



**RULES SUGGESTION
to the
ADVISORY COMMITTEE ON CIVIL RULES
and its
TPLF SUBCOMMITTEE**

**UNIFORM DISCLOSURE OF THIRD-PARTY LITIGATION FUNDING CONTRACTS
IS NECESSARY TO INFORM JUDGES' AND PARTIES' KEY
CASE MANAGEMENT DECISIONS**

**An Examination of TPLF Contracts Reveals Common Control Mechanisms
that Can Affect the Litigation Process and Influence Substantive Outcomes**

Transparency Doesn't Impose a Burden; It Lifts a Veil

September 3, 2025

Lawyers for Civil Justice (“LCJ”)¹ respectfully reiterates its suggestion that the Advisory Committee on Civil Rules (“Advisory Committee”) and its TPLF Subcommittee promulgate a rule requiring disclosure of third-party litigation funding (“TPLF”) contracts.² Disclosure to courts and parties is necessary to inform case management and prevent misunderstandings caused by the control mechanisms in TPLF contracts that can alter the usual dynamics of litigation and resolution. A uniform disclosure rule would also relieve courts of having to expend judicial resources to decipher on an *ad hoc* basis whether a particular agreement should be disclosed in a particular case. The insurance disclosure requirement in Rule 26(a)(1)(A)(iv) is

¹ LCJ is a national coalition of corporations, law firms, and defense trial lawyer organizations that promotes excellence and fairness in the civil justice system to secure the just, speedy, and inexpensive determination of civil cases. Since 1987, LCJ has been closely engaged in reforming federal procedural rules in order to: (1) promote balance and fairness in the civil justice system; (2) reduce costs and burdens associated with litigation; and (3) advance predictability and efficiency in litigation.

² See Lawyers for Civil Justice and US Chamber of Commerce Institute for Legal Reform, Rule Suggestion, *It Is Time to Address the Patchwork of Inadequate Practices: How the Lack of FRCP Guidance Is Failing Courts and Parties Who Need a Uniform and Credible Procedure for Understanding Third-Party Litigation Funding Agreements*, Oct. 2, 2024, https://www.uscourts.gov/sites/default/files/24-cv-v_suggestion_from_lcj_and_ilr_rule_26_tplf.pdf.

the appropriate model. Like insurance agreements, TPLF contracts influence the conduct of litigation generally, far beyond the “claims and defenses” of a particular case.³ A TPLF disclosure rule would provide judges with clear guidance, help all parties make informed strategic and settlement decisions based on a “realistic appraisal of the case,”⁴ and help protect vulnerable plaintiffs, many of whom likely do not understand the instruments of control given to funders when named parties or their lawyers sign TPLF contracts.

The nine TPLF contracts discussed in this Rules Suggestion (and attached as Exhibits A-I) provide clear insights about the funding agreements that are common in federal courts today because they include contracts written and agreed to by the largest funders who are investing billions of dollars in federal court litigation as well as funders with fewer litigation investments.⁵ Examining specific provisions—and understanding how they work separately and in combination—reveals how a rule requiring disclosure of TPLF contracts would provide courts and parties critical insight for managing their cases effectively.

Introduction

TPLF agreements give non-party funders specific mechanisms of control or significant influence over litigation and settlement decisions, in addition to the right to a portion of any proceeds from a judgment or settlement. Examining the funders’ tools of control in TPLF contracts reveals how funders influence the course and outcomes of lawsuits in ways that courts and parties need to understand in order to manage litigation fairly and efficiently. The potency of these hidden control mechanisms may be startling—even “amazing”⁶—to those who encounter them for the first time, read boilerplate disavowals of control, or hear funders disclaim control over their funded cases.⁷

Some TPLF contracts expressly give non-party funders direct control over the litigation.⁸ Other TPLF contracts ensure that funders have indirect—but still powerful—influence by obligating the funded plaintiffs and lawyers to pursue the claims (even if at some point they want to settle), to monetize equitable relief, and by allowing funders the “veto power” of discontinuing funding at any time.⁹ Contracts may also give funders significant influence over plaintiffs’ counsel, not

³ The Advisory Committee rejected the notion that Rule 26(b) “relevancy” analysis should limit the disclosure of insurance agreements when it promulgated Rule 26(a)(1)(A)(iv). Fed. R. Civ. P. 26 advisory committee notes to 1970 amendment. At the time, many courts were rejecting discovery requests for insurance agreements “reason[ing] from the text of Rule 26(b) that it permits discovery only of matters which will be admissible in evidence or appear reasonably calculated to lead to such evidence.” *Id.* Those courts “avoid[ed] considerations of policy, regarding them as foreclosed.” *Id.* The Advisory Committee concluded that the policy considerations transcend “relevancy” and necessitate the disclosure of insurance agreements.

⁴ As the Advisory Committee said about disclosure of insurance coverage, a rule requiring disclosure of TPLF contracts “will enable counsel for both sides to make the same realistic appraisal of the case, so that settlement and litigation strategy are based on knowledge and not speculation.” Fed. R. Civ. P. 26 advisory committee notes to 1970 amendment.

⁵ *In re Fresh Acquisitions, LLC*, No. 21-30721-SGJ-11, 2025 WL 2231870, at *9 (Bankr. N.D. Tex. Aug. 5, 2025) (observing that even purported TPLF “experts” have “only seen a few actual litigation funding agreements”).

⁶ *Id.* at *5 (“the Litigation Funding Agreement here seemed rather amazing to the court”).

⁷ See *infra* Section IV.

⁸ See *infra* Section I.

⁹ See *infra* Section II.

only in the selection and replacement of counsel, but also by obligating the plaintiff to cooperate with counsel and enabling the sharing of success fees in ways that create and exacerbate conflicts of interest—all of which weaken the ability of often-vulnerable and unsophisticated plaintiffs to participate in, or even understand, their own cases.¹⁰

The Advisory Committee should take particular notice of provisions that can, unbeknownst to judges, shape substantive outcomes and undermine court orders. The contracts that require the plaintiff to pay the funder the monetary value of any injunctive relief or specific performance awarded¹¹ impose a strong disincentive against non-monetary relief that can skew the remedies presented to, and ultimately ordered by, the court. Some contracts mandate that the plaintiff and counsel provide all documents obtained in the course of litigation to the funders,¹² a provision inconsistent with most protective orders. And some contracts undermine court orders to pay costs and sanctions by obligating plaintiffs to pay all such penalties¹³—even where the misconduct being sanctioned originated with the funder or its selected-and-controlled counsel, not with the plaintiff. Absent disclosure of TPLF contracts, courts and litigants have no awareness of such provisions and no insight into how they might impact their cases. Indeed, courts and parties may not even know when such provisions are having an effect because TPLF contracts typically prohibit the plaintiff and counsel from divulging the existence of the agreement or discussing its terms. A rule requiring disclosure of TPLF contracts would aid judges by lifting the veil on provisions that courts otherwise do not know about.

The TPLF Subcommittee has asked: “What is the court to do with the information if the disclosure is required?”¹⁴ The answer is: the court would not have to take any action because a rule requiring disclosure of TPLF contracts would provide courts and parties the information needed to manage cases effectively and reach a just result. Courts typically take no action in response to the disclosure of insurance agreements, which similarly inform courts and parties about the interests of a non-party who may have significant control over litigation and settlement decisions. Aristotle observed: “Knowledge of the fact differs from knowledge of the reason for the fact.” Knowing that a plaintiff is not responding to settlement offers, or is demanding monetary damages rather than injunctive relief, is different from knowing that a non-party funder is preventing the plaintiff from considering settlement or requiring the plaintiff to pay the funder the monetary value of any non-monetary relief. Simple disclosure of the TPLF contract provides such knowledge, with no burden on judicial resources. In addition, if TPLF-related issues or problems do arise, prior disclosure ensures that courts will have the benefit of open and adversarial briefing in keeping with normal litigation procedure. Absent a disclosure rule, courts will continue to engage in *ex parte* communications about TPLF contracts, which places a heavy burden on judicial resources by putting the onus on judges to understand the agreements and how they work in practice.¹⁵

¹⁰ See *infra* Section III.

¹¹ See *infra* Section II.B.

¹² See *infra* Section V.

¹³ See *infra* Section VI.

¹⁴ Advisory Committee on Civil Rules, Agenda Book, Apr. 1, 2025, 272, <https://www.uscourts.gov/sites/default/files/2025-03/2025-04-civil-rules-committee-agenda-book-final-updated-3.28.25.pdf>.

¹⁵ See *infra* Section VII.

The Subcommittee also asks: Will a disclosure rule cause more discovery motions and battles? The answer, informed by the experience of states with TPLF disclosure rules, as well as the long-term federal judiciary's experience with insurance contracts, is most likely "no." However, it depends on how the rule is written. A simple rule along the lines of Rule 26(a)(1)(A)(iv) requiring disclosure of agreements would provide a clear procedure and relieve courts and parties from disputes over TPLF disclosure. Conversely, a complex rule that lets some TPLF contracts remain secret, includes fact-specific prerequisites for discovery, or suggests a list of factors that weigh differently in every case, would inevitably lead to more litigation.

I. TPLF CONTRACTS CAN GIVE DIRECT CONTROL OVER LITIGATION AND SETTLEMENT TO NON-PARTY FUNDERS, AFFECTING COURTS AND PARTIES

A. Funders' Control Over Litigation Decisions Affects Case Management

Some TPLF agreements expressly give the funder the right to control litigation and direct counsel. For example, the ILP Funding Agreement¹⁶ provides that "the Lawyers and ILP will determine what Claims should be pursued in the Proceedings" and that "ILP will give day-to-day instructions to the Lawyers on all matters concerning the Claims and the Proceedings and may give binding instructions to the Lawyers and make binding decisions on behalf of the Plaintiff in relation to the Claims."¹⁷ These rights are reinforced by other provisions, including the requirement that the plaintiff instruct the lawyers to "comply with all instructions given by ILP,"¹⁸ that ILP's "management services" include "providing day-to-day instructions to the Lawyers,"¹⁹ and that the funder's discretionary decision to cease funding requires counsel to "discontinue the prosecution of the Claim."²⁰ The contract also gives ILP discretion over appeals.²¹

The Therium Chevron Funding Agreement²² permits the lawyers in a class action case to do only three things without Therium's consent—join an additional party, add a new cause of action, and commence additional proceedings. It otherwise requires that "the Proceedings shall be prosecuted in accordance with the Project Plan" and "subject to Therium's prior agreement to any proposed variation of the Project Plan."²³

¹⁶ Exhibit A, Litigation Funding Agreement between International Litigation Partners Ltd. and Laurence John Bolitho, March 13, 2014, ("ILP Funding Agreement").

¹⁷ *Id.* at §5.1.

¹⁸ *Id.* at §6.3.1 (although this is constrained to some degree by § 13, which restores some rights to the clients in the event that counsel identifies a conflict of interest, except with respect to settlement, which client never controls).

¹⁹ *Id.* at §7.1.

²⁰ *Id.* at §5.3.

²¹ *Id.* at §11.

²² Exhibit B, Litigation Funding Agreement between Therium Litigation Funding, Jacqueline A. Perry QC, and Neil J. Fraser, Mar. 29, 2016, ("Therium Chevron Funding Agreement").

²³ *Id.* at §7.

The ramifications of such provisions are explicit in the Burford/Sysco Agreement,²⁴ which provides that, in the event of a breach by the funded plaintiff (“breach” being defined broadly²⁵), the funder may take over the conduct and settlement of the litigation, including instructing or replacing counsel.²⁶ The contract contemplates that the funder will “act in the name of” the plaintiff—and requires the plaintiff to continue to appear “at any hearings” at the direction of the funder.

Disclosure of these types of provisions would help courts and parties understand why the named plaintiff may not be directing—or even participating in—the litigation. It would make courts and parties aware of any control exercised by a non-party with separate financial interests and strategic objectives for the case. Knowing about such an agreement allows the court to anticipate and avoid practical case management problems; for example, if a court knows that a non-party funder has significant control over litigation decisions, it may require the funder to attend status conferences in addition to the plaintiff who might not be able to participate meaningfully. Similarly, should a court impose costs or sanctions for discovery violations, knowledge that the funder was responsible for the sanctionable conduct will ensure that those sanctions will not be borne by a plaintiff who lacked authority under the TPLF contract to prevent the violation.

Further problems can occur when courts and parties are unaware that a TPLF contract may itself be the source of conflict. Courts ignorant of TPLF contractual provisions cannot detect when a disputed contract term, rather than something in the litigation, causes counsel’s actions. Disputes between funders and plaintiffs about who gets to make particular litigation decisions may manifest as confusing delays, contradictory positions or statements, or counsel’s apparent inability to act or explain an action or decision. A court might attribute such delays to typical client indecision when they actually reflect a covert, three-way struggle between plaintiff, counsel, and the non-party funder over contractual rights and obligations.

A simple disclosure rule for TPLF contracts analogous to that for insurance agreements would provide the necessary information to avoid these problems with no judicial action required. Judges would know not only who is “in the courtroom” but also how the non-party funder’s actions may affect the court’s case management. Indeed, courts have found good cause for TPLF disclosure when funders are involved in making decisions about the case.²⁷ In contrast, when TPLF contracts are concealed from the court and the parties, courts may be burdened with time-consuming disputes that could have been addressed early in the process or avoided altogether. Courts that do not consider TPLF contracts may never understand (even in retrospect) how these

²⁴ Exhibit C, Second Amended and Restated Capital Provision Agreement between The Counterparty and The Capital Providers, Dec. 22, 2020, (“Burford/Sysco Agreement”).

²⁵ *Id.* at §12.2.

²⁶ *Id.* at §13.1.

²⁷ See, e.g., *MSP Recovery Claims Series, LLC v. Sanofi-Aventis U.S., LLC*, 2024 WL 4100379 at *6 (D.N.J. Sept. 6, 2024) (finding “good cause” for “discovery into litigation funding” where documents suggest that the funders “have intimate involvement in Plaintiffs’ decision-making”) (citing the holding in *In re: Valsartan NDMA Contamination Litigation*, 405 F. Supp. 3d 612, 615 (D.N.J. 2019), that good cause is satisfied where “a non-party is making ultimate litigation or settlement decisions, the interests of plaintiffs or the class are sacrificed or not being protected, or conflicts of interest exist”).

contracts can impair the court’s ability to execute good case management and thwart the parties’ ability to navigate the litigation and resolve their disputes.

B. Funders’ Control Over Settlement Affects Parties’ Ability to Discuss Resolution—Impeding Proper Judicial Management

Some TPLF contracts expressly give the funder the right to accept or reject settlement offers. In the ILP/Bolitho Funding Agreement, the funded plaintiff cannot “discontinue, abandon, withdraw or settle” the litigation or “reject any Settlement offer made by any Defendant” without prior written consent from ILP.²⁸ The contract even prevents the funded plaintiff from having “any communication with any Defendant” or defense representative.²⁹ In the event that the funded plaintiff and the funder disagree about whether to settle the case, the contract provides that counsel will decide³⁰—the same counsel who take direction from the funder.³¹ Similarly, the Amendment to the Burford/Sysco Agreement³² provides that the named party “shall not accept a settlement offer without the Capital Providers’ prior written consent, which shall not be unreasonably withheld....”³³ A related provision states that the funded plaintiff “shall not ... agree to settle or otherwise resolve any separate action, claim, suit, or arbitration” with any defendant in the underlying litigation if doing so would impact the funder’s recoveries.³⁴ In the LMFS Funding Agreement,³⁵ the plaintiff “gives [funder] full and complete authorization to negotiate and accept any settlements of Claims” and “agrees to cooperate and consent to any settlement deemed reasonably [sic] by [funder].”³⁶ The agreement requires the plaintiff “to direct his/her attorney to settle Claims as directed by [funder] if so directed,”³⁷ and requires the funder’s consent to dispose of or discontinue the claims.³⁸

Most courts consider it good case management to ensure that decision makers are in the room, or at least available, during settlement conferences. Yet many courts do not realize that some TPLF contract provisions not only transfer settlement decisions to funders, but also often create conflicts between the plaintiff’s interests and the funder’s. The ILP Funding Agreement starkly

²⁸ Exhibit A, ILP Funding Agreement at §6.2.

