, bylaw or other legislation as amended, consolidated, re-enacted, substituted or extended from time to time. References to a statute include a reference to all regulations as may be passed under that statute;
- (d) references to a document, including any Relevant Document, shall include references to that document as amended, novated, or substituted from time to time;
- (e) the expressions **“accession”**, **“after acquired property”**, **“attach”**, **“crops”**, **“documents of title”**, **“equipment”**, **“future advance”**, **“goods”**, **“intangible”**, **“inventory”**, **“investment securities”**, **“financing statement”**, **“livestock”**, **“proceeds”**, **“purchase money security interest”**, **“risk”**, **“security interest”**, **“transfer”** and **“value”** have the respective meanings given to them under, or in the context of, the PPSA.

2. MONEYS SECURED

- 2.1 **Payment:** The Debtor shall pay the Moneys Secured to the Securityholder in the manner and at the times agreed upon between the Debtor and the Securityholder as provided for in the Deed. Each part of the Moneys Secured shall be paid in New Zealand Dollars and shall be paid free and clear of any restriction or condition and (except to the extent required by law) without any deduction or withholding on account of any tax and any other amount, whether by way of set-off, counterclaim or otherwise.
- 2.2 **Default Interest:** If the Debtor defaults in payment of any part of the Moneys Secured, the Debtor shall pay default interest to the Securityholder on the unpaid amount from its due date until its date of payment in accordance with the terms of the Deed.
- 2.3 **Due Date:** The Moneys Secured shall be paid to the Securityholder no later than 3.00 pm on the due date for payment or, if that date is not a Business Day, on the Business Day immediately after it. Any payment received later than 3.00 pm on any day shall be deemed to have been made on the next following Business Day.
- 2.4 **Application of Moneys:** Notwithstanding any rule of law, or any appropriation or purported appropriation made by the Debtor or any other person, or any other matter or circumstance, the Securityholder may appropriate all moneys paid to the Securityholder in reduction of the Moneys Secured as between principal, interest and other amounts due to the Securityholder as the Securityholder determines.

3. SECURITY

- 3.1 **Grant of Security Interest:** The Debtor as security for the payment of the Moneys Secured, and the performance by the Debtor of all the Debtor's other obligations to the Securityholder at any time under the Relevant Documents, grants to the Securityholder a security interest in the Collateral.
- 3.2 **Continuing Security:** This deed shall operate as a continuing security between the Securityholder and the Debtor irrespective of any sum or sums that may be paid to the credit of any account of the Debtor with the Securityholder, and notwithstanding:
- (a) the appointment, retirement or removal, at any time, of a Receiver;
 - (b) the exercise by the Securityholder or a Receiver of any power conferred by this Deed, by any other Relevant Document or by law; or
 - (c) any settlement of account or any other matter or thing whatever,
- and shall remain in full force and effect and extend to cover all of the Moneys Secured until a final release has been executed by the Securityholder.
- 3.3 **No Other Financing Statements:** The Debtor shall:
- (a) not consent (where consent is required) to any person filing a financing statement against the Debtor which may or does include the Collateral, or against any of the Collateral without the prior written consent of the Securityholder;
 - (b) notify the Securityholder immediately if it becomes aware of any person taking any steps to file a financing statement against the Debtor or the Collateral.
- 3.4 **Priority:** The security interest granted in Personal Property under this Deed has the same priority in relation to all Moneys Secured including future advances and shall constitute a first ranking security interest.

4. COVENANTS

4.1 **Positive Covenants:** The Debtor shall:

- (a) comply with all terms of the Relevant Documents, and with the terms of all agreements affecting the Collateral;
- (b) on becoming aware of an Event of Default or Potential Event of Default, notify the Securityholder promptly;
- (c) promptly comply with and observe all laws and all requirements and orders of any authority (statutory or otherwise) non-compliance with which might impose some security or liability upon any part of the Collateral or prejudicially affect the security created by this Deed, and promptly apply for and obtain renewals of all leases, licences and authorities which may be necessary or expedient for the carrying on of its business;
- (d) promptly pay and discharge when due all taxes, assessments and outgoings levied, charged, assessed upon or payable in respect of any part of the Collateral, and promptly pay all other debts and liabilities of the Debtor when due;
- (e) promptly give notice to the Securityholder of the service of any notice adversely affecting any part of the Collateral, or of the commencement of any proceedings adversely affecting any part of the Collateral;
- (f) pay all proceeds to the Securityholder in reduction of the Moneys Secured, and must pay or deal with the proceeds in accordance with the directions of the Securityholder;
- (g) if required by the Securityholder, deposit with the Securityholder:
 - (i) all documents of title relating to any part of the Collateral, including Rights; and
 - (ii) any document or thing given to secure the payment of money to the Debtor.

4.2 **Negative Covenants:** The Debtor shall not:

- (a) sell, lease or dispose of, or permit the sale, lease or disposal of, any Collateral, or permit to subsist any other security in relation to any Collateral (other than, in relation to Personal Property, a purchase money security interest);
- (b) change the Debtor's name without first notifying the Securityholder of the new name not less than 7 days before the change takes effect.

5. REPRESENTATIONS AND WARRANTIES

5.1 **Representations and Warranties:** The Debtor represents and warrants to the Securityholder that:

- (a) it is a Debtor duly and validly existing under the laws of New Zealand, capable of suing and being sued, and has the power and authority to own its assets and to conduct its business as at present;
- (b) it has the power to enter into, exercise its rights and perform and comply with its obligations under this Deed and the Relevant Documents;

- (c) it has taken all necessary action to authorise the entry into, execution and delivery of this Deed and the Relevant Documents and the performance of all obligations expressed in this Deed and the Relevant Documents to be binding on it;
- (d) this Deed and the Relevant Documents constitute its legal, valid and binding obligations, enforceable in accordance with their terms;
- (e) neither the execution and delivery of this Deed and the Relevant Documents nor the performance or observance by it of its obligations under this Deed and the Relevant Documents violates, conflicts with, or results in a breach of, any terms, conditions or provisions of, or constitutes a default under, any law or court order by which it is bound, or any agreement to which it is a party;
- (f) all consents required in terms of any applicable law, document or agreement to the granting of this Deed and the Relevant Documents have been obtained;
- (g) except for the Proceedings it is not party to any litigation or arbitration, nor subject to any administrative proceeding or investigation, the outcome of which might have a material adverse effect on its business, nor is any such litigation, arbitration or administrative proceeding or investigation threatened;
- (h) all financial information given, or to be given, to the Securityholder in respect of it does, and will, fairly and accurately represent their financial position at the date as of which such financial information is given;
- (i) all information provided by the Debtor to the Securityholder with respect to the Proceedings is true, complete and accurate in all material respects, and there is no material matter relating to the Proceedings that has not been disclosed to the Securityholder;
- (j) it is the lawful and sole owner of the Collateral;
- (k) there are no other security interests over or in relation to the Collateral; and
- (l) no Event of Default or Potential Event of Default has occurred.

5.2 **Repetition:** Each of the representations and warranties in clause 5.1 will be deemed to be repeated as of each day prior to the termination or expiry of this Deed as though made on, and as of, each such date.

6. **PERFORM DEBTOR'S OBLIGATIONS**

6.1 **Performance Obligations:** If:

- (a) the Debtor fails to perform any of its obligations contained or implied in this Deed or any Relevant Document; or
- (b) the Securityholder considers it necessary or desirable to perform any obligation, pay any money, incur any expense or take any action (whether in the course of taking possession of or selling or preserving or protecting the Collateral, or in the discharge of the Debtor's obligations under this Deed, or Relevant Document or otherwise) in order to protect its interests under this Deed,

then the Securityholder may do so at its discretion. The money paid or expense incurred by the Securityholder, together with any other liability or expense incurred by the Securityholder in relation to the Collateral, being repayable by the Debtor to the Securityholder upon demand and bearing interest from the time when the money was paid or the expense incurred at the Specified Interest Rate.