²⁹ *Id.* at §6.7.

³⁰ *Id.* at §13.5.

³¹ *See infra* Section III.

³² Exhibit D, Amendment No. 1 to Second Amended and Restated Capital Provision Agreement, Mar. 31, 2022, (“Amendment to Burford/Sysco Agreement”).

³³ *See* Amendment to Burford/Sysco Agreement at §7(b)(v). This language is purportedly cabined by language providing that “the Capital Providers (and their respective Affiliates) shall have no right to exercise control over the independent professional judgment of its Nominated Lawyers and shall not seek to impose a commercially unreasonable result with respect to settlement,” but *see infra* Section IV for a discussion of why the limitations present in this provision may be illusory. This amendment replaced a provision that required Sysco to give the funder “an opportunity to discuss such settlement offer prior to the Counterparty accepting or rejecting it” and provided that the funder “shall have no right to exercise control over the independent professional judgment of the Counterparty and its Nominated Lawyers and shall not seek to coerce the Counterparty and its Nominated Lawyers with respect to settlement.” *See* Exhibit C, Burford/Sysco Agreement at §5.3(b)(v).

³⁴ Exhibit C, Burford/Sysco Agreement at §5.3(b)(x).

³⁵ Exhibit E, Litigation Funding Agreement between Litigation Management and Financial Services, LLC, and Vicki Mize, Nov. 1, 2016, (“LMFS Funding Agreement”).

³⁶ *Id.* at §7(b).

³⁷ *Id.* at §7(c).

³⁸ *Id.* at §§2(b)(iii) and (iv).

illustrates this problem: the funded plaintiff cannot “discontinue, abandon, withdraw, or settle” litigation without ILP’s written consent and is prohibited from having “any communication” with defendants or their representatives. Similarly, the Burford/Sysco agreement’s prohibition that the funded party “shall not accept a settlement offer without the Capital Providers’ prior written consent” puts the funder in control of settlement and ensures that any settlement meets the funder’s definition of success.

Absent disclosure of TPLF contracts, courts cannot appreciate why settlement discussions stall, why plaintiffs are unable to respond to seemingly reasonable offers, or why cases continue to be litigated despite apparent willingness by the named parties to resolve their dispute. Defense counsel cannot effectively negotiate when the person across the table has no settlement authority and undisclosed non-parties with different interests and risk calculations are controlling decisions. Understanding settlement dynamics requires knowing whether funders have veto power over reasonable offers, minimum recovery requirements, or strategic reasons for prolonging litigation that have nothing to do with the underlying dispute (including interests in other “portfolio” cases). Courts and parties might misinterpret delays in responding to settlement offers as negotiating ploys when they actually reflect the time a non-party funder needs to evaluate and approve any potential agreement, or even to arbitrate or litigate disputes about the meaning of the TPLF contract in separate proceedings.

When a court is called upon to ensure that a settlement is fair and reasonable—for example, as Rule 23(e) requires in class actions—it cannot make that determination reliably without knowing whether a significant portion of the proceeds is being paid to a non-party and on what terms. Because the TPLF contract may preclude the plaintiff or counsel from disclosing the existence of funding or any details about the arrangement, mandating disclosure is the only way the court can obtain this important information.

II. TPLF CONTRACTS CAN GIVE NON-PARTY FUNDERS MEANINGFUL INDIRECT CONTROL AND INFLUENCE OVER LITIGATION AND SETTLEMENT

A. Obligating Named Parties to Pursue Claims Can Cause “Zombie Litigation”

Some TPLF agreements require the funded plaintiffs to continue pursuing their claims—in other words, the contracts are the plaintiffs’ commitment to keep litigating even if, at some point in the future, they decide it would be time to settle or otherwise end the case. For example, the ILP Funding Agreement and the Therium Dominion Funding Agreement³⁹ require the plaintiff to “diligently prosecute the Proceedings.”⁴⁰ Similarly, the Legalist Funding Agreement⁴¹ requires the plaintiff “to continue to conduct its prosecution of the Claim(s)”⁴² and the Longford Capital

³⁹ Exhibit F, Litigation Funding Agreement between Therium Finance AG IC and Dominion Minerals Corp, 2015, (“Therium Dominion Funding Agreement”).

⁴⁰ Exhibit A, ILP Funding Agreement at §6.1.4; Therium Dominion Funding Agreement at §9.2.6(a).

⁴¹ Exhibit G, Litigation Funding Agreement between Legalist Fund II, L.P. and DiaMedica Therapeutics Inc., Dec. 29, 2019, (“Legalist Funding Agreement”).

⁴² *Id.* at §6.3.

Agreement⁴³ requires the plaintiff to prosecute the claims.⁴⁴ A robust provision in the LMFS Funding Agreement provides:

Following termination of this agreement by Claimant, Company, at its own risk and for its sole benefit may continue the proceedings without the participation of Claimant. Company shall be entitled to require Claimant to continue proceedings if Company does not wish to continue proceedings in its own name and if Company does not wish to disclose the fact that the proceedings are being funded.⁴⁵

Such contractual obligations can create “zombie litigation”⁴⁶—lawsuits that continue despite all named parties wanting to settle. Courts and parties need to know about such provisions so they can make informed decisions to prevent cases from “going zombie.” For example, a court with this knowledge might require an earlier settlement conference, impose a more aggressive discovery schedule, or set a firm trial date. Opposing parties, factoring in this dynamic, might decide to make earlier and more serious settlement offers, or alternatively understand that settlement is futile and instead prepare for trial.⁴⁷ Either way, the court and parties will make better-informed strategic decisions if they understand whether the plaintiff has contracted away its ability to settle and must continue prosecuting the claims until a non-party funder says otherwise. Learning of these provisions by early disclosure is key; finding out after settlement negotiations have failed, or after the third trial date comes and goes, wastes the court’s and parties’ time while creating unnecessary delay and expense.

B. Obligating Plaintiffs to Monetize Equitable Relief Can Affect Judicial Rulings, Prolong Litigation, and Hinder Resolution

Some TPLF agreements require plaintiffs to maximize monetary recoveries over equitable relief including injunctions, specific performance, restitution, rescission, and declaratory relief. For example, the Litchfield Ventures contract with the Fresh Acquisitions Liquidating Trust⁴⁸ provides:

If Forward Seller supports or accepts (to the extent such acceptance is within Forward Seller’s power) any offer to Settle the Litigations that includes non-cash Litigation Proceeds, Forward Seller shall take all actions necessary to move the Court to cause the monetization of all such non-cash Litigation Proceeds, to obtain the cash value of such non-cash Litigation Proceeds as soon as practicable, and to cause the payment of the cash Litigation Proceeds received in accordance with this Agreement.⁴⁹

⁴³ Exhibit H, Funding Agreement between Longford Capital Fund I, LP, and Quest Patent Research Corporation, Mar. 11, 2014, (“Longford Capital Agreement”).

⁴⁴ *Id.* at §8.1(b).

⁴⁵ Exhibit E, LMFS Funding Agreement at §6(b).

⁴⁶ See Steinitz, Maya, *Zombie Litigation: Claim Aggregation, Litigant Autonomy and Funders’ Intermeddling* (November 01, 2024). Forthcoming in Cornell Law Review, 2025, Boston Univ. School of Law Research Paper No. 24-40, available at: <https://ssrn.com/abstract=5054864> or <http://dx.doi.org/10.2139/ssrn.5054864>.

⁴⁷ Opposing parties might also decide to challenge the enforceability of the agreement.

⁴⁸ Exhibit I, Master Prepaid Forward Purchase Agreement by and between Litchfield Ventures, LLC, and Fresh Acquisitions Liquidating Trust, May 3, 2023, (“Litchfield Funding Agreement”).

⁴⁹ *Id.* at §4.3.

The Therium Dominion Funding Agreement provides that if the plaintiff receives any recoveries “in non-monetary form,” then it must pay the funder the market value of those recoveries, which is to be established by an independent expert (whose fees the plaintiff also must pay).⁵⁰ The Amendment to Burford/Sysco Agreement requires that the plaintiff “shall take such actions as are reasonable and appropriate to maximize the Proceeds received from each Claim, giving priority to cash Proceeds.”⁵¹ Similarly, the Burford/Sysco Agreement requires the named party to “use all commercially reasonable efforts to: (A) pursue such Claim and all of the Counterparty’s legal and equitable rights arising in connection with such Claim; (B) bring about the reasonable monetization of such Claim through a Claim Resolution....”⁵² The agreement gives effect to this provision by requiring the named party to “retain and remunerate the applicable Nominated Lawyers to prosecute such Claim vigorously in a commercially reasonable manner in order to bring about the reasonable monetization of such Claim through a Claim Resolution” and “cooperate with such Nominated Lawyers in all matters pertaining to such Claim (including providing documents and Information, appearing and causing others within the Counterparty’s power to appear for examinations and hearings).”⁵³ The Legalist Funding Agreement goes even further and requires that the plaintiff “shall ... pay ... an amount equal to the Non-Monetary Claim Proceeds Fair Market Valuation,”⁵⁴ and the Longford Capital Agreement defines “Proceeds” to include the cash value of “injunctions” and non-monetary relief.⁵⁵

These monetization requirements have the effect, and the intent, of skewing the plaintiffs’ sought-after relief. If kept secret from the court and parties, they can prevent negotiated resolution and, ultimately, influence the court to fashion suboptimal relief. Judges kept in the dark about these provisions may be unaware that a non-party’s interest in cash payments is precluding the parties from presenting options that the court would find just. Courts considering whether to grant equitable remedies need to understand that a TPLF contract may make such relief effectively worthless or even a burden to the nominal plaintiffs. The defending parties may have reasonable settlement offers rejected without knowing that the plaintiff is contractually bound to maximize monetary recovery to the exclusion of other considerations like avoiding future wrongdoing, preserving business relationships, or managing reputational concerns that might otherwise make settlement attractive to the nominal plaintiff. And the plaintiff who wants to accept a reasonable settlement offer—or would prefer less aggressive discovery tactics, streamlined motion practice, or resolution discussions—may be powerless in the face of the funder’s insistence not to breach the duty to “maximize” proceeds. These provisions effectively allow funders to reframe any disagreement about settlement terms as a potential breach of contract, creating economic pressure that complicates judicial management, stymies settlement efforts, and supersedes even the plaintiffs’ own judgment about the best resolution of the dispute.

⁵⁰ Exhibit F, Therium Dominion Funding Agreement at §13.

⁵¹ Exhibit D, Amendment to Burford/Sysco Agreement at §7(a).

⁵² Exhibit C, Burford/Sysco Agreement at §5.3(b)(i).

⁵³ *Id.* at §5.3(b)(ii).

⁵⁴ Exhibit G, Legalist Funding Agreement at §3.2.

⁵⁵ Exhibit H, Longford Capital Agreement at §2.34.

C. The Funders' Right to Discontinue Funding Allows Funders to Control the Case and Resolution

TPLF contracts may allow the funder to withdraw funding with minimal or no restrictions. For example, the LMFS Funding Agreement states that the “[funder] shall be entitled to terminate this agreement in whole or in part without notice and to cease any further funding of [plaintiff’s] Claims.”⁵⁶ The Therium Dominion Funding Agreement similarly provides the funder with multiple paths to terminate funding. It limits the funder’s commitment solely to the first tranche of funding, and gives the funder “sole discretion” to fund subsequent tranches, with a two-month exclusive option to do so.⁵⁷ In addition, it gives the funder the right to terminate the agreement unilaterally if it “ceases to be satisfied as to the merits of the Claim” or “reasonably believes that the Claim is no longer commercially viable.”⁵⁸ It also provides that the funder can decide whether to fund or continue funding based on any “relevant” information whether or not material, giving the funder *carte blanche* to walk away at any time.⁵⁹ Some TPLF contracts provide notice, but no other restrictions. For example, the ILP Funding Agreement gives the funder “sole discretion” to “cease to fund any Claim” subject to 14 days written notice to the plaintiff⁶⁰ (and gives the funder equal discretion to terminate the funding agreement as a whole⁶¹) and the Legalist Funding Agreement allows the funder to terminate the agreement for any reason with 30 days written notice.⁶²

These provisions, both independently and in conjunction with other control mechanisms, effectively give the funder veto power over every decision in a case, regardless of boilerplate language to the contrary. Plaintiffs and plaintiffs’ lawyers who turn to funders to support litigation are vulnerable to threats of discontinued funding since they likely do not have the resources to litigate independently, let alone sue the funder (or defend the funder’s suit) for breach of contract.⁶³ Disclosure of these provisions would inform judges’ and parties’ ability to manage funded cases because it allows an understanding not only of who is in control but also the ongoing potential for disputes between the named party and its funder—disputes occurring in an environment where plaintiffs may have no choice but to accede to funders’ wishes about litigation strategy, settlement terms, or case management to avoid termination and potential breach-of-contract claims.

⁵⁶ Exhibit E, LMFS Funding Agreement at §6(c).

⁵⁷ Exhibit F, Therium Dominion Funding Agreement at §2.

⁵⁸ *Id.* at §16.3.

⁵⁹ *Id.* at §6.2.

⁶⁰ Exhibit A, ILP Funding Agreement at §5.2.

⁶¹ *Id.* at §18.1.

⁶² Exhibit G, Legalist Funding Agreement at §8.2.4.

⁶³ One feature of some TPLF contracts—a two-month exclusive option to fund future tranches—may effectively preclude plaintiffs from finding alternative funding sources if time is of the essence, further increasing the funder’s leverage.

III. TPLF CONTRACTS CAN GIVE NON-PARTY FUNDERS EFFECTIVE CONTROL OVER THE FUNDED PLAINTIFFS' RELATIONSHIP WITH COUNSEL

A. TPLF Contracts Can Interfere with the Attorney-Client Relationship

TPLF agreements can give non-party funders extraordinary powers over the plaintiffs' counsel. The Therium Dominion Funding Agreement obligates the plaintiff to:

- “follow the legal advice” of counsel, “including whether it would be appropriate to make or accept any offer to settle”⁶⁴ and makes the client liable for costs incurred “as a result of [the plaintiff’s] failure... to co-operate with or follow the advice of” counsel;⁶⁵
- instruct counsel to report to the funder if counsel believes the plaintiff has breached the funding agreement, including by “threatening to cease or ceasing” to engage that counsel, or by “failing to follow the advice” of counsel;⁶⁶
- instruct counsel to provide a letter to the funder stating, *inter alia*, that counsel “has assumed a duty of care to Therium and its shareholders” with respect to information and advice provided to the funder prior to the execution of the funding agreement;⁶⁷ and
- instruct counsel to provide Therium with “copies of draft pleadings, witness statements, expert reports, and significant correspondence” prior to issue, clearly contemplating that the funder will have input into the contents of such materials.⁶⁸

These provisions are not unique. The Burford/Sysco Agreement requires the plaintiff to “cooperate” with counsel;⁶⁹ the ILP Funding Agreement requires the plaintiff to “follow all reasonable legal advice given by” counsel;⁷⁰ and, under the Legalist Funding Agreement, “[t]he Plaintiff agrees to take and follow the legal advice of the Lead Counsel” excluding settlement.⁷¹

It is not a federal judge’s job to police attorney ethics—that function belongs to bar associations and disciplinary authorities. However, courts and parties need to understand and plan for situations where TPLF contracts subvert the usual attorney-client fiduciary relationship. Such

⁶⁴ Exhibit F, Therium Dominion Funding Agreement at §§9.2.8-9.

⁶⁵ *Id.* at §5.1.1.

⁶⁶ *Id.* at §9.3. This provision raises significant ethical duty issues by putting counsel in the position of informing their clients’ potential adversaries (here, the funder) of claims the funder may have against counsel’s client. In effect, this requires counsel to be more loyal to the funder than the counsel’s client if a conflict of interest arises.

⁶⁷ *Id.* at §9.2.1 and appendix 2.

⁶⁸ *Id.* at §9.2.4.

⁶⁹ Exhibit C, Burford/Sysco Agreement at §5.3(b)(ii).

⁷⁰ Exhibit A, ILP Funding Agreement at §6.1.1. (mitigated somewhat by provisions that the plaintiff can “override” ILP’s instructions to counsel, and in the event that counsel identifies a conflict of interest, the agreement contemplates that counsel will give preference to the plaintiff’s interests, §13.

⁷¹ Exhibit G, Legalist Funding Agreement at §6.4.

provisions fundamentally change how litigation decisions are made, creating case management challenges that affect all participants.

When courts issue case management orders, set deadlines and trial dates, or seek to resolve discovery disputes and pre-trial motions, they need to know whether they are dealing with traditional client-directed representation or something altogether different: a non-party-and-attorney-controlled relationship where the nominal plaintiff is out of the loop, lacking meaningful input into litigation strategy or resolution of his or her own case. For the other parties to the case, this scrambling of the traditional attorney-client relationship makes settlement negotiations and case planning far more complex. In class actions, this information is essential for courts making the Rule 23(e)-required determinations about the adequacy of the named plaintiff and the fairness of the proposed settlement.

Defense counsel cannot effectively factor in plaintiff motivations into their settlement evaluations and try to address them when the plaintiff is essentially a bystander, contractually obligated to defer to attorney judgment, particularly when that attorney may be receiving revisions of drafts from non-party funders (why else would the funders require drafts?) and the lawyer is instructed to report the plaintiff's suspected "breaches" of the TPLF contract to funders.⁷²

B. Funders' Power to Prevent Change of Counsel Is Potent

TPLF contracts can give funders the ability to "lock in" a specific lawyer or firm, giving funders potent control over the case—since funders frequently provide designated counsel with repeat business or "portfolio" relationships. Most dramatically, the Therium Dominion Funding Agreement requires counsel to report to the funder if the client "breaches its obligations under this Agreement" by "threatening to cease or ceasing to" engage with counsel⁷³ and gives the funder the right to consent before new lawyers are engaged.⁷⁴ The Burford/Sysco Agreement bars the plaintiff from engaging new outside counsel unless it obtains the funder's "prior written consent... which consent shall not unreasonably be withheld."⁷⁵ It also bars the plaintiff from renegotiating its economic arrangement with its outside counsel, and further requires the funder's prior written consent to any economic arrangement with replacement counsel unless the terms

⁷² Contractual provisions that purport to re-write the attorney-client relationship raise ethical and regulatory issues. Requiring clients to accede to the advice of counsel, rather than the other way around, instructing counsel to report their own ostensible client's possible breaches of a contract to a counterparty, and to provide otherwise privileged drafts of pleadings and other important documents to non-party funders prior to filing, raise serious questions about whether counsel is properly serving client interests. But these ethical issues can be addressed only if the proper authorities know about potentially problematic arrangements. A rule requiring disclosure of TPLF agreements would support the preservation of the ethics of the legal profession. With disclosure, TPLF-related ethical concerns could be identified and handled by appropriate authorities rather than concealed. If the FRCP continue to remain silent on disclosure—or to be understood not to allow it, as some courts interpret Rule 26(b)(1)'s definition of the scope of discovery—then unethical practices will be undetected and unaddressed. Importantly, an FRCP disclosure rule could save judges who discuss or review TPLF contracts *ex parte* from being put in the uncomfortable position of being the only disinterested persons privy to potentially unethical arrangements. Uniform disclosure of TPLF contracts would protect the judiciary by allowing sunshine to serve as a natural deterrent to unethical arrangements, lessening the possibility that funders and lawyers employ problematic control provisions in the first place.

⁷³ Exhibit F, Therium Dominion Funding Agreement at §9.3.2.

⁷⁴ *Id.* at §9.5.

⁷⁵ Exhibit C, Burford/Sysco Agreement at §§5.3(d-f).

are identical or inferior to the terms agreed to with previous counsel.⁷⁶ Along similar lines, the ILP Funding Agreement restricts the plaintiff from terminating or replacing counsel without the funder's prior written consent;⁷⁷ the Legalist Funding Agreement provides that "[t]he Plaintiff ... will not engage a new attorney or law firm ... to advise and/or represent the Plaintiff in connection with the Claim(s)" without 30 days prior notice and "without giving good faith consideration to the Funder's response;"⁷⁸ the Longford Capital Agreement defines replacing counsel as a "Material Adverse Event" that requires plaintiff to obtain Longford's prior written consent and mandates that any replacement counsel will be subject to "the same terms and provisions" as the letter attached to the contract;⁷⁹ and the Litchfield Funding Agreement provides:

If New Counsel is replacing Current Counsel, Forward Seller [plaintiff] shall not engage such New Counsel unless and until such New Counsel and Forward Seller execute and deliver to Forward Purchaser [funder] an instruction letter in substantially the same form as the Current Counsel Instruction Letter or such other form approved by Forward Purchaser in writing in its sole discretion.⁸⁰

Even when new counsel is allowed, TPLF contracts can enable funders to obstruct or delay onboarding of replacement counsel.

A non-party funder's ability to prevent, or dictate the terms of, a plaintiff's choice of new counsel is important for courts and parties to know. Courts managing litigation should be aware of counsel primarily serving the interests of a non-party rather than the named plaintiff in the case. When counsel takes positions seemingly contrary to client interests, courts need the information and tools to evaluate whether this reflects legitimate strategic judgment or funder relationships that the plaintiff cannot overcome. Courts should know that, if a funded plaintiff discovers conflicts of interest or becomes dissatisfied with counsel performance, the funder's contractual control over replacement counsel can prevent the plaintiff from obtaining truly independent representation. Opposing parties also need this information to assess whether they are dealing and negotiating with counsel loyal to the plaintiff, or whether counsel recommendations may be influenced by separate economic relationships with funders that create incentives including to prolong litigation or reject otherwise reasonable settlements.

C. The Sharing of Contingent Fees between Funders and Counsel Can Influence Judicial Management, Affect the Other Parties, and Aggravate Conflicts

Knowing how lawyers and non-parties propose to split contingency fees can be critical for courts and parties trying to avoid making case management and resolution decisions based on incorrect assumptions. Splitting contingency fees can create incentives and conflicts of interest that distort attorney decision-making. The Therium Dominion Funding Agreement's structure, where the client pays the contingent fee to the funder who then "shares" recoveries with counsel through a

⁷⁶ *Id.*

⁷⁷ Exhibit A, ILP Funding Agreement at §6.2.4.

⁷⁸ Exhibit G, Legalist Funding Agreement at §6.7.

⁷⁹ Exhibit H, Longford Capital Agreement at §8.3 and Exhibit D thereto.

⁸⁰ Exhibit I, Litchfield Funding Agreement at §5.2.

separate undisclosed agreement,⁸¹ fundamentally alters counsel’s economic incentives in ways that may diverge from the court’s and other parties’ expectations, as well as the funded plaintiff’s interests. The Therium Chevron Funding Agreement requires the lawyers to “recover the maximum possible Contingency Fee,” which is the lawyers’ share of the proceeds, not the recovery to the class.⁸² Having counsel’s compensation depend on funder satisfaction rather than a preset percentage of plaintiff’s recovery creates—and is intended to create—a strong financial incentive for counsel to prioritize funder preferences over client objectives.

The ramifications multiply when funders invest in multiple cases involving the same law firm and “cross-collateralize” those investments so profits from one case are used to cover expenses from another. Such payment schemes can aggravate potential conflicts of interest in numerous ways, including the calculation and timing of counsel’s contingent fee. Some TPLF agreements diverge from the usual calculation of a contingent fee as a percentage of the overall recovery, with the result that funded counsel could receive a larger fee than normally permitted by ethical rules.⁸³ When funders cross-collateralize investments across multiple cases involving the same firm, counsel’s incentives on any individual case will be skewed by the performance of other funded matters, creating litigation and settlement dynamics that courts and parties cannot understand or address without disclosure of the TPLF contract.

Any facet of litigation and resolution could be affected by TPLF compensation schemes. Funded counsel recommendations will inevitably be influenced towards economic arrangements that make certain outcomes more profitable than others, potentially affecting the timing and terms of settlement offers across multiple otherwise unrelated cases. Courts managing litigation, ordering settlement conferences, and evaluating discovery disputes need to have this information available since counsel’s actions can reflect complex economic calculations rather than the case-specific client advocacy that courts ordinarily expect. Opposing parties also need this information since it alters litigation and settlement dynamics.

IV. THE “PROTECTIONS” AGAINST FUNDERS’ CONTROL ARE OFTEN ILLUSORY AND CAN MISLEAD JUDGES AND PARTIES

A. Boilerplate Disavowals of Funder Control May Be Contradicted by Specific Contractual Provisions and Are Likely Unenforceable

While TPLF contracts may contain blanket representations that the funder is a passive investor and does not control the litigation or settlement, such provisions are frequently contradicted by other specific powers set forth in the agreement.⁸⁴ For example, the Therium Chevron Funding Agreement—the one that permits the lawyers to do only three things without funder consent⁸⁵—states that “[n]othing in this Agreement entitles Therium to control the conduct of the Claim

⁸¹ Exhibit F, Therium Dominion Funding Agreement at Recital C.

⁸² Exhibit B, Therium Chevron Funding Agreement at §3.1.3.

⁸³ The TPLF compensation in *Fresh Acquisitions* was “three multiplied by whatever the litigation funder funds . . . , plus a 12% return.” *Fresh Acquisitions*, 2025 WL 2231870, at *5.

⁸⁴ A basic rule of contract construction is that “general words do not derogate from special.” *Generalia specialibus non derogant*, BLACK’S LAW DICTIONARY (5th ed. 1979).

⁸⁵ See *supra* notes 22-23.

and/or the Proceedings.” In other words, the disavowal of control in TPLF contracts is likely illusory.

Plaintiffs who seek funding to support their lawsuits are highly unlikely to have the resources to initiate collateral litigation to enforce their contractual rights. And even if the funded party can afford to litigate against the funder, they may not succeed—as happened in the dispute between Burford and Sysco, where an arbitral tribunal restrained Sysco from settling claims without Burford’s consent despite multiple affirmations in the funding agreement that Burford did not control resolution.⁸⁶ The Burford/Sysco Agreement states that “the Capital Providers are each passive providers of external capital and have not become owners of, partners in, or parties to the claims or any part thereof or acquired any rights as to their control or resolution ... the Counterparty remains in full control of the assertion and resolution of the claims.” The contract also says that “the Counterparty shall have day-to-day and overall control over the conduct of, and responsibility for, the Claims and neither the Capital Providers nor their respective Affiliates shall exercise, or seek to exercise, any such control over the Claims.”⁸⁷ In addition, that contract says the funder “shall not be entitled to control or direct the conduct of the Claims, or to require settlement thereof.”⁸⁸ None of those hortatory phrases prevented Burford from taking legal action to prevent the parties’ settlement, nor from undertaking to wrest control of the litigation for itself, in part based on the provisions in the TPLF contract that obligated the funded plaintiff to pursue and monetize the funded claims⁸⁹ and empowered the funder to step into the shoes of the plaintiff to control litigation and settlement in the event of a “breach” by the plaintiff.⁹⁰ Thus, in practice, the boilerplate disclaimers of control in TPLF contracts are not worth the paper they are printed on.

Yet funders continue to assert that they do not exercise control over the cases they fund. Andrew Cohen of Burford told an audience of judges at the Sixteenth Annual Judicial Symposium on Civil Justice Issues at the George Mason University Antonin Scalia Law School:

And again, I don’t know how to say this any more clearly, we don’t control settlement. If we do, I know that Burford Capital as a funder is not subject to ethical rules because we’re not a lawyer, but I am a lawyer, and I do take ethical rules seriously, and I would find it really loathsome to misrepresent that to a court.⁹¹

At the time of this statement, Burford was actively engaged in its high-profile legal campaign to enforce its contractual rights to prevent its client, Sysco, from consummating a settlement

⁸⁶ See Behrens, Mark, *Third-Party Litigation Funding: A Call for Disclosure and Other Reforms to Address the Stealthy Financial Product that Is Transforming the Civil Justice System*, 34 Cornell J.L. & Pub. Pol’y 1, 8-9 (2024), <https://community.lawschool.cornell.edu/wp-content/uploads/2025/03/Behrens-final.pdf>.

⁸⁷ Exhibit C, Burford/Sysco Agreement at §5.2(c).

⁸⁸ *Id.* at §5.2(b).

⁸⁹ *Id.* at §5.3(b).

⁹⁰ *Id.* at 13.1(b).

⁹¹ GEORGE MASON ANTONIN SCALIA LAW SCHOOL LAW & ECONOMICS CENTER, Judicial Education Program, Sixteenth Annual Judicial Symposium on Civil Justice Issues, *Panel 6: The Evolution of Third-Party Litigation Funding* at 1:08:00-1:08:22 (Oct. 10, 2022), <https://masonlec.org/events/sixteenth-annual-judicial-symposium-on-civil-justice-issues/>.

agreement in a lawsuit Burford funded.⁹² Even today, despite the widespread knowledge of its legal maneuvering in the Sysco litigation, Burford still maintains that “Burford is a passive financier and does not control the legal assets in which we invest, except in extraordinary circumstances agreed to in advance by the client.”⁹³

Similar to the Burford/Sysco Agreement, the language in the Therium Funding Agreement purports to say “nothing in this Agreement shall permit [the funder] to override any advice” given by counsel to the funded plaintiff,⁹⁴ although this disavowal is pointedly “subject to [the funder’s] rights to termination”—in other words, the funder always holds over the funded plaintiff’s head the looming threat that it can walk away any time it chooses in the event of a dispute. Notably, this provision relates to advice of counsel and does not limit the funder’s right to “override” any decision taken by the funded party. Therium nonetheless proclaims that funders “remain passive providers of capital.”⁹⁵ The recent transfer of Therium’s TPLF business also creates uncertainty about what practices new management will undertake.⁹⁶

The current absence of a rule requiring disclosure of TPLF contracts increases the likelihood that federal judges and litigants will be deceived by boilerplate disavowals of funder control. Courts that take such disavowals at face value, or that substitute *ex parte* and *in camera* practices for disclosure of TPLF contracts, run a high risk of misunderstanding the funders’ control mechanisms.

B. The Reasonableness Standard Is Ineffectual in Control Disputes

The “reasonableness” standard used in many TPLF contracts is also illusory as a purported limit on a funder’s control. For example, the Amendment to Burford/Sysco Agreement provides that the funded plaintiff “shall not accept a settlement offer without the Capital Providers’ prior written consent, which shall not be unreasonably withheld....”⁹⁷ Yet this provision did not prevent Burford from withholding its consent to a settlement agreement and taking legal action against its client to prevent the settlement,⁹⁸ action that a federal judge concluded “threaten[ed] the public policy favoring the settlement of lawsuits.”⁹⁹ The vagueness of “unreasonably” as a standard for breach of contract makes it impractical to enforce, adding to the unlikelihood that funded plaintiffs would spend limited resources to enforce their interpretation of that word. Moreover, settlement offers typically require a prompt response and may be withdrawn if circumstances change. Thus, disagreements over “reasonableness,” particularly if requiring arbitration or litigation, could give funders a “pocket veto” over settlements by delaying

⁹² See *In re Pork Antitrust Litigation*, 2024 WL 511890, at *1 (Mag. D. Minn. Feb. 9, 2024) (describing litigation), *aff’d*, 2024 WL 2819438 (D. Minn. June 3, 2024).

⁹³ Burford, <https://www.burfordcapital.com/introduction-to-legal-finance/#faq> (last visited Aug. 6, 2025).

⁹⁴ Exhibit F, Therium Dominion Funding Agreement at §9.7.

⁹⁵ Therium, <https://www.therium.com/blog/litigation-funding-a-useful-tool-for-forward-looking-gcs-and-in-house-lawyers/> (last visited Aug. 6, 2025).

⁹⁶ See *Therium Retreats, Fortress Takes Control—Leaving Claimants and Investors Exposed to Financial Realignment* (June 17, 2025) <https://knowsulu.ph/the-untold-sulu-story/inside-the-fortress-capital-control-and-the-quiet-collapse-of-therium> (“Although Therium remains administratively party to existing contracts, its diminished role leaves claimants and law firms vulnerable to delays, contract revisions, or outright case abandonment”).

⁹⁷ Exhibit D, Amendment to Burford/Sysco Agreement at §7(b)(v).