7. EVENTS OF DEFAULT

7.1 **Enforcement:** The Moneys Secured will become immediately due and payable and the Securityholder may exercise its powers of enforcement under this Deed on the occurrence of any of the following events:

- (a) the Debtor fails to pay all or part of the Moneys Secured on its due date for payment or upon demand, if payable upon demand; or
- (b) the Debtor commits any breach of, or defaults in the due performance or observance of, any of the Debtor's obligations contained or implied in this deed or in any Relevant Document; or
- (c) any other indebtedness of the Debtor or of any Relevant Person is not paid when due or becomes (or becomes capable of) being rendered due and payable prior to its stated maturity by reason of a breach or event of default (however described); or
- (d) a distress, execution, attachment or other legal process is claimed, levied or issued against any part of the Collateral, or a judgment of any court against the Debtor remains unsatisfied for more than five (5) Business Days; or
- (e) the Debtor requests the Securityholder to appoint a Receiver over any of the Collateral or a Receiver is appointed over, or an encumbrancer takes possession of or exercises its powers of enforcement in respect of, any of the Collateral, or if a liquidator, provisional liquidator, administrator, trustee, inspector appointed under any companies or securities legislation or similar officer, is appointed in respect of the Collateral or any part of any other assets of the Debtor or of any Relevant Person or application is made for the appointment of any of the officials referred to in this subclause; or
- (f) the Debtor or any Relevant Person is declared or becomes bankrupt or insolvent, is unable to, or is deemed or presumed unable to pay its debts when due; or calls a meeting of, or enters into dealings with any of, its creditors with a view to avoiding, or in expectation of, insolvency; or makes a general assignment or an arrangement or composition with or for the benefit of any of its creditors; or stops or suspends or threatens to stop or suspend payments to its creditors or proposes a reorganisation, moratorium or other administration involving any of them.

8. ENFORCEMENT

8.1 **Powers:** At any time after the occurrence of, and during the continuance of, an Event of Default the Securityholder may (without it being necessary to appoint a Receiver under this Deed or give any prior notice to the Debtor, and without prejudice to any other rights, powers or remedies it may have under this Deed or by law):

- (a) declare the whole of the Moneys Secured to be due and payable, whereupon they shall immediately become due and payable;
- (b) enter upon and take and keep possession of all or part of the Collateral and:
 - (i) carry on any business with the whole or part of the Collateral, for which purpose the Securityholder may, on such terms and in such manner as it thinks fit, employ any persons or acquire any further property or rights (which upon acquisition shall be deemed to become part of the Collateral), or do anything concerning the Collateral which it could do if it were the absolute owner of the Collateral, without being responsible for any loss or damage that may arise or occur as a consequence of such actions;

- (ii) pay and discharge the expenses incurred in the exercise of any of such powers, or otherwise in respect of the provisions of this Deed, out of the revenue from or proceeds of the Collateral;
- (iii) sell, call in, collect, and convert into money the whole or any part of the Collateral in such manner and for such consideration as the Securityholder thinks fit. Upon any such sale the Securityholder may sell any part of the Collateral by public auction or tender, or private contract, on such terms as the Securityholder thinks fit, for immediate or deferred consideration, and may buy in or rescind or vary any contract of sale and may re-sell without being responsible for any loss occasioned;
- (c) collect any unpaid capital, and call up any uncalled capital, of the Debtor, where a company; and
- (d) compromise and effect compositions.

8.2 **Acts Valid:** All sales and things authorised by clause 8.1 will be as valid and effective as if done by the Debtor itself. Further, the Securityholder will be accountable for only so much of the money as is actually received by the Securityholder resulting from any sale or disposition but only to the extent of the Collateral. The Debtor will remain liable for any Moneys Secured in excess of the amount of money actually received by the Securityholder.

8.3 **Securityholder or Manager:** The power of sale and other rights, powers and remedies conferred upon the Securityholder or any Receiver by this Deed or by law may be exercised or enforced by the Securityholder, or by any Manager or authorised person on behalf of the Securityholder.