⁹⁸ Behrens, *supra* note 69, at 8-9.

⁹⁹ *Pork Antitrust*, 2024 WL 2819438, at *4.

responses to settlement offers until the window of opportunity has closed. Because the “reasonableness” standard may not be a meaningful check on a funder’s ability to control litigation and resolution, it can be understood only in the context of the control mechanisms in the contract.

C. Plaintiffs Are Often Forbidden from Disclosing their Own Funding Arrangements

TPLF contracts often prohibit funded plaintiffs from disclosing the existence of their TPLF contract or its terms—even to the court—absent a court order. For example, the Burford/Sysco Agreement restricts the disclosure of “Confidential Information,” which is defined to include “the nature, terms and existence of this Agreement,” and “the existence of any relationship between the Counterparty and a Capital Provider or any of its Affiliates or Representatives.”¹⁰⁰ In addition, the contract “obligate[s]” “each party ... to keep confidential the existence and content of any arbitral proceedings initiated hereunder and any rulings or award”¹⁰¹ (with limited exceptions). These provisions—gag rules that prevent plaintiffs from speaking up when they no longer control their cases—mean that courts and parties will not ordinarily learn of the existence of TPLF contracts, understand their impact on the case, or know when disputes arise about those contracts.¹⁰² Passively waiting for a plaintiff to give notice about a TPLF contract will not work. A disclosure rule is essential to protect courts, parties, and the funded plaintiff themselves from issues caused by TPLF contract provisions.

V. TPLF CONTRACTS CAN UNDERMINE PROTECTIVE ORDERS BY GIVING NON-PARTY FUNDERS ACCESS TO CONFIDENTIAL DOCUMENTS

Some TPLF contracts give funders access to all documents relevant to the claims, including confidential and privileged documents. Such provisions are likely in conflict with protective orders and party agreements. For example, the Longford Capital Agreement gives Longford “Regular and Timely Disclosure of Important Documents” including “Deposition transcripts and discovery materials,” “Key documents related to any material event or change in the prosecution of the Claims,” and “Any documents related to possible settlement or other resolution of the Claims.”¹⁰³ Similarly, the ILP Funding Agreement requires the plaintiff to instruct counsel to give the funder “a copy of all documents obtained from, or provided to, any Defendant in the Proceedings,”¹⁰⁴ and requires the plaintiff to provide “all information, documents and assistance” that the funder reasonably requests.¹⁰⁵ The LMFS Funding Agreement requires the plaintiff “to execute a separate power of attorney which shall entitle [funder] to request and view official and/or court documents.”¹⁰⁶ The Therium Dominion Funding Agreement requires the plaintiff to

¹⁰⁰ Exhibit C, Burford/Sysco Agreement at §8.2 and Exhibit A thereto.

¹⁰¹ *Id.* at §29(g).

¹⁰² For one example, see *Fresh Acquisitions*, 2025 WL 2231870, at *1 (“The court learned somewhat inadvertently—in response to its inquiries—that the Liquidating Trustee entered into a litigation funding agreement. . . . According to certain defendants . . ., this litigation funding agreement was hampering the prospect of settlement. . . . This court was surprised to hear about a litigation funding agreement.”).

¹⁰³ Exhibit H, Longford Capital Agreement at Exhibit A.

¹⁰⁴ Exhibit A, ILP Funding Agreement at §6.3.5.

¹⁰⁵ *Id.* at §4.2.

¹⁰⁶ Exhibit E, LMFS Funding Agreement at §2(b)(vii).

instruct counsel to give the funder “any documents or information relating to the Claim and Proceedings.”¹⁰⁷

In *Valjakka v. Netflix*,¹⁰⁸ the court found that a lawyer violated its protective order by sharing highly confidential information with a TPLF company, including expert reports, information about source code, and financial data.¹⁰⁹ The lawyer acknowledged that the funder “had full access to [the defendant’s] documents produced in discovery,” but argued that the disclosures were within the scope of the protective order for reasons including that the funder met the order’s definition of “a Professional Vendor.”¹¹⁰ The court found the lawyer’s arguments “unavailing,” that the defendant’s “interests in preventing [the funder’s] improper access to its confidential materials are incontestable,” and that sanctions were merited.¹¹¹

Courts and parties need to know when TPLF agreements grant non-party funders access to confidential and privileged documents because, as *Valjakka* demonstrates, such provisions undermine the effectiveness of protective orders and party stipulations on information sharing. Courts issuing protective orders, and parties stipulating to them or drafting their terms and scope, need to know when funder access rights exist, and to whom such obligations are owed, to ensure that any proposed stipulation or order is adequate to protect confidential information.

Moreover, parties producing sensitive documents in discovery should have the right to know that the requesting party has promised to share their confidential materials with a non-party litigation funder, especially since funders may have strategic motivations unrelated to the particular lawsuit, such as obtaining information related to other cases or gaining access to competitors’ proprietary data and intellectual property. Only disclosure of the TPLF contract can allow producing parties to seek appropriate language in protective orders and to make objections to discovery requests when funder access would create unacceptable risks. Only disclosure of TPLF contracts will allow courts to consider such language and objections based on information rather than speculation.

Additionally, courts enforcing protective orders need to understand these arrangements because confidentiality violations—and any ensuing sanctions—may be the fault of non-party funders, not the nominal parties. Sanctions against non-parties for improper conduct require different enforcement mechanisms and potentially broader relief. An FRCP disclosure rule for TPLF contracts is necessary to provide courts and parties the information needed for fashioning and enforcing appropriate protective orders.

VI. TPLF CONTRACTS CAN INTERFERE WITH COURT RULINGS ABOUT COSTS AND SANCTIONS

Some TPLF contracts require the plaintiff to pay any court-ordered costs or sanctions—even if the plaintiff did not participate and could not prevent the funder and counsel from engaging in the sanctionable conduct. For example, the Therium Dominion Funding Agreement states that

¹⁰⁷ Exhibit F, Therium Dominion Funding Agreement at §9.2.3.

¹⁰⁸ 2025 WL 2263684 (N.D. Cal. July 10, 2025).

¹⁰⁹ *Id.* at *2-3.

¹¹⁰ *Id.* at 3.

¹¹¹ *Id.* at 4.

the funder is not liable for defense costs, fines, or penalties,¹¹² and requires the plaintiff to indemnify the funder against any amounts that either the client or the funder is ordered to pay to an opponent or becomes liable for by settling or discontinuing the suit.¹¹³ Even more expansively, the Burford/Sysco Agreement provides that the funder shall not have “any obligation to fund any fees, expenses, or other sums in relation to any Claim” including “sums awarded against, or penalties incurred by, the Counterparty, including any costs orders, awards, interest, damages, expenses, or penalties against the Counterparty, nor to fund any legal fees or any other costs whatsoever incurred as a result of defending any counterclaim brought against the Counterparty in relation to any Claim or defending any enforcement or other proceedings against the Counterparty.”¹¹⁴ The Longford Capital Agreement also provides that the funder is not responsible for costs for fees associated with any adverse claims.¹¹⁵

These provisions can contravene court orders and undermine their purpose—while at the same time depriving plaintiffs of independent legal representation. By shielding funders who have control or material influence over litigation and settlement decisions from any potential costs and sanctions arising from their decisions, these arrangements can render a court order ineffective, futile, or even manifestly unjust. Such contractual provisions, when unknown to the court and parties, not only undermine the deterrent effect of cost-shifting rules and sanctions but also may encourage irresponsible litigation conduct since funders may benefit from, and cannot be held financially accountable for, discovery violations, frivolous motions, or other sanctionable behavior they may direct.

VII. AN FRCP DISCLOSURE RULE IS SUPERIOR TO *EX PARTE* COMMUNICATIONS ABOUT TPLF CONTRACTS

An FRCP rule requiring disclosure of TPLF contracts is superior to reliance on *ex parte* discussions or written filings about what are often lengthy and complex agreements with contradictory and even deliberately “opaque”¹¹⁶ provisions. The only way to understand a TPLF contract is to read it, and the adversarial process is the best method for illuminating issues. Due process requires that significant matters be dealt with transparently with all parties having a meaningful opportunity to consider the issues and be heard. A court seeking to comprehend a TPLF contract through a secret, one-sided conversation with counsel for the funded party is highly unlikely to come away with an accurate understanding of how the contract can actually affect the process and substance of the case before it. The lawyer for the funded plaintiff has obvious incentives to emphasize boilerplate language disavowing control while minimizing the significance of the specific control mechanisms, especially where the lawyer has an ongoing relationship with the funder in another matter or even a whole “portfolio” of lawsuits, which is common today. Courts that conclude “there’s nothing to see here” after an *ex parte* communication are taking a significant risk to their credibility if a dispute later develops about the contract or the behavior of the funder or the lawyers, or if something untoward or unethical occurs. The Code of Judicial Conduct’s strong admonition against *ex parte* communications reflects that they are inappropriate for substantive legal determinations such as contract

¹¹² Exhibit F, Therium Dominion Funding Agreement at §5.1.3.

¹¹³ *Id.* at §8.2.

¹¹⁴ Exhibit C, Burford/Sysco Agreement at §11(a).

¹¹⁵ Exhibit Longford Capital Agreement at §3.3.

¹¹⁶ *Fresh Acquisitions*, 2025 WL 2231870, at *9.

interpretation. A disclosure rule would relieve courts from the perceived need, risks, inadequacy, and burdens of *ex parte* communications about TPLF contracts by lifting the veil and, if needed, allowing the parties to advocate their interests related to those contracts in the open in keeping with the traditions of our adversarial system.

Conclusion

The Advisory Committee should promulgate a rule requiring disclosure of TPLF contracts similar to the insurance disclosure requirement in Rule 26(a)(1)(A)(iv). As with insurance contracts, TPLF disclosure is necessary not because it is “relevant” to any particular “claim or defense,” but rather because TPLF contracts can affect the conduct of litigation as a whole. A TPLF disclosure rule will provide judges with an essential tool for effective case management: knowledge of how and when a non-party controls litigation and settlement decisions. A uniform rule would eliminate the burden of motion practice where one side seeks, and another party resists, disclosure of the contract, and it would ensure that judges need not examine TPLF contracts unless parties raise specific issues through normal briefing processes. Without Advisory Committee action, judges will continue either to be in the dark about potential problems created by TPLF contracts or will be forced to spend judicial resources (including in the inadequate practice of *ex parte* communications) deciphering complex funding agreements case by case without clear procedural guidance about when disclosure is required. The transparency provided by a rule requiring disclosure of TPLF contracts would lift a veil rather than impose a burden, creating a framework that removes uncertainty and unnecessary process from courts while adding the knowledge necessary for effective case management and successful settlement negotiations.

EXHIBIT A

INTERNATIONAL LITIGATION PARTNERS LIMITED

LITIGATION FUNDING AGREEMENT

BETWEEN:

INTERNATIONAL LITIGATION PARTNERS LTD

and

LAURENCE JOHN BOLITHO

INTERNATIONAL LITIGATION PARTNERS LIMITED

LITIGATION FUNDING AGREEMENT

Date	13 March 2014
Parties	INTERNATIONAL LITIGATION PARTNERS LTD of Level 2,90 William Street, Melbourne VIC 3000 (ILP) LAURENCE JOHN BOLITHO of 14 Bolitho Road, Kyabram,VIC 3620 (Plaintiff)

RECITALS

- A. The Plaintiff has one or more Claims against the Defendants and other persons have claims which are the same or similar to the Claims.
- B. A Class Action has already been commenced by the Plaintiff against the Defendants in respect of some or all of the Claims.
- C. The Plaintiff has requested ILP to manage the Case, pay the Case Costs and provide necessary funding and support for the Case.
- D. ILP is prepared to manage the Case, pay the Case Costs and provide necessary funding and support for the Case on the terms of this ILP Agreement

AGREEMENT

1. Definitions

1.1. In this ILP Agreement, unless the context otherwise requires:

“Adverse Costs Order” means any costs order made in favour of the Defendants (or any of them) against the Plaintiff and/or ILP in the Proceedings in respect of costs of any Defendant incurred during the term of this ILP Agreement.

“Alternative Dispute Resolution Process” means any form of negotiation, discussions, mediation, conciliation, expert determination or other form of consensual dispute resolution process which seeks to settle the Claims and/or the Proceedings.

“Case” means the Proceedings.

“Case Costs” means the following costs and expenses:

- (a) the costs and expenses associated with the Case Investigation and Case Management by the Lawyers and/or ILP;
- (b) the costs involved in the provision by ILP of any security for costs;
- (c) any Adverse Costs Order paid by ILP;
- (d) the costs incurred by ILP in quantifying any Adverse Costs Order;
- (e) the reasonable legal fees and the reasonable disbursements (including Counsel fees) reasonably incurred by the Lawyers for the dominant purpose of preparing for, conducting and resolving the Proceedings ;
- (f) any costs paid by ILP pursuant to this ILP Agreement;
- (g) all of ILP’s out of pocket costs and expenses paid or incurred in relation to the Case, including in relation to any consultants and experts engaged by ILP ; and

- (h) any GST payable on any Supply made by any entity as a result of the above costs or expenses being incurred.

“Case Investigation” means the investigation referred to in sub-clause 4.1.

“Case Management” means the management described in clause 7.

“Claims” means the claim or claims the Plaintiff has or may have against some or all of the Defendants and for loss and damage caused to the Plaintiff by the conduct of one or more of the Defendants in relation to or arising out of the acquisition by the Plaintiff of any Securities.

“Class Action” means the proceedings commenced by the Plaintiff in the Supreme Court of Victoria (SCI 2012 7185) against the Defendants.

“Conflicts Management Policy” means ILP’s policy, as amended from time to time, for managing conflicts.

“Consideration” has the same meaning as in the GST Act

“Costs Order” means an order made by a Court requiring the Plaintiff and/or ILP to pay the costs incurred by another party to the Proceedings.

“Court” means the Supreme Court of Victoria being the court in which the Proceedings are being conducted.

“Date of Commencement” means the date this ILP Agreement signed by the Plaintiff.

“Defendants” means each of the individuals and corporations named as defendants in the Class Action and any others against whom Proceedings are commenced.

“GST” has the same meaning as in the GST Act.

“GST Act” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“ILP” means International Litigation Partners Limited (ACN 167 628 597).

“ILP Agreement” means this agreement between the Plaintiff and ILP and, if amended, this agreement as amended.

“Input Tax Credit” has the same meaning as in the GST Act.

“Judgment” means any judgment of a competent Court against any Defendant in respect of any Claim.

“Lawyers” means Mark Elliott of Level 2, 90 William Street, Melbourne, 3000 or any other solicitors appointed in their place as agreed between ILP and the Plaintiff.

“Legal Work” means advice and other legal services which the Lawyers consider reasonably necessary in relation to the Proceedings.

“Plaintiff” means the company or individual whose details appear on the front page of this ILP Agreement and the successors or assigns of that company or individual.

“Privilege” unless the context otherwise requires, means legal professional privilege .

“Proceedings” means the Class Action concerning all or some of the Claims,

“Regulations” means the Corporations Amendment Regulation 2012 (No. 6) as amended from time to time.

“Resolution Sum” means any money received or payment made to settle, compromise or resolve one or more or all of the Claims .

“Securities” means unlisted debentures issued by Banksia Securities Limited.

“Settlement”, means any agreement, compromise, discontinuance, waiver, payment, release, understanding or any other arrangement whatsoever where money, value or a benefit passes from or on behalf of a Defendant to the Plaintiff in respect of one or more of the Claims

“Supply” has the same meaning as in the GST Act.

“Taxable Supply” has the same meaning as in the GST Act.

“Termination” means:

- (a) a termination in accordance with this IPL Agreement; and
- (b) any completion, failure, avoidance, rescission, annulment or other cessation of effect of this IPL Agreement.

2. **General**

- 2.1. The written terms of this IPL Agreement constitute the entire agreement between the parties.
- 2.2. Neither the Plaintiff nor ILP intend to be partners or fiduciaries with or towards each other. Nothing in this IPL Agreement shall constitute the Plaintiff and ILP as partners or fiduciaries.
- 2.3. There will be no variation or amendment to the terms of this IPL Agreement except in writing signed by each of the Plaintiff and ILP.
- 2.4. A facsimile transmission of this IPL Agreement signed by any party to it will be treated as an original signed by that party.
- 2.5. If any provision of this IPL Agreement, or the application thereof to any person or circumstances, shall be or become invalid or unenforceable, the remaining provisions shall not be affected and each provision shall be valid and enforceable to the full extent permitted by law.
- 2.6. The Plaintiff and ILP will promptly execute all documents and do all things that either of them from time to time reasonably requires of the other to effect, perfect or complete the provisions of this IPL Agreement and any transaction contemplated by it.
- 2.7. The singular includes the plural in this IPL Agreement and vice versa.

- 2.8. All references to clauses, sub-clauses and paragraphs are references to clauses, sub-clauses and paragraphs in this ILP Agreement.
- 2.9. A reference in this ILP Agreement to any legislation or legislative provision includes any statutory modification, amendment or re-enactment of that legislation or legislative provision, and includes any subordinate legislation or regulations issued under that legislation or legislative provision.

3. **Cooling Off Period**

- 3.1. The Plaintiff may, by written notice given to ILP within 14 days after the Date of Commencement, withdraw from this ILP Agreement. Such withdrawal will cause this ILP Agreement to terminate but will not be treated as a Termination.
- 3.2. If the Plaintiff withdraws in accordance with sub-clause 3.1, the Plaintiff shall have no continuing or further obligation to ILP save for any obligations of confidence arising in respect of information received by the Plaintiff prior to the withdrawal.

4. **Case Investigation**

- 4.1. The Plaintiff consents to ILP, at ILP's discretion:
- 4.1.1. investigating the evidentiary basis for the Claims of the Plaintiff;
 - 4.1.2. collating the material documents;
 - 4.1.3. investigating the capacity of any Defendants to pay any judgment, award or order which may be made against that Defendant relating to the Claims;
 - 4.1.4. investigating the preparedness of the Defendants to resolve the Claims.
- 4.2. The Plaintiff will provide, or procure the provision of, all information, documents and assistance as ILP may reasonably request for the Case Investigation on the basis that the information and documentation is confidential, provided for the purpose of resolving the Claims of the Plaintiff, remains the exclusive property of the Plaintiff and will be returned by ILP at the conclusion of the Case.

- 4.3. Notwithstanding sub-clause 4.2 the Plaintiff agrees that any information or documents provided to ILP may be used by ILP in the Case Investigation and may be disclosed by ILP for the purposes of the Proceedings.
- 4.4. The Plaintiff hereby authorises ILP to seek and obtain any information and documentation which ILP believes may be relevant to the Claims of the Plaintiff from any person or entity.
- 4.5. The Plaintiff consents to ILP providing a copy of this ILP Agreement to third parties who request evidence of the authority granted to ILP pursuant to sub-clause 4.4.
- 4.6. Without derogating from anything else in this clause 4, ILP may use the results of its investigations:
 - 4.6.1. to assist ILP in the preparation or prosecution of any proceedings to which this ILP Agreement applies;
 - 4.6.2. to monitor its actual and potential obligations under this ILP Agreement;
 - 4.6.3. to review whether it provides or continues to provide funding in respect of any of the Claims or the Case.

5. **Proceedings**

- 5.1. The Plaintiff agrees that:
 - 5.1.1. the Lawyers and ILP will determine what Claims should be pursued in the Proceedings;
 - 5.1.2. ILP will give day-to-day instructions to the Lawyers on all matters concerning the Claims and the Proceedings and may give binding instructions to the Lawyers and make binding decisions on behalf of the Plaintiff in relation to the Claims ; and
- 5.2. ILP may decide, in its sole discretion following consultation with the Lawyers to cease to fund any Claim by giving 14 days' written notice of its decision to the Plaintiff.

5.3. If ILP decides to cease funding any Claim under sub-clause 5.2, then all of ILP's obligations in relation to that Claim, other than ILP's accrued obligations, cease on the date ILP's notice becomes effective. The Plaintiff agrees that on ILP's notice becoming effective, the Lawyers will as soon as is reasonably possible discontinue the prosecution of the Claim concerned by taking any step necessary to discontinue the prosecution of the Claim. For the avoidance of doubt, any such decision by ILP will not result in a termination of this ILP Agreement.

5.4. The accrued obligations of ILP referred to in sub-clause 5.3 comprise:

5.4.1. payment of any outstanding Case Costs incurred in relation to the Claim referred to in that sub-clause up to the date the notice of ceasing to fund takes effect; and

5.4.2. payment of any Adverse Costs Order against the Plaintiff in the Case in respect of costs which arise in, or are attributed to, the period beginning on the Date of Commencement and ending on the date ILP's notice of ceasing to fund takes effect .

6. The Plaintiff's Obligations

6.1. For the duration of this ILP Agreement, the Plaintiff must:

6.1.1. subject to this ILP Agreement, follow all reasonable legal advice given by the Lawyers and by counsel retained by the Lawyers in relation to the Proceedings and the Claims ;

6.1.2. promptly provide full, frank and honest instructions to the Lawyers and counsel and provide the Lawyers with all documents in the Plaintiff's possession, custody or power that are relevant to the Claims or the Proceedings;

6.1.3. provide a signed, written witness statement to the Lawyers on their request for use in the Proceedings, attend the Court to give evidence in person if required by the Lawyers to do so and actively participate in any Alternative Dispute Resolution Process;

- 6.1.4. diligently prosecute the Proceedings and any appeals and do all things necessary to enable the Lawyers to ensure that the Proceedings and any appeals;
 - 6.1.5. comply with all orders of the Court and all statutory provisions, regulations, rules and directions which apply to the Plaintiff in relation to the Claims and the Proceedings;
 - 6.1.6. provide ILP and the Lawyers with full contact details, including where possible an email address, and immediately inform the Lawyers and ILP of any change in contact details;
 - 6.1.7. immediately inform the Lawyers and ILP of any information, circumstance or change in circumstances likely to affect the Claims, any issue in any Proceedings or the recoverability of any Resolution Sum;
 - 6.1.8. promptly take all appropriate actions, at ILP's expense and with ILP's written agreement, to tax or assess any costs claimed by any Defendant in an Adverse Costs Order; and
 - 6.1.9. take all appropriate action to diligently enforce any judgment obtained in the Proceedings against any Defendant.
- 6.2. For the duration of this ILP Agreement, the Plaintiff must not, without the prior written consent of ILP:
- 6.2.1. discontinue, abandon, withdraw or settle the Proceedings or the Claims against any Defendant or make any admission in relation to the Claims;
 - 6.2.2. subject to clause 13, reject any Settlement offer made by any Defendant;
 - 6.2.3. reject any offer made by any Defendant to engage in any form of Alternative Dispute Resolution Process; or
 - 6.2.4. terminate the retainer of the Lawyers or retain any other solicitors in place of the Lawyers.

- 6.3. For the duration of this ILP Agreement, the Plaintiff instructs the Lawyers to:
- 6.3.1. subject to clause 13, comply with all instructions given by ILP or as is set out in this ILP Agreement;
 - 6.3.2. comply with all orders of the Court and all statutory provisions, regulations, rules and directions which apply to the Plaintiff in relation to the Claims and the Proceedings;
 - 6.3.3. conduct the Proceedings efficiently and effectively;
 - 6.3.4. keep ILP fully informed of all material developments in the Proceedings and in relation to the Claims, including immediately informing ILP if, in the Lawyers' opinion, the Plaintiff's prospects of achieving success in the Proceedings or the Defendant's capacity to pay any judgment is or is likely to be impaired;
 - 6.3.5. provide ILP with a copy of all advice given by the Lawyers or counsel to the Plaintiff in relation to the Proceedings and the Claims and, if requested to do so by ILP, a copy of all documents obtained from, or provided to, any Defendant in the Proceedings;
 - 6.3.6. immediately inform ILP of all Settlement offers or offers to engage in an Alternative Dispute Resolution Process received from any Defendant and allow ILP the opportunity to attend any Alternative Dispute Resolution Process agreed with any Defendant;
 - 6.3.7. obtain, at ILP's expense and with ILP's written agreement, a taxation or assessment of any Defendant's costs comprising any Adverse Costs Order and provide a copy of all documents relating to the taxation or assessment to ILP; and
 - 6.3.8. provide full assistance and co-operation to ILP in relation to opposing, taxing, assessing or resolving any application for security for costs or any Adverse Costs Order.

6.4. The Plaintiff agrees to keep and preserve any documents relating to the Defendants, the Proceedings and/or the Claims that the Plaintiff has in his, her or its possession, custody or control and the Plaintiff:

6.4.1. will provide to the Lawyers all information and documents relevant to the Proceedings and the Claims if and when so requested by the Lawyers;

6.4.2. authorises the Lawyers, without waiving privilege, to provide the information and documents referred to above to ILP; and

6.4.3. if ordered to do so by a Court in any Proceedings relating to his, her or its Claims, authorises the Lawyers to provide the information and documents to the Defendants and to any third party the subject of a Court order.

6.5. The Plaintiff:

6.5.1. will immediately notify ILP if the Plaintiff is requested or required to disclose any information relating to the negotiation, existence, terms or performance of this ILP Agreement and if so requested by ILP will take such steps as may reasonably be available to prevent disclosure of such parts of the information as ILP may nominate;

6.5.2. will not disclose to any person, other than its legal and financial advisors for the purpose of obtaining confidential legal or financial advice, or ILP, any information:

6.5.2.1 to which Privilege or obligations of confidence attach; or

6.5.2.2 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 Proceedings;

unless the disclosure is in accordance with advice from the Lawyers and is necessary for the purposes of the prosecution of those Proceedings.

- 6.6. The obligations in sub-clause 6.5 are continuing obligations and survive the Termination of this ILP Agreement.
- 6.7. The Plaintiff will not, during the period of this ILP Agreement, have any communication with any Defendant, or any officer, servant or agent of any Defendant relating to the Claims .

7. **Case Management**

- 7.1. ILP will provide the following management services in respect of the Case during the term of this ILP Agreement:
 - 7.1.1. advising the Plaintiff on strategy;
 - 7.1.2. considering the advice of the Lawyers and providing day-to-day instructions to the Lawyers (subject to clause 13);
 - 7.1.3. database and document management;
 - 7.1.4. reporting to the Plaintiff in respect of progress; and
 - 7.1.5. facilitating any Alternative Dispute Resolution Process.
- 7.2. the Plaintiff undertakes, if requested by ILP, to ratify and confirm in writing the validity of any act or exercise of power by ILP done in good faith.
- 7.3. For the duration of this ILP Agreement, ILP will:
 - 7.3.1. by implementing the Conflicts Management Policy, comply with the requirements of the Regulations; and
 - 7.3.2. provide timely and clear disclosure to the Plaintiff of any material breach of the Regulations by ILP in relation to the subject matter of this ILP Agreement.

8. Case Costs

- 8.1. ILP will pay the Case Costs on the terms of this ILP Agreement.
- 8.2. ILP will not seek reimbursement of any internal overheads incurred as part of the Case Costs, other than through the Consideration referred to in sub clause 12.1.2.
- 8.3. If any Defendant makes any payment by way of costs during the course of the Case then the payment may be utilised by ILP in paying or reimbursing any Case Costs. The Lawyers will pay such monies in accordance with this ILP Agreement as directed by ILP from time to time.
- 8.4. ILP will pay any Adverse Costs Order.
- 8.5. If the Court orders the Plaintiff to provide any security for the costs of any Defendant then ILP will provide the security for costs in such other form that ILP determines and the Defendants or the Court accept, relating to costs incurred by a Defendant during the term of this ILP Agreement.

9. Receipt of the Resolution Sum

- 9.1. The Plaintiff and ILP agree that the Lawyers will (and are hereby directed to):
 - 9.1.1. receive any Resolution Sum;
 - 9.1.2. immediately pay any Resolution Sum into a trust account.
- 9.2. The Lawyers will hold that part of the Resolution Sum ordered by the Court as being due to ILP under this ILP Agreement on trust for ILP and that part belonging to the Plaintiff and all other members of the Class Action on trust for each of them with the Resolution Sum to be dispensed in accordance with this ILP Agreement and any Court order.
- 9.3. The Plaintiff and ILP agree that the Lawyers are irrevocably instructed to pay to ILP all amounts ordered by the Court to be payable to ILP under this ILP Agreement;

10. **Payment of the Resolution Sum by the Lawyers**

- 10.1. If a lump sum amount is received in Settlement of the Claims, then after deducting all amounts required to be paid or reimbursed to ILP under this ILP Agreement, the balance will be distributed to the Plaintiff and other Class Action members on such basis as is ordered by the Court.

11. **Appeals**

- 11.1. If there is a final judgment in the Proceedings which is not in favour of the Plaintiff and ILP wishes an appeal to be lodged, then the Plaintiff will cause the Lawyers to lodge and prosecute the appeal in the name of the Plaintiff or other appropriate appellant. The Plaintiff and the Lawyers will take all reasonable steps to expeditiously prosecute the appeal. ILP will pay the legal costs and disbursements in connection with the appeal and will pay any Adverse Costs Order if the appeal is unsuccessful.
- 11.2. If there is a final judgment in the Proceedings in favour of the Plaintiff and the Defendant appeals, then ILP may elect to fund the legal costs and disbursements of the Plaintiff's defence of the appeal. If ILP so elects, the Plaintiff will cause the Lawyers to defend the appeal in the name of the Plaintiff or other appropriate defendant. The Plaintiff and the Lawyers will take all reasonable steps to expeditiously prosecute the defence of the appeal. ILP will pay any Adverse Costs Order if the appeal is lost by the Plaintiff.

12. **Repayment of Case Costs and Consideration**

- 12.1. Subject to any necessary Court order, the Plaintiff acknowledges and agrees that upon Resolution, ILP is entitled to be paid from the Resolution Sum as follows:
- 12.1.1. the Case Costs paid by ILP in relation to the Class Action to which the Resolution Sum relates; and
- 12.1.2. a further amount, as Consideration for the financing of the Case and performance by ILP of its various obligations under this ILP Agreement, being a maximum of 30% of that Resolution Sum.

- 12.2. No fees, commissions or other payments will become due or owing by the Plaintiff to ILP in relation to the Case.

13. **The Lawyers' Retainer and Settlement**

- 13.1. The Plaintiff acknowledges and accepts that the Lawyers have entered, or will enter, into an agreement with ILP for the provision of legal services.
- 13.2. ILP will give day-to-day instructions to the Lawyers on all matters concerning the Claims and the Proceedings, however the Plaintiff may override any instruction given by ILP in so far as it concerns any Claim of the Plaintiff by the Plaintiff giving instructions to the Lawyers.
- 13.3. Except in relation to Settlement, which is dealt with below, if the Lawyers notify ILP and the Plaintiff that the Lawyers believe that circumstances have arisen such that they may be in a position of conflict with respect to any obligations they owe to ILP and those they owe to the Plaintiff, the Plaintiff and ILP agree that, in order to resolve that conflict, the Lawyers may:
- 13.3.1. seek instructions from the Plaintiff, whose instructions will override those that may be given by ILP;
 - 13.3.2. give advice to the Plaintiff and take instructions from the Plaintiff, even though that advice is, and instructions are, or may be, contrary to ILP's interests; and
 - 13.3.3. refrain from giving ILP advice and from acting on ILP's instructions, where that advice is, or those instructions are, or may be, contrary to the Plaintiff's interests.
- 13.4. Nothing in sub-clause 13.3 entitles the Plaintiff to breach, or authorises the breach, of any terms of this ILP Agreement.
- 13.5. In recognition of the fact that ILP has an interest in the Resolution Sum, if the Plaintiff :
- 13.5.1. wants to Settle the Class Action for less than ILP considers appropriate; or

13.5.2. does not want to Settle the Class Action when ILP considers it appropriate to do so;

then the Plaintiff agrees that ILP and Plaintiff must seek to resolve their difference of opinion by referring it to counsel for advice on whether, in counsel's opinion, Settlement of the Class Action on the terms and in the circumstances is fair and reasonable in all of the circumstances.

13.6. If Counsel's opinion is that the Settlement is fair and reasonable then the Plaintiff and ILP agree that the Lawyers will be instructed to do all that is necessary to settle the Class Action provided that the approval of the Court is sought and obtained.