9. APPOINTMENT OF RECEIVER

9.1 **Power to Appoint Receiver:** At any time after the occurrence of an Event of Default the Securityholder may (whether or not it has exercised any other power) appoint in writing any person or persons (whether an officer or officers of the Securityholder or the Debtor or not) to be Receiver of the whole or any part of the Collateral. A Receiver shall be the agent of the Debtor, and the Debtor alone shall be responsible for the acts and defaults of the Receiver. The Securityholder may remove any Receiver and may appoint a new Receiver in place of a Receiver who has been removed, retired or died, or in addition to a Receiver already appointed.

9.2 **Joint and Several:** If the Securityholder appoints two or more persons as Receiver, then unless the appointment expressly states otherwise, those persons shall be deemed to have been appointed, and be entitled to act, jointly and severally.

9.3 **Powers:** Every Receiver so appointed will (in addition to statutory powers vested in him by law) have power, subject to any limitations contained in such appointment, to do all or any of the following things:

- (a) take immediate possession of the Collateral;
- (b) sell any part of the Collateral in such manner and on such terms as the Receiver thinks fit;
- (c) let or bail all or any part of the Collateral for such term, at such rent and on such other terms as the Receiver thinks fit, and vary and surrender leases of any part of the Collateral;

- (d) compromise, settle or submit to arbitration any disputes or other matters which may arise in connection with the business of the Debtor or the Collateral;
- (e) bring, take, prosecute, defend or compromise such proceedings as the Receiver considers necessary or expedient in relation to the Collateral and use the name of the Debtor in those proceedings;
- (f) give valid receipts for all money and execute and do all assurances, instruments, acts and all other matters and things that the Receiver thinks proper for realising all or any part of the Collateral;
- (g) execute in the name and on behalf of the Debtor all transfers, deeds and other assurances and documents necessary to vest in any purchaser, or other person the whole or any of the Collateral and enter into all documents in relation to the powers given to the Receiver as are necessary or expedient in the opinion of the Receiver;
- (h) generally do, and cause to be done, any act, matter or thing affecting the Collateral that the Receiver might do or cause to be done if the Receiver had the absolute beneficial ownership of the Collateral and carried on the business of the Debtor for the Receiver's own benefit without being answerable for any loss or damage.

9.4 **Third Party:** No person dealing with the Securityholder or any Receiver or agent of any Receiver will be concerned to enquire:

- (a) whether or not the security granted to the Securityholder has become enforceable;
- (b) whether the powers that the Securityholder or the Receiver or its agents are purporting to exercise have become exercisable;
- (c) whether any Moneys Secured remains due or unpaid;
- (d) as to the necessity for, or regularity of, any terms or conditions upon which any sale, lease, mortgage, or other transaction is made;
- (e) as to the application of any money paid to the Securityholder, any Receiver or agent of any Receiver.

The remedy of the Debtor in respect of any actionable impropriety or irregularity in connection with the powers of the Securityholder or any Receiver or agent of any Receiver will be in damages only.

9.5 **Possession:** The Securityholder may at any time give up possession of all or any of the Collateral.

9.6 **Not Liable:** Neither the Securityholder nor any Receiver will be liable to account:

- (a) as mortgagee in possession or for anything except actual receipts or be liable for any loss on realisation or for any loss or accident occurring in any business or operation carried on, or for any negligence, default or omission for which a mortgagee in possession might be liable;
- (b) for any loss that may occur in or as a result of the exercise, purported exercise or non-exercise of any of their rights, powers or remedies. Any loss will, where borne by the Securityholder or a Receiver, form part of the Moneys Secured.

9.7 **Application of Proceeds:** All moneys received by the Securityholder or a Receiver, whether in the exercise of the powers of the Securityholder or the Receiver or otherwise

in relation to Personal Property, shall be applied in accordance with the provisions of the PPSA.

1.4 **Contingent Liabilities:** If any part of the Moneys Secured is contingently owing or not yet owing at the time of an application of money under clause 8.1 or clause 9.7, the Securityholder may deposit an amount not exceeding that part in an interest-bearing deposit account on such terms and conditions as the Securityholder thinks fit with any person (including the Securityholder or any of its related companies) until that part becomes actually payable or ceases to be contingently owing. At that time the Securityholder may retain for its own account the amount that is then actually payable to it and deal with any balance in accordance with clause 8.1 or clause 9.7, as the case may be.