14. **Confidentiality and Provision of Documents**

14.1. In providing to ILP any documents or information about the Claims and any Proceedings, the Plaintiff does not intend to waive any Privilege that may attach to such documents or information.

14.2. Unless specifically prohibited by the terms of a court order or other professional obligation, the Lawyers will provide to ILP a copy of any document obtained in the Proceedings by way of discovery, subpoena or any other coercive power of the Court, subject to ILP's, and its officers' and employees', implied undertaking given to the Court.

14.3. ILP and the Plaintiff agree that all information, communications and documents provided to or acquired, exchanged or generated by or between either of them or the Lawyers in relation to the Case ("the Case Information") are provided, acquired, exchanged or generated in circumstances where the Plaintiff is contemplating or conducting litigation against the Defendant. As a result, ILP and the Plaintiff acknowledge that:

14.3.1. all the Case Information is confidential;

14.3.2. the Case Information may be subject to a claim of legal privilege by the Plaintiff;
and

14.3.3. the communications are “confidential communications” and the documents are “confidential documents” within the meaning of Part 3.10 of the Evidence Act 1995 (*Cth*);

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

14.4. ILP and the Plaintiff agree to maintain the confidentiality of, and any legal privilege attaching to, the Case Information that is not in the public domain unless the disclosure of any part of that Case Information is:

14.4.1. agreed to be made by the Plaintiff and ILP; or

14.4.2. authorised by this ILP Agreement; or

14.4.3. otherwise required by law.

15. **Disclosure of Information**

15.1. The Plaintiff warrants that, to the best of the Plaintiff’s knowledge, at the Date of Commencement there is no information in the custody, possession or control of the Plaintiff materially relevant to the Claims or the outcome of the Proceedings or the potential for any judgment sum to be recovered in respect of the Claims , which has not been disclosed to ILP.

15.2. If, after the Date of Commencement of this ILP Agreement, the Plaintiff becomes aware of any information which has or may have a material impact on the Claims or the potential for any judgment sum to be recovered, the Plaintiff will immediately inform ILP of that information.

16. **Miscellaneous**

16.1. The Plaintiff and ILP will not do or permit to be done, save as provided in this ILP Agreement, anything likely to deprive any party of the benefit for which the party entered into this ILP Agreement.

- 16.2. The Plaintiff and ILP will keep the contents of this ILP Agreement confidential in so far as it concerns the terms of the relationship between the Plaintiff and ILP.

17. Duration of this Agreement

- 17.1. This ILP Agreement commences on the Date of Commencement and continues in operation until:

17.1.1. all Proceedings have concluded;

17.1.2. ILP has complied with all of its obligations under this ILP Agreement.

18. Termination by ILP

- 18.1. ILP is entitled, in its sole discretion, to terminate its obligations under this ILP Agreement other than its accrued obligations, by giving 14 days' written notice to the Plaintiff that this ILP Agreement and ILP's obligations under it are terminated.

- 18.2. All obligations of ILP under this ILP Agreement cease on the date ILP's termination of its obligations referred to in sub-clause 18.1 becomes effective, save for obligations accrued to that date.

- 18.3. The accrued obligations of ILP referred to in sub-clause 18.1 comprise:

18.3.1. payment of any outstanding Case Costs incurred up to the date the notice of termination takes effect; and

18.3.2. payment of any Adverse Costs Order against the Plaintiff in any Proceedings in respect of costs which arise in, or are attributed to, the period beginning on the Date of Commencement and ending on the date ILP's termination becomes effective.

19. Termination by the Plaintiff

- 19.1. If ILP commits a material breach of this ILP Agreement and does not remedy the breach within 30 days after receiving written notice from the Plaintiff, the Plaintiff may terminate this ILP Agreement forthwith by written notice to ILP.
- 19.2. If ILP informs the Plaintiff that ILP has agreed to other solicitors becoming the Lawyers, those solicitors will become the Lawyers for the purposes of this ILP Agreement in place of the existing Lawyers.
- 19.3. Replacement of the Lawyers :
- 19.3.1. will not result in a Termination of this ILP Agreement; and
- 19.3.2. will not result in the replacement solicitors assuming any obligations of the Lawyers accrued to the date the appointment of the Lawyers is terminated.

20. Governing Law

- 20.1. This ILP Agreement is entered into in Victoria and is to be construed in accordance with and governed by the laws of Victoria.
- 20.2. The parties submit to the exclusive jurisdiction of the Supreme Court of Victoria.

Executed:

Signed by)
 for and on behalf of **INTERNATIONAL**)
LITIGATION PARTNERS LIMITED)
 the presence of:)



 Signature of Witness



 Signature **DIRECTOR**

RICHARD BASTOW

 (Print) Name of Witness

Signed by **LAURENCE JOHN**)
BOLITHO in the presence of:)



 Signature of Witness



 Signature

ROBERT CROW

 (Print) Name of Witness

EXHIBIT B

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

An Incorporated Cell Registered in Jersey number 118617

DATE: 29 MARCH 2016
~~JANUARY 2016~~ NOVEMBER 2015
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**AMENDED ~~AND RE-STATED~~ LITIGATION
FUNDING AGREEMENT**

- (1) THERIUM LITIGATION FUNDING IC;
- (2) JACQUELINE A PERRY QC; and
- (3) NEIL J FRASER.

DATED this 29 day of ^{March} ~~January~~ 2016

PARTIES:

- (1) **THERIUM LITIGATION FUNDING IC** (an incorporated cell registered in Jersey number 118617) whose address is Charter Place, 23/27 Seaton Place, St Helier, Jersey, JE1 1JY ("**Therium**");
- (2) **JACQUELINE A PERRY QC**, of 4/5 Grays Inn Square, Grays Inn, London, WC1R 5AH; and
- (3) **NEIL J FRASER** of 63 Perryn Road, Acton, London, W3 7LS.

RECITALS:

- (A) The Lawyers are attorneys called to the English and or Californian bar and act, pursuant to a contingency fee agreement dated 9th June 2015 (as updated and signed by lead plaintiff on November 21, 2015, to harmonise with the operative pleadings), as attorneys for the lead plaintiff and the putative class in the case of Gbarabe, et al v Chevron Corporation in the Federal Court of San Francisco Action Number 14-cv-00173-SI arising out of the KS Endeavor rig explosion on 16 January 2012.
- (B) In order to facilitate the pursuit of the Claim, Therium agreed to fund certain of the disbursements and expenses expected to be incurred in pursuing the Claim, subject to and in accordance with the terms of a Litigation Funding Agreement dated 24th November 2015. The Parties wish to reflect in the documentation various amendments agreed as at the date of the Litigation Funding Agreement and for that purpose enter into this Amended and Re-Stated Litigation Funding Agreement which replaces and supersedes the Litigation Funding Agreement dated 24th November 2015 in its entirety with effect from the Commencement Date.

1. OPERATIVE PROVISIONS:

1.1 Interpretation

In this Agreement the following definitions shall have the following meanings:

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

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

"Claim" means the claims and causes of action of the Claimants as described in Schedule 1;

"Claimants" means Natto Iyela Gbarabe and all other plaintiffs and members of the class as certified in the Proceedings represented by the Lawyers, together with their successors and assigns and any other party in relation to which the Lawyers agrees to act in relation to the Claim;

"Commencement Date" means 24th November 2015;

"Contingency Fee Agreement" means the contingency fee agreement between Natto Iyela Gbarabe as lead plaintiff and the Lawyers dated 9th June 2015 (as updated and signed by lead plaintiff on November 21, 2015, to harmonize with the operative pleadings) and any other agreement between one or more of the Claimants and the Lawyers (and/or Rufus-Isaacs Acland & Grantham) (as varied from time to time) in which the Lawyers (and/or Rufus-Isaacs Acland & Grantham) agree to act or are remunerated in relation to the Claim;

"Contingency Fee" means any share of the Proceeds and all value received by, on behalf of, or in lieu of payment to, the Lawyers before or after the date of this Agreement, in connection with or arising out the Contingency Fee Agreement and/or from the Claim;

"Committed Funds" means the Committed Funds as detailed in the Schedule;

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

"Court" means the United States District Court Northern District of California San Francisco Division and any other court, arbitration panel or tribunal which is seized with the Proceedings from time to time;

"Defendants" means those parties listed in Schedule 1;

"Disbursements" means the costs and expenses plus any VAT if applicable, where specified in the Project Plan or otherwise agreed or paid by Therium;

"Lawyers" means Jacqueline A Perry QC and Neil J Fraser, in their personal capacity and trading as Rufus-Isaacs Acland & Grantham.

"Legal Privilege" means attorney-client privilege, work product protection and/or any other applicable privilege or protection

against disclosure, as well as the Lawyers' obligations of confidentiality to the Claimants;

"Party" means a party to this Agreement;

"Payment" shall mean a payment made by the Lawyers to Therium made pursuant to this Agreement;

"Payment Date" shall mean, in respect of any Payment, the date on which payment is received by Therium in cleared funds;

"Proceeds" means any value received by, on behalf of, or in lieu of payment to, the Claimants (including but not limited to any payment received into a trust for the Claimants) before or after the date of this Agreement, in connection with or arising out of the Claim as a result of any judgment, award, order, settlement arrangement or compromise, (including payment of any attorney fee award, costs order, interest, settlement sum, compensation payment, costs and interest), whether in monetary or non-monetary form, whether actual or contingent and before deduction of any taxes in relation thereto;

"Proceedings" means the proceedings brought by the Claimants against the Defendant in the case of Gbarabe, et al v Chevron Corporation in the Federal Court of San Francisco, Action Number 14-cv-00173-SI and each and every litigation or arbitral proceeding issued or arising out of or in connection with the Claim or any individual or class proceedings involving the same or similar causes of action as the pending action with respect to the explosion on the KS Endeavor on 16th January 2012, in which the Lawyers may act, including any pre-action correspondence, settlement negotiations or mediation and any enforcement proceedings to enforce payment of any judgment, order, award or settlement agreement, brief details of which are included in the Schedule;

"Professional Conduct" means the professional ethical, legal rules and mandates, including the Californian Bar rules, by which the Lawyers are bound, governed and obliged to perform;

"Project Plan" means the project plan and budget for Costs for the Proceedings, as may be varied from time to time by agreement between the Parties in accordance with clause 18;

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

"Reasonable Costs Sum" means a sum equal to the total of all Costs paid or otherwise funded by Therium pursuant to this

Agreement, whether or not those Costs were reasonably incurred by the Claimants in accordance with this Agreement and whether or not they were specified in the Project Plan;

"Recovery" means the recovery of the Contingency Fee or any part thereof;

"Success Fee" shall mean a sum equivalent to:

- (i) 6x (six times) the total Committed Funds, plus
- (ii) 2% of all Proceeds,

together with any VAT payable on such amount (if any);

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

"VAT" means value added tax or any similar sales tax at the rate for the time being in force (as may be varied from time to time by HM Revenue & Customs or such other relevant taxation authority).

- 1.2 Any reference to a Recital, Clause, Schedule or Appendix is to the relevant Recital, Clause, Schedule or Appendix of or to this Agreement and any reference to a sub-clause or paragraph is to the relevant sub-clause or paragraph of the Clause or Schedule in which it appears.
- 1.3 Except where the context requires otherwise, words denoting the singular include the plural and vice versa, and words denoting any one gender include all genders.
- 1.4 Any reference to "persons" includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality).
- 1.5 Any reference to a statute, statutory provision or subordinate legislation shall be construed as referring to it as from time to time amended, extended or re-enacted.
- 1.6 Any phrase introduced by the terms "including", "include", "**In particular**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words following those terms.
- 1.7 Any obligation on the Lawyers in this Agreement shall be construed to mean the Lawyers joint and severally, both in their personal capacity and working under the style of Rufus-Isaacs

Acland & Grantham and any reference to the Lawyers shall refer to the Lawyers each individually as well as jointly.

2. LIABILITY OF THE PARTIES

This Agreement shall not give rise to any liability on the part of Therium to pay any part of the Defendant's fees, costs or expenses.

3. THE LAWYERS'S PRINCIPAL OBLIGATIONS

3.1 The Lawyers shall at all times:

3.1.1 act with the utmost good faith in all of their dealings with Therium and the Claimants;

3.1.2 comply diligently with the terms of, and their obligations under this Agreement;

3.1.3 prosecute the Claim diligently and use all reasonable endeavours, consistent with the professional conduct of the Claim in accordance with the terms of this Agreement, to recover the maximum possible Contingency Fee in respect of the Claim, either through an agreed settlement, a judgment, an order, or jury trial as soon as reasonably possible;

3.1.4 insofar as is reasonably required to give effect to the terms and commercial purpose of this Agreement, procure that Rufus-Isaacs Acland & Grantham and any other firm or entity engaged either in the conduct of the Claims or engaged to act in whatever capacity for the Claimants or the Lawyers in connection with the Claim, shall at all times perform and act consistently with the terms and commercial purpose of this Agreement; and

3.1.5 Subject to clause 3.1.2:

(a) not enter into any further arrangement for funding the Claim or dealing with the Contingency Fee save as disclosed to Therium prior to the Commencement Date or without Therium's consent (not to be unreasonably withheld or delayed);

(b) not to add a Claimant to the Proceedings save where the Lawyers provide their services to such additional Claimant under the terms of the existing (or equivalent) Contingency Fee Agreement;

- (c) (without prejudice to 3.1.5(b) above) give written notice to Therium of its intention to add any further Claimant;
- (d) comply diligently with the terms of, and the Lawyers's obligations under, the Contingency Fee Agreement;
- (e) not to vary the Contingency Fee Agreement;
- (f) not to terminate the Contingency Fee Agreement except in accordance with clause 16 (save where the Lawyers are compelled to stop acting for Professional Conduct reasons, in which case the Lawyers and Therium shall discuss the matter in good faith before any action is taken);
- (g) enforce the Claimants' obligations under the Contingency Fee Agreement;
- (h) give Therium true copies of all notices received pursuant to the Contingency Fee Agreement without unreasonable delay;
- (i) procure that the Contingency Fee is at all times dealt with in accordance with clause 11 and in cleared funds free of any encumbrance, charge or lien, and that it remains free of any encumbrance, charge or lien (other than in favour of Therium);
- (j) ensure that the Claim is conducted so as to minimize the likelihood of the Claimant or the Lawyers being ordered to pay the Defendant's fees, costs or expenses or any part of them; and
- (k) subject also to clause 10, not seek an order that would adversely affect Therium's rights under this Agreement (save where the Lawyers are compelled to seek such an order for Professional Conduct reasons).

3.2 The Lawyers agree to pay to Therium in accordance with the terms of this Agreement, up to but not exceeding the amount of the Contingency Fee calculated as at the Payment Date:

- 3.2.1 first, the sum necessary to reimburse Therium the amount of the Reasonable Costs Sum; and
- 3.2.2 secondly, the Success Fee.

- 3.3 If the Claimants do not recover any Proceeds in this case, the monies invested by Therium are not required to be repaid. It is realised and understood by the Parties that nothing in this Agreement contains a guarantee that any amounts will be paid to Therium save in the event of recovery of Proceeds by the Claimants.

4. THERIUM'S OBLIGATIONS

- 4.1 Therium shall at all times:
 - 4.1.1 act in good faith in all its dealings with the Lawyers;
 - 4.1.2 comply diligently with the terms of, and obligations under, this Agreement; and
 - 4.1.3 treat all information relating to the Claim disclosed to it as subject to the confidentiality obligations set out in clause 14.
- 4.2 Therium shall not be liable or responsible to the Lawyers or the Claimants for any advice, view, comment or consent (or withholding of a consent, unless unreasonably withheld where it is provided that such consent will not be unreasonably withheld) or notice given in the performance of this Agreement.