9.8 **Remuneration of Receiver:** The Securityholder may fix the remuneration of a Receiver at an amount, or on a basis, agreed between the Securityholder and the Receiver or, failing agreement, at an amount, or on a basis, determined by the Securityholder.

10. APPOINTMENT OF INVESTIGATING AGENT

10.1 **Appointment:** At any time while any Moneys Secured are outstanding under this Deed, the Securityholder may appoint, in writing signed by the Securityholder or the Securityholder's representative, an Investigator.

10.2 **Terms of Appointment:** Every Investigator will be appointed for such period and at such remuneration (to be paid by the Debtor) as the Securityholder determines. In addition, the Securityholder may in the same manner remove any Investigator so appointed and appoint another or others in substitution. Where the Securityholder elects to appoint more than one person as Investigator, that appointment may, at the discretion of the Securityholder, be either joint or joint and several.

10.3 **As Agent:** Every Investigator will be the agent of the Debtor and will not be deemed to be a manager, director or officer of the Debtor and the Debtor alone will be responsible for the Investigator's acts and defaults.

10.4 **Powers:** Every Investigator will have the power (subject to any limitation contained in the terms of appointment) to investigate and inquire into the financial and business position of the Debtor, including:

- (a) to make inquiries from any director, officer or employee of the Debtor concerning any business, financial or other matter or thing whatever regarding the Debtor and the Collateral and to make inquiries from all contractors, sub-contractors, customers, debtors, creditors or any other business associate of the Debtor regarding the Debtor's business and financial position;
- (b) to make inquiries from the Debtor's solicitors, accountants, sharebrokers or other consultants or advisers relating to the Debtor and to inspect and take copies of or extracts from any file, contract, document or other matter held by such advisers or consultants relating in any way to the Debtor;
- (c) to investigate and make such other inquiry as the Investigator thinks necessary to ascertain whether the Debtor is in, or is about to go into, default of any of its obligations or covenants under this Deed, any Relevant Document, or under any other security given by the Debtor.

10.5 **Debtor Obligations:** The Debtor must procure and ensure that the Debtor and all persons having possession or control of records of the Debtor or of any other information relating to the Collateral or of the Debtor's business transactions and financial affairs fully

co-operates with and provides the Investigator with proper access to such Debtor records and other information. The Debtor must in particular:

- (a) ensure that all of the foregoing is delivered to the Investigator immediately upon request;
- (b) complete any authorities that the Investigator may require in the exercise of the Investigator's powers so as to permit the Investigator to make the fullest investigation regarding the affairs of the Debtor without restriction; and
- (c) ensure that the Investigator has full access to any land, building or property occupied by the Debtor, or forming part of the Collateral, on which any part of the Collateral is kept.

10.6 **Reports:** The Debtor authorises the Securityholder to require the Investigator to provide to the Securityholder any reports or information requested by the Securityholder.

11. SET-OFF

11.1 **Authorised:** The Debtor authorises the Securityholder to apply (without any prior notice or demand) any moneys owed or to become owing by the Securityholder to the Debtor in or towards satisfaction of the Moneys Secured. If at any time any amount is contingently due or any amount due is not quantified, the Securityholder may retain and withhold payment of any such amount owed to the Debtor, and the payment of any interest or other moneys thereon, pending that amount becoming due and/or being quantified. The Securityholder may set off the maximum liability that may at any time be or become owing to it by the Debtor, or partly the one and partly the other, and in each case without any prior notice or demand. For the purposes of this clause the Securityholder is authorised to break any term deposit and to use all or any part of any such amount owed to the Debtor to buy such other currencies as may be necessary to effect those applications.

11.2 **Exercise:** The Securityholder shall not be obliged to exercise any of its rights under this clause, which shall be without prejudice and in addition to any other rights under any Relevant Document and any right of set-off, combination of accounts, lien or other right to which it is at any time otherwise entitled (whether by law, contract or otherwise).

12. FURTHER ASSURANCE AND ATTORNEY

12.1 **Further Assurances:** The Debtor shall execute and deliver to the Securityholder all such transfers, assignments, securities, instruments, and other deeds or documents, and shall do all such things, as may be necessary or as the Securityholder may require to:

- (a) perfect the Debtor's title to the Collateral in whole or part; or
- (b) perfect the security intended to be created by this Deed; or
- (c) more satisfactorily secure to the Securityholder the Moneys Secured, including the granting of fixed or specific securities (including a mortgage of any land) in such form and on terms as required by the Securityholder; or
- (d) transfer to or vest in the Securityholder (or any purchaser from the Securityholder or a Receiver) the whole or any part of the Collateral; or
- (e) facilitate the realisation of the whole or any part of the Collateral; or
- (f) exercise all or any of the rights, powers and remedies conferred on the Securityholder or a Receiver; or

(g) secure to the Securityholder the full benefit of the provisions of this Deed.

12.2 **Appointment of Attorney:** The Debtor irrevocably appoints the Securityholder, every Manager and every Receiver, severally to be the attorney of the Debtor (each an "Attorney") to, in the name of and as the act of the Debtor and at its expense in all things, do anything which the Debtor agrees to do under the provisions of this Deed or any Relevant Document or which, in the Attorney's opinion, is necessary or expedient to give effect to any right, power or remedy conferred on the Securityholder or a Receiver by this Deed, any Relevant Document by law or otherwise (including executing deeds and instituting, conducting and defending legal proceedings). Each Attorney may:

- (a) delegate its powers (including this power of delegation) to any person for any period, and revoke a delegation; and
- (b) exercise or concur in exercising its powers even if the Attorney has a conflict of duty in exercising its powers or has a direct or personal interest in the means or result of that exercise of powers.

The Debtor hereby ratifies and agrees to ratify anything done by its Attorney or any delegate in accordance with this clause.

13. ASSIGNMENT

13.1 **Securityholder May Assign:** Subject to any provision to the contrary in any Relevant Document that is expressed to override this clause, the Securityholder may assign and transfer all or any of its rights and obligations under this Deed to any person or persons and may disclose to a potential assignee or any other person with whom it may wish to enter into contractual relations in connection with this Deed or any Relevant Document, such information about the Debtor as shall have been made available to the Securityholder generally.

13.2 **Debtor Cannot Assign:** The Debtor may not assign and transfer any of its rights and obligations under this Deed without the prior written consent of the Securityholder.

14. NOTICES

14.1 **In Writing:** Each notice, request, demand or other communication to be given or made to either party under this Deed shall:

- (a) be given or made in writing;
- (b) be signed by the sender or an authorised officer of the sender;
- (c) be given or made to such party at the address or facsimile number, and marked for the attention of the person (if any) from time to time designated by that party to the other, for the purposes of this Deed.

14.2 **Receipt of Notice:** A notice, request, demand or other communication shall be deemed to have been received:

- (a) in the case of personal delivery on a Working Day, on the date of that delivery;
- (b) in the case of a letter posted by mail, on the second Working Day after posting; and
- (c) in the case of a facsimile sent on a Working Day, during normal business hours in the place of receipt, upon the facsimile machine from which the facsimile was sent producing a transmission report which evidences that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purposes of this

clause. If transmission is after normal business hours in the place of receipt, it shall be deemed to be received on the commencement of the next following Working Day.

15. INDEMNITIES/NO MARSHALLING

15.1 **Indemnity:** The Debtor indemnifies the Securityholder and each Receiver on demand to the fullest extent permitted by law, against any cost, loss, expense (including all legal expenses on a solicitor and own client basis), other liability (including loss of profit or of margin) and any penalty (including any fine or statutory impost) that the Securityholder certifies as having been sustained or incurred as a result of or in connection with:

- (a) the occurrence or continuance of any Event of Default;
- (b) anything done or omitted or purported to be done or omitted by the Securityholder or a Receiver in the exercise or purported exercise of its rights under this Deed or at law (and whether or not arising by reason of mistake, oversight, negligence or error of judgment),
- (c) a defect of the Debtor's title to any property that is, or that appears to be, Collateral;
- (d) any claim, demand, action or legal proceeding made or taken by any person (including the Debtor) against the Securityholder or a Receiver that in any way relates to the whole or any part of the Collateral (including, without limitation, the legal costs incurred by the Securityholder or a Receiver (on a solicitor and own client basis) in defending any such claim, demand, action or legal proceeding);
- (e) any amount payable by the Debtor to the Securityholder not being paid when due (whether by acceleration or otherwise), or being received or recovered by the Securityholder other than on its due date;
- (f) any failure on the part of the Debtor to utilise any financial accommodation (in whole or in part) on the date designated for its utilisation;
- (g) any bill of exchange drawn or accepted for the accommodation of the Debtor, to which the Securityholder is party;
- (h) any bond, guarantee, letter of credit or analogous assurance or undertaking issued by the Securityholder at the request of the Debtor;
- (i) the Securityholder giving credit or performing any other service for the Debtor; and
- (j) any breach of any obligation by the Debtor or a Relevant Person under this Deed or a Relevant Document or any law.

15.2 **No Marshalling:** The Securityholder is not required to marshal, enforce or apply under or appropriate, recover or exercise:

- (a) any security interest, guarantee or other entitlement held at any time by it; or
- (b) any moneys or assets which it at any time holds or is entitled to receive,

before this Deed is enforced.

16. CONTRACTING OUT OF PPSA RIGHTS

16.1 The Debtor:

- (a) agrees that if, at any relevant time, the Securityholder does not at that time have priority over all other secured parties in relation to any Personal Property, then the Debtor and the Securityholder will, for purposes of section 109(1) of the PPSA, be deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section. Nothing in this clause (a) shall have the effect of limiting the Securityholder's rights under clause 8.1;
- (b) agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to this Deed, or the security interest under this Deed; and
- (c) waives the Debtor's right to:
 - (i) object to the Securityholder's proposal to retain any Personal Property under section 121 of the PPSA; or
 - (ii) not have goods damaged when the Securityholder removes an accession under section 125 of the PPSA; or
 - (iii) receive notice of the removal of an accession under section 129 of the PPSA; or
 - (iv) apply to the Court for an order concerning the removal of an accession under section 131 of the PPSA; or
 - (v) (without affecting clause 17.9 of this Deed) redeem any Personal Property under section 132 of the PPSA; or
 - (vi) receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by this Deed.

17. GENERAL

17.1 **Costs and Expenses:** The costs and expenses (including legal fees) incurred or charged by the Securityholder in connection with:

- (a) the administration and release of this Deed and each other Relevant Document;
- (b) the enforcement or preservation of, or the attempted enforcement or preservation of, any rights under this Deed and each other Relevant Document, or in suing for or recovering the Moneys Secured; and
- (c) the granting of any waiver or consent, or any variation or discharge of this Deed or any other Relevant Document, required by the Debtor,

shall be deemed for all purposes to be Project Costs under the Deed.

17.2 **Taxes:** The Debtor shall pay all stamp, documentary, transaction, registration and other like duties and taxes (including fines, interest and penalties), if any, which may be payable or determined to be payable in connection with the execution, delivery, registration, performance, enforcement or variation of this Deed and each other Relevant Document,

and shall indemnify the Securityholder against all liabilities with respect to or resulting from any delay or omission to pay any such duty or taxes.