5. AGREEMENT TO FUND

- 5.1 In return for the Lawyers agreement to pay, where there is a Recovery and limited to the extent of that Recovery, the Reasonable Costs Sum and the Contingency Fee in accordance with the terms of this Agreement, Therium agrees with effect from the Commencement Date to pay the Claimant's Reasonable Costs incurred up to the amount of the Committed Funds, in accordance with the terms of this Agreement. This includes Reasonable Costs.
- 5.2 The Lawyers and any other suppliers of services provided for in the Project Plan shall address invoices relating to the Costs described in the Project Plan to Therium and to deliver those invoices to Therium for payment.
- 5.3 If in the reasonably held opinion of Therium, any Costs invoiced by the Lawyers or any other supplier of services are not Reasonable Costs, Therium shall serve a Challenge Notice on the Claimant, with a copy to the relevant supplier, within 20 Business Days of delivery of the relevant invoice.
- 5.4 In the event of a Challenge Notice being served, the Lawyers agree to raise any queries identified in the Challenge Notice with the relevant supplier with the aim of reaching an agreement as to the disputed Costs. Where an agreement, satisfactory to Therium, cannot

be reached within 10 Business Days of service of the Challenge Notice, the decision as to whether such Costs are Reasonable Costs shall be taken by an independent costs lawyer (the "**Costs Lawyer**") within 20 Business Days of his appointment. The Costs Lawyer so appointed shall be a member of the Association of Costs Lawyers and shall be appointed jointly by the Parties. Therium and the Lawyers agree to be bound by such decision, and the Lawyers shall use best endeavours to procure the agreement of the relevant supplier to be bound by such decision. Unless the Costs Lawyer directs another person to pay his costs, Therium agrees to meet his costs which shall be treated as part of the Reasonable Costs and within the Project Plan save that the amount of the Committed Funds shall remain unaffected.

- 5.5 Pending resolution of a Challenge Notice, Therium shall pay all Costs that are not subject to challenge.
- 5.6 Within 5 Business Days of receiving the Costs Lawyer's decision, Therium will pay any sum owing to either the relevant supplier and/or the Costs Lawyer if directed by the Costs Lawyer.

6. INTEREST

- 6.1 In the event, due to any action or inaction of the Lawyers, that any sum payable under this Agreement is not paid by its due date, interest will be payable on such sum:
 - 6.1.1 at the rate of 5% per annum above National Westminster Bank Plc's base rate for the time being in force, compounded annually; and
 - 6.1.2 from the date on which payment was due to the date payment is received, or for such other period as may be specified in this Agreement.

7. CHANGES TO THE LITIGATION

- 7.1 Subject to sub-clauses 3.1.3 and 3.1.5, the Lawyers shall have the right to:
 - 7.1.1 join an additional party to the Proceedings;
 - 7.1.2 add a new cause of action to the claims in the Proceedings; and
 - 7.1.3 commence additional proceedings;without first giving notice to Therium with an explanation of the impact of such change on the Project Plan and budget.

- 7.2 Save as set out in clause 7.1 and subject to Therium's prior agreement to any proposed variation to the Project Plan, the Proceedings shall be prosecuted in accordance with the Project Plan and the Lawyers shall use all reasonable endeavours to keep the disbursements within the Project Plan budgets.

8. WARRANTIES

- 8.1 The Lawyers acknowledge and accept that Therium's decision to enter into this Agreement is based on the information and materials provided by it to Therium (which, subject to legal privilege, shall include all requested copies of all legal advice relating to the Claim and all requested copies of correspondence with the Defendant relating to the Claim) and other documents and materials provided to Therium prior to the Commencement Date and where, for reasons of legal privilege, a document cannot be produced, the Lawyers accept and warrant that they have advised Therium that specific document has been withheld and of its implications for the Claim.
- 8.2 The Lawyers confirm that, to the best of their knowledge and belief, the information, documents and materials provided (or otherwise notified in accordance with clause 8.1 above) by them to Therium prior to the Commencement Date are accurate, complete and true in all material respects and that the Lawyers have not failed to disclose any information, document and/or material which would be relevant to Therium's decision to enter into and remain bound by this Agreement.
- 8.3 The Lawyers warrant that, save as disclosed to Therium in writing:
- 8.3.1 as at the Commencement Date the Lawyers have not granted (or purported to grant) any charge, lien or other security in favour of a third party over the Claim or the Contingency Fee (or otherwise dealt with the same in any way); and
- 8.3.2 they will not grant (or purport to grant) any such charge, lien or other security over the Claim or the Contingency Fee, until all payments (whether actual or contingent) due to Therium under this Agreement have been met or otherwise extinguished.
- 8.4 Each Party warrants to the other that the execution and performance of, and compliance with, their respective obligations under this Agreement is fully authorised by each of them and the persons executing the Agreement have the necessary and appropriate authority to do so.
- 8.5 The Lawyers warrant that they have obtained all necessary instructions, agreements and consents from the Claimants, to the

extent required, to enable them to enter into and perform this Agreement.

- 8.6 The Lawyers warrant that this Agreement is legal and enforceable under the laws of California, including any applicable professional or regulatory rules.
- 8.7 The Lawyers warrant that they have, where such consent or instruction is necessary, obtained written irrevocable instructions and consent from the Claimants and where there is no such consent or instruction, the Lawyers will use their best endeavours to ensure that the Claimants agree and/or comply as follows:
 - 8.7.1 as to the matters set out in clause 10.2 below;
 - 8.7.2 that they shall use their best endeavours to support the prosecution of the Claim through the Proceedings;
 - 8.7.3 that they shall not take any step to encourage, induce, cause, procure or behave in such a way that may result in them or one or more of the Claimants withdrawing from the Proceedings; and
 - 8.7.4 that they shall not take any step to encourage, induce, procure or behave in such a way that may result in them or one or more of the Claimants seeking to bypass, circumvent or otherwise adversely affect the Proceedings.
- 8.8 The Lawyers warrant that so far as they are aware, there is no prospect of Therium being held liable to pay (or contribute to) the Defendant's fees, costs and expenses in the event that the Claim is lost.
- 8.9 The Lawyers warrant that there is no requirement to disclose the content of this Agreement to the parties to the proceedings or the Court, and that if at any time such a requirement arises or to do so would be prudent and in furtherance of the objectives set out at Clause 10.2, the Lawyers will promptly take all such steps as reasonably practicable to make such disclosure (and shall inform Therium of the existence of such requirement).
- 8.10 Notwithstanding any other provision of this Agreement, the Lawyers shall not sell, dispose of or in any way alienate their rights such that the Lawyers' right to be paid the Contingency Fee may be materially prejudiced, without the consent of Therium (such consent not to be unreasonably delayed or withheld).

- 8.11 The Lawyers represent and warrant that there is no legal or professional consideration which would adversely impact any payment otherwise due under clause 3.2. The Lawyers irrevocably undertake that they will not assert any Professional Conduct or ethical prohibition defence or objection to any payment otherwise due under clause 3.2 of this Agreement to Therium and agrees to waive any right to make any such assertion to Therium seeking specific performance for any payment otherwise due under clause 3.2 of this Agreement to Therium.
- 8.12 The Lawyers warrant that they have no third party indebtedness (other than trade creditors in the ordinary course of The Lawyers' business), and that so far as the Lawyers are aware, there is no reason why they will not be able to repay their liabilities as they fall due for payment.
- 8.13 The Lawyers warrant that they have in place adequate professional indemnity insurance appropriate to their practice.

9. ACKNOWLEDGEMENTS

- 9.1 Therium recognises that the Lawyers must at all times comply with its duties under the rules of the California Bar to act independently and in the best interests of the Claimant and in accordance with their other professional duties.
- 9.2 Nothing in this Agreement entitles Therium to control the conduct of the Claim and/or the Proceedings.

10. THE LAWYERS' FURTHER OBLIGATIONS

- 10.1 The Lawyers shall not engage any co-counsel or any forensic accountants or other third parties not budgeted for in the Project Plan without Therium's prior written consent, such consent not to be unreasonably withheld and having regard at all times to the Lawyers' Professional Conduct reasons for proposing any such engagement.
- 10.2 The Lawyers shall (and for this purpose have obtained binding and irrevocable instructions from the Claimants to):
 - 10.2.1 conduct the Proceedings in accordance with the procedural rules applicable in the Court and comply with any judgment, order or award made in the Proceedings;
 - 10.2.2 provide Therium with any documents or information relating to the Claim and Proceedings as may be reasonably requested by Therium subject to the Lawyers not breaching the Claimant's Legal Privilege;

10.2.3 on behalf of the Claimants and on their own account:

- (a) diligently prosecute the Proceedings and seek to enforce and recover the Contingency Fee;
- (b) devote sufficient and appropriate time and reasonably available resources to the prosecution of the Proceedings and the enforcement and recovery of any Proceeds;
- (c) in respect of any forensic accountants or other third parties retained to assist in the Proceedings:
 - (i) monitor their work and performance; and
 - (ii) take all reasonable steps to ensure that they carry out their proper and lawful instructions in the Proceedings in a professional manner, promptly and with due expedience;
- (d) save as required to preserve the Claimants' legal privilege, keep Therium promptly informed of any significant developments in the Proceedings (including any settlement discussions, any offers received and any information, evidence or advice coming to the attention of the Claimants or the Lawyers, which may be material either to the prospects of success of the Claim or of enforcing any judgment or award or the amount of the Contingency Fee); and
- (e) save as required to preserve the Claimants' legal privilege, make a monthly summary report in writing to Therium regarding the overall progress of the Proceedings, giving reasonable particulars of that progress and any developments and Disbursements incurred against the Project Plan;

10.2.4 Subject to the Lawyers not breaching the Claimants' Legal Privilege, give reasonable notice of and permit Therium where reasonably practicable, to attend as an observer at internal meetings, which include meetings with experts, and send an observer to any mediation or hearing relating to the Claim.

10.3 The Parties agree not to do or permit to be done anything likely to deprive each other of any benefit for which the other has entered into this Agreement.

- 10.4 The Lawyers acknowledge that Therium has relied on the involvement of the Lawyers as acting for the Claimants in agreeing to fund the Proceedings and that termination of their representation of the Claimants may adversely affect the Recovery and the return to Therium. Subject to any Professional Conduct obligations, the Lawyers therefore agree, during the operation of this Agreement, not to terminate their representation of the Claimants without prior consent of Therium such consent not to be unreasonably withheld.
- 10.5 The Lawyers agree that if Therium requires any advice given by the Lawyers in respect of the Claim and/or the Proceedings to be confirmed by a second opinion, the Lawyers will fully co-operate with any other firm instructed by Therium.
- 10.6 For the avoidance of doubt, subject to Therium's rights of termination pursuant to clause 16, nothing in this Agreement shall permit Therium to override any advice given by the Lawyers to the Claimants. This includes any opinion given pursuant to clause 10.5 of this Agreement.
- 10.7 The Lawyers agree to advise and represent the Claimants and conduct the Proceedings with reasonable skill and care and acknowledges and accepts that Therium shall be entitled to rely upon the performance of their professional services as if Therium were a client. The Lawyers further agree that, in the event of loss caused by any breach of its duty to perform its obligations with reasonable skill and care, that the harm suffered by Therium has occurred in England and Wales. In the event of a conflict between the interests of Therium and the Claimant, Therium accepts that the Lawyers shall be obliged to act in the best interests of the Claimants and shall be entitled to continue to act for the Claimants in the Proceedings and Therium waives any conflict so arising.

11. TREATMENT OF CONTINGENCY FEE

- 11.1 The Lawyers agrees to hold any Contingency Fee received by them or any third party on its behalf, upon trust for Therium throughout the Trust Period on terms that Therium shall be entitled to such part of the Contingency Fee as shall be equal to the total of all amounts due under the terms of this Agreement to Therium.
- 11.2 The Lawyers shall ensure that the Contingency Fee when payable to it shall be paid into the Escrow Account immediately upon receipt. In the event of Recovery, the Lawyers shall notify Therium as to the amount of that Recovery and provide a calculation of the Contingency Fee together with such supporting documentation as Therium may reasonably require.

- 11.3 In so far as consistent with their professional obligations as attorneys to the Claimants, the Lawyers shall use their best endeavours to cause any Claim Proceeds to be recovered as quickly as possible.
- 11.4 The Lawyers shall at the request in writing of Therium execute all documents and do all things that Therium may reasonably require to perfect Therium's entitlement to be paid and/or to ensure Therium is paid any amount, including the Success Fee, due to Therium under this Agreement.
- 11.5 In the case of any Contingency Fee received in non-monetary form, the Lawyers shall use their best endeavours to gather in the Contingency Fee in accordance with the terms of the Contingency Fee Agreement and the Contingency Fee received shall be held and dealt with by the Lawyers in accordance with clause 11.
- 11.6 In the case of any Contingency Fee received in a form other than a single cash payment, the Parties agree that the non-cash element shall be valued by an independent valuer agreed by the Parties with the cost of that valuation to be met from the Contingency Fee. Where the Parties cannot agree, within 10 Business Days of receipt of the Contingency Fee by The Lawyers, on the identity of the independent valuer, then the Parties will each appoint their own neutral third party ("a Neutral") and these two Neutrals will select a third Neutral. In each case the Neutral shall be from one of the larger UK accountancy firms with offices in the UK. The majority decision of the Neutrals ("the Neutral Decision") shall be binding upon the Parties.
- 11.7 If any payment due to Therium from the Contingency Fee is delayed due to action or failure to act on the part of The Lawyers, the Lawyers shall compensate Therium for the delay in making payment by paying to Therium interest on the sum delayed for the period of the delay calculated in accordance with clause 6.

12. EXCLUDED TIME COSTS, EXPENSES AND LIABILITIES

- 12.1 Therium will not pay nor be liable for any of the following costs, expenses sums or liabilities:
 - 12.1.1 fees and time costs of the Lawyers save as included within the Project Plan (or otherwise agreed);
 - 12.1.2 any fees, time costs, Disbursements and/or other sums incurred as a result of any default by the Lawyers in the performance of their obligations to Therium;

- 12.1.3 any liability to contribute to the Defendants' fees, costs expenses or the Claimants' liability for fines or penalties;
 - 12.1.4 any fees, time costs Disbursements and/or other sums incurred as a result of any unreasonable failure by the Claimants and/or the Lawyers, to comply with any relevant rules of professional conduct or an order of the Court during the Proceedings;
 - 12.1.5 any fees, time costs Disbursements and/or other sums incurred prior to the Commencement Date (save to the extent that those costs are included in the Project Plan) or after termination of this Agreement; or
 - 12.1.6 any element of VAT or other tax on the provision of services.
- 12.2 In the event that Therium suffers any fees, time costs Disbursements and/or other sums falling within sub clauses 12.1.1 to 12.1.6 (inclusive) then the Lawyers shall indemnify Therium in respect of any sum paid out by Therium.

13. PRIVILEGE

- 13.1 Subject at all times to Professional Conduct and Legal Privilege obligations owed to the Claimants, the Lawyers shall use all reasonable efforts to report fully and appropriately to Therium. Therium agrees to take all reasonable steps in respect of any such information to:
- 13.1.1 maintain its confidentiality;
 - 13.1.2 protect and not waive any privilege attaching to it; and
 - 13.1.3 keep it secure and safe.
- 13.2 The parties to this Agreement acknowledge and agree that:
- 13.2.1 the Claimants do not waive or lose any legal professional privilege, litigation privilege, common interest privilege, without prejudice privilege, attorney-client privilege, attorney work product doctrine or other privilege or protection attaching to any information provided to Therium (whether provided by the Claimants or the Lawyers);
 - 13.2.2 The Claimants, the Lawyers and Therium share a common purpose and interest in sharing confidential information for the purpose of pursuing the Claim; and

- 13.2.3 it is in the mutual interest of the Claimants, the Lawyers and Therium that they share information, including confidential information and/or work product subject always to the protection of legal professional privilege, litigation privilege, common interest privilege, without prejudice privilege, attorney-client privilege, attorney work product doctrine or other privilege or protection attaching to any information that they share.

14. CONFIDENTIALITY

- 14.1 Therium shall procure that any persons to whom it provides confidential documents or information shall comply with the obligations imposed on Therium pursuant to clause 13.
- 14.2 Therium will immediately inform the Lawyers of any request or order to disclose their privileged documents or any other privileged information held by Therium, except where informing the Lawyers would contravene any law or regulation.