- 17.3 **Partial Invalidity:** If at any time any provision of this Deed or any other Relevant Document is or becomes illegal, invalid or unenforceable in any respect under the law of any relevant jurisdiction, that illegality, invalidity or unenforceability shall not affect the ability of the Securityholder to enforce the provisions (or, as the case may be, the remaining provisions) of this deed or each other Relevant Document, nor shall such affect or impair the legality, validity or enforceability of those provisions under the law of any other jurisdiction.
- 17.4 **Waiver:** No failure on the part of the Securityholder to exercise, and no delay on its part in exercising, any right, power or remedy under this Deed or a Relevant Document shall operate as a waiver of such right, power or remedy, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
- 17.5 **Remedies Cumulative:** The rights, powers and remedies provided in this Deed are cumulative and not exclusive of any rights, powers or remedies provided by law.
- 17.6 **Survival of Provisions:** The obligations of the Debtor contained in this Deed shall survive the repayment of the Moneys Secured and the release of this Deed. Each indemnity shall constitute a continuing obligation of the Debtor that is separate and independent from its other obligations under this Deed and each other Relevant Document. Each indemnity shall apply irrespective of any indulgence granted by the Securityholder and shall continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any sum due under this Deed or any judgment or order.
- 17.7 **Release:** The Securityholder shall not be obliged to execute or deliver a release of this Deed or the charge created by this Deed unless:
- (a) the Debtor has paid to the Securityholder all of the Moneys Secured;
 - (b) the Securityholder is satisfied that no further moneys may become payable by the Debtor to the Securityholder in the future arising out of any Agreement entered into, or matter occurring, before the date of release; and
 - (c) the Securityholder is satisfied that no payment made or to be made by the Debtor may be voided, or required to be repaid by the Securityholder, under any law relating to insolvency.
- 17.8 **Reinstatement:** If any payment received or recovered by the Securityholder, a Receiver, or any other person on behalf of the Securityholder is or may be avoided, whether by law or otherwise, then (notwithstanding that the Securityholder may have signed a release pursuant to clause 19.7):
- (a) the payment will be deemed not to have affected or discharged the liability of the Debtor under this Deed or any other security given by the Debtor in favour of the Securityholder, and the Securityholder and the Debtor to the maximum extent permitted by law will be restored to the position in which each would have been if that payment had not been received or recovered; and
 - (b) the Securityholder will be entitled to exercise all rights which the Securityholder would have been entitled to exercise if that payment had not been received or recovered.

- 17.9 **Redemption:** The Debtor may (unless otherwise specified in an Agreement or unless the Debtor has otherwise agreed in writing) redeem the Collateral by tendering to the Securityholder in cleared funds an amount certified by the Securityholder as being equal to the Moneys Secured as at the date the amount is tendered, after the occurrence of an Event of Default, but before the Securityholder:
- (c) sells any Collateral; or
 - (d) is deemed to have taken any Collateral in satisfaction of the Debtor's obligations under this Deed.
- 17.10 **No Merger:** The Securityholder's right to payment of any part of the Moneys Secured (including under any negotiable instrument or Agreement) shall not merge in the Debtor's obligation to pay that part under this Deed. The Securityholder may demand payment of any part of the Moneys Secured, and may exercise its rights, powers and remedies under this Deed, whether or not a negotiable instrument, security, contract or other obligation relating to that part is still current or has not fallen due.
- 17.11 **Subordination:** Nothing in this Deed will be construed or interpreted as:
- (a) a consent by the Securityholder to any property that is not Personal Property becoming an accession to any Personal Property that is part of the Collateral;
 - (b) a consent by the Securityholder to any security interest attaching to or any charge or security interest being created in, any Collateral; or
 - (c) an agreement to subordinate the security interest or the charge constituted under this Deed.
- 17.12 **Certificate:** The certificate of the Securityholder as to any amount or fact which might reasonably be expected to be within the Securityholder's knowledge shall be prima facie evidence of that amount or fact.
- 17.13 **Several liability:** The Debtors are severally (and not jointly) liable for the performance of their applicable obligations under this Deed.
- 17.14 **Limitation of Liability for Trustees:** The liability of any independent trustee of any trust which is or becomes a Debtor shall be limited to the assets of the trust from time to time. A trustee will be an independent trustee for the purposes of this clause if he, she or it is not a beneficiary or the settlor of the relevant trust.
- 17.15 **Consents:** The Securityholder or a Receiver may give or withhold an approval or consent, conditionally or unconditionally, and in the absolute discretion of the Securityholder or Receiver.
- 17.16 **Governing Law:** This Deed shall be governed by and construed in accordance with the laws of New Zealand.