15. TERMINATION

- 15.1 This Agreement shall continue in full force and effect until payment of any and all sums due to Therium pursuant to this Agreement and in any event clauses 1 (Interpretation), 6 (Interest), 8 (Warranties), 10 (The Lawyers' Further Obligations), 11 (Treatment of Contingency Fee), 13 to 15 (Privilege, Confidentiality, Termination), 18 (Waiver), 20 and 21 (Invalidity and Succession) and 24 (Dispute Resolution) and 26 (Law and Jurisdiction) shall continue in full force and effect notwithstanding Termination of this Agreement.
- 15.2 The Lawyers and Therium jointly may at any time agree, by mutual consent in writing, to terminate this Agreement.
- 15.3 In the event that Therium reasonably considers that there has been a material breach of this Agreement by the Lawyers, Therium shall notify the Lawyers that Therium requires the Lawyers to remedy the breach within 20 Business Days. In the event that the breach is not remedied within that period, Therium shall be entitled to terminate this Agreement forthwith by giving Notice to the Lawyers. Within 5 Business Days of such termination the Lawyers shall reimburse to Therium the amount of the Reasonable Costs Sum together with interest on the amount of the Reasonable Costs Sum calculated in accordance with clause 3.2 from the date of this Agreement to the date of payment and pay to Therium the balance of any and all sums due to Therium pursuant to clause 3.2. The Lawyers further agree to provide all information and documents reasonably required by Therium for the purpose of calculating the sums due in accordance with this clause or for auditing that calculation. For the purposes of this clause 15.3, a material breach shall include,

but not be limited to, any breach of any of the warranties set out in clause 8.

- 15.4 Exercise of the rights to terminate in accordance with this clause 15 shall not affect any accrued rights or entitlements of Therium including any contingent rights or entitlements.

16. ASSIGNMENT

- 16.1 The Parties agree that Therium shall be entitled to assign to any group, parent or associated entity and/or sub-contract all of its rights, interests and obligations pursuant to this Agreement.
- 16.2 Save as provided in clause 16.1, a Party shall not assign or transfer this Agreement or any of its rights under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement.
- 16.3 If Therium assigns to a third party in accordance with clause 16.1 it shall notify The Lawyers of such assignment in accordance with clause 21 within five (5) Business Days.

17. VARIATION

No variation to this Agreement shall be valid unless it is in writing and signed by each of the Parties.

18. WAIVER

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

19. MOST FAVOURED NATION

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

20. INVALIDITY AND SEVERABILITY

If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable whether in whole or in part or in relation to any of the

Parties to the Agreement, the validity, legality and enforceability of the remaining provisions, or their validity and enforceability as against other parties, shall not in any way be affected or impaired. The parties shall nevertheless negotiate in good faith in order to agree to the terms of a mutually satisfactory provision or arrangement, achieving so nearly as possible the same commercial effect, to be substituted for the provision so found to be void or unenforceable and each Party shall take any step required, including executing any further or other document, in order to give effect to the Parties' intention in entering into this Agreement.

21. SUCCESSION

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

22. NOTICES

- 22.1 Any Notice to be served under this Agreement shall be in writing and may be delivered by hand or sent by pre-paid first class recorded delivery post to the Party to be served at the relevant address set out in this Agreement.
- 22.2 Any Notice shall be deemed to have been served:
 - 22.2.1 If delivered by hand, at the time of delivery to the Party; or
 - 22.2.2 if posted, at 10.00am on the second Business Day after it was posted to the Party.
- 22.3 In proving service of a Notice it shall be sufficient to prove that delivery by hand was made or that the envelope containing the Notice was properly addressed and posted as a pre-paid first class recorded delivery letter.

23. COUNTERPARTS

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

24. DISPUTE RESOLUTION

- 24.1 The Parties agree that in the event of any dispute between them relating to:

24.1.1 the distribution of the Contingency Fee or relating to any payment alleged to be payable pursuant to this Agreement; or

24.1.2 termination of this Agreement under clause 15;

24.2 They will give the other written notice of the event of dispute. Within 10 Business Days of either party receiving notice in accordance with this clause 23, the Parties will use their best endeavours to agree to the identity of an Independent Queens Counsel ("**Jointly Appointed Counsel**") or in lieu of such agreement then, the Parties will each appoint their own neutral third party Queens Counsel ("**a Neutral**") and these two Neutrals will select a third such Neutral. The decision of the Jointly Appointed Counsel or the majority decision of the Neutrals as appropriate ("**the Decision**") shall be binding upon the Parties. The costs of this dispute process will be payable as directed by Jointly Appointed Counsel or the Neutrals, as appropriate.

25. NO PARTNERSHIP

Nothing in this Agreement is intended to create a partnership between the parties hereto.

26. LAW AND JURISDICTION


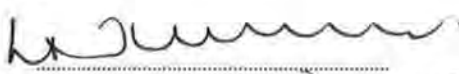
26.1 This Agreement and any dispute arising from or connected with this Agreement, including any dispute concerning the validity of this Agreement and any dispute as to the performance of the Lawyers obligations referred to in clause 10.7 above, is governed by and is to be construed in accordance with the law of England and Wales.

26.2 Save for any dispute resolved finally pursuant to clause 23 above, any dispute arising out of or connected to this Agreement, including the validity or termination thereof, shall be finally resolved by a sole arbitrator under the arbitration rules of the London Court of International Arbitration (the "**LCIA**"). The seat of the arbitration shall be London, the language of the arbitration shall be English and the arbitrator shall be a practising member of the English Bar. The arbitrator shall be appointed by the agreement of the Parties provided that, if the Parties cannot reach agreement on the appointment of the arbitrator within 30 days, then any Party may apply to have the arbitrator appointed by the LCIA.

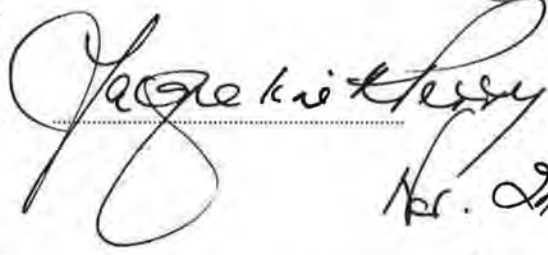
IN WITNESS of which the Parties have each executed this Agreement as a

deed on the date shown above

SIGNED by **THERIUM LITIGATION
FUNDING IC**

) 
)
) 
)
-Director Authorised signatory

SIGNED by **JACQUELINE A PERRY QC**

) 
)
)
Ms. 24/11/2015

SIGNED by **NEIL J FRASER**


) 
)
)
November 24, 2015

SCHEDULE

Claim: The claims and causes of action which are the subject matter of the Proceedings and any other claims and causes of action of the Claimants arising out of the explosion on the KS Endeavor on 16th January 2012.

Commencement Date: ~~The date of this Agreement.~~ 24 NOVEMBER 2015

Defendant: Chevron Corporation. 

Committed Funds: USD 1,500,000 (One million five hundred thousand US dollars) 

APPENDIX 1
Project Plan

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Exhibit 14

THERIUM

Therium Litigation Funding IC
Charter Place, 23/27 Seaton Place, St Helier,
Jersey, JE1 1JY
www.therium.com
An Incorporated Cell Registered in Jersey number 118817

Ms Jacqueline A Perry QC
4/5 Gray's Inn Square
London
WC1R 5AH

By email

18th May 2016

Dear Jacqueline,

Litigation Funding Agreement between (1) Therium Litigation Funding IC (2) Jacqueline A. Perry QC and (3) Neil J Fraser dated 29 March 2016 (the "Funding Agreement").

This letter records the agreement between Therium Litigation Funding IC, you and Neil to vary the Funding Agreement as follows:

- (a) the Schedule to the Funding Agreement shall be varied to replace the Committed Funds description in its entirety with the following:

Committed Funds: USD 1,700,000 (One million seven hundred thousand US dollars)

The Funding Agreement shall be read with such consequential changes as are necessary to give effect to this agreement. To the extent that the provisions of the Funding Agreement are inconsistent with this variation, this variation shall prevail. Save in respect of these amendments, all provisions of the Funding Agreement shall remain in full force and effect.

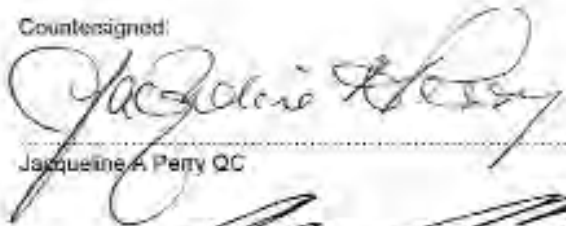
If you have any queries on the above please do not hesitate to contact me. Otherwise please would you arrange for this Variation Letter to be signed below.

Yours sincerely,


For and behalf of Therium Litigation Funding IC.

cmf/

Countersigned:



Jacqueline A. Perry QC



Neil J. Engel

5/26/16.

EXHIBIT C

Execution Copy

PRIVATE & CONFIDENTIAL
ATTORNEY WORK PRODUCT
SUBJECT TO CONFIDENTIALITY AGREEMENT
PROTECTED FROM DISCLOSURE BY APPLICABLE PRIVILEGES

This document contains protected attorney work product and discloses through its structure and terms the mental impressions of counsel. Access to this document is restricted by confidentiality agreement and professional privilege.

Dated as of December 22, 2020

**Second Amended and Restated
Capital Provision Agreement**

between

The Counterparty named in Annex I hereto

and

The Capital Providers, as defined in the introductory paragraph hereof

CONTENTS

SECTION	PAGE
1. Definitions.....	2
2. Capital Provision Obligations and Capital Providers' Entitlement	2
2.1 Capital Amounts	2
2.2 Capital Providers' Entitlement.....	3
3. Payment Obligations of the Counterparty.....	7
3.1 Payments	7
3.2 Proceeds to Payment Agent, etc.....	7
4. Payments Generally	8
4.1 Place and Account for Payment.....	8
4.2 Interest on Overdue Amounts	8
4.3 Waiver of Right of Set-Off	8
5. Covenants.....	9
5.1 Covenants of Each Party	9
5.2 Covenants of the Capital Providers.....	9
5.3 Covenants of the Counterparty	10
6. Representations and Warranties.....	13
6.1 Representations and Warranties of Each Party	13
6.2 Representations and Warranties of the Capital Providers.....	14
6.3 Representations and Warranties of the Counterparty	15
7. Material Non-Public Information	17
8. Confidentiality	17
8.1 Exclusive Ownership of Information by Disclosing Party	17
8.2 Non-Disclosure of Information.....	18
8.3 Confidentiality Procedures.....	19
8.4 Judicial and Official Disclosure Requests	19
9. Legal Privilege	20
9.1 Common Interest Privilege Applies.....	20
9.2 Information Subject to Privilege Protection	20

9.3	Information Subject to Work Product Protection	20
9.4	No Obligation to Provide Privileged Information	21
10.	Indemnification of the Capital Providers	21
11.	Exculpation; Reinstatement	21
12.	Remedy Events	22
12.1	Failure to Pay or Deliver	22
12.2	Breach or Repudiation	23
12.3	Misrepresentation.....	23
12.4	Bankruptcy	23
12.5	Reorganization Without Assumption.....	23
13.	Remedies	24
13.1	Available Remedies Generally	24
13.2	Remedies Cumulative	24
13.3	Cure Periods.....	24
14.	Enforcement of Claim Resolution	25
15.	Termination by the Counterparty	25
16.	Limitations on Transfer, Successors and Assigns; Third Party Beneficiaries	25
17.	Tax Withholding	26
18.	Anti-Corruption; Data Protection	26
19.	Notices	28
19.1	Effectiveness of Notices	28
19.2	Change of Details.....	28
20.	Amendments	28
21.	Entire Agreement	28
22.	Counterparts	29
23.	Survival of Obligations	29
24.	No Waiver	29
25.	Severability	29
26.	Expenses	29
27.	Relationship of Parties	30
28.	Governing Law	30

29.	Dispute Resolution.....	30
30.	Administrative and Collateral Agent	33
31.	Rules of Construction	34

SECOND AMENDED AND RESTATED CAPITAL PROVISION AGREEMENT, dated as of December 22, 2020 (“**Agreement**”), between SYSCO CORPORATION, an entity organized or formed under the laws of the jurisdiction identified in Annex I (the “**Counterparty**”), on the one hand, and each of ROSLINDALE LLC, a limited liability company formed under the laws of the State of Delaware (“**Capital Provider No. 1**”), POSEN INVESTMENTS LP, a limited partnership formed under the laws of the State of Delaware (“**Capital Provider No. 2**”), and KENOSHA INVESTMENTS LP, a limited partnership formed under the laws of the State of Delaware (“**Capital Provider No. 3**”, Capital Provider Nos. 1, 2 and 3, severally but not jointly, each a “**Capital Provider**” and collectively, the “**Capital Providers**”), on the other hand.

WHEREAS, the Counterparty, before interacting with the Capital Providers in regard to the matters described herein and without any influence from the Capital Providers, decided to pursue the Claims, as defined in Exhibit A and identified on Annex II to this Agreement;

WHEREAS, the Counterparty has consulted with and sought advice from an Affiliate of the Capital Providers about the Counterparty’s ability to obtain external capital based on the potential future value of the Claims;

WHEREAS, the Counterparty has provided or may provide confidential materials protected by the attorney-client privilege and/or the attorney work product doctrine, or other existing law protecting such materials from disclosure, to the Capital Providers and their Affiliates, subject to a non-disclosure and common interest agreement and in reliance on the common interest privilege, the work product doctrine, and other existing law protecting such materials from disclosure;

WHEREAS, the Capital Providers or their Affiliates have conducted research and analysis and communicated views and opinions both internally and to the Counterparty, all in reliance on that same common interest privilege, work product doctrine, and other existing law protecting such research, analysis and communications from disclosure;

WHEREAS, the Capital Providers and the Counterparty entered into that certain Capital Provision Agreement, dated as of October 15, 2019 (the “**Original Agreement**”), to provide for financing in connection with the Counterparty’s legal claims relating to its purchases of broiler chickens (collectively, as more specifically described on Annex II, the “**Chickens Claim**”);

WHEREAS, the Capital Providers and the Counterparty revised the Original Agreement by entering into that certain Amended and Restated Capital Provision Agreement, dated as of June 9, 2020 (the “**First Amended Agreement**”), to provide for additional financing in connection with the Counterparty’s legal claims relating to its purchases of pork products (collectively, as more specifically described on Annex II, the “**Pork Claim**”);

WHEREAS, the Capital Providers and the Counterparty now wish to expand their financing arrangement to include legal claims of the Counterparty relating to its purchases of beef products, [REDACTED], and [REDACTED] (collectively, as each set of claims is more specifically described on Annex II, the “*Beef Claim*”, “[REDACTED]” and “[REDACTED]”, respectively);

WHEREAS, the parties wish to amend and restate the First Amended Agreement to accomplish the foregoing;

WHEREAS, the Capital Providers are each passive providers of external capital and have not become owners of, partners in, or parties to the claims or any part thereof or acquired any rights as to their control or resolution; consequently, while the Capital Providers will receive certain information with respect to the Claims and consult with the Counterparty thereon, the Counterparty remains in full control of the assertion and resolution of the claims; and

WHEREAS, the parties are sophisticated and are entering into this Agreement freely and entirely of their own volition following independent legal advice from experienced counsel, and do not believe that this Agreement or the transactions it contemplates are inconsistent with any relevant law or public policy.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

Certain capitalized terms used herein have the meanings assigned thereto in Exhibit A. Capitalized terms used but not otherwise defined in Exhibit A have the respective meanings assigned to such terms elsewhere in this Agreement.

2. CAPITAL PROVISION OBLIGATIONS AND CAPITAL PROVIDERS’ ENTITLEMENT

2.1 Capital Amounts

The Capital Providers have provided and shall provide capital to the Counterparty as set forth below.

(a) Capital Amounts:

- (i) *Chickens Claim.* Pursuant to the Original Agreement, the Capital Providers provided to the Counterparty [REDACTED] in respect of the Chickens Claim on October 15, 2019.
- (ii) *Pork Claim.* Pursuant to the First Amended Agreement, the Capital Providers provided to the Counterparty [REDACTED]

██████████ in respect of the Pork Claim on June 12, 2020.

- (iii) *New Claims.* Pursuant to this Agreement, the Capital Providers shall provide to the Counterparty up to ██████████ in respect of the New Claims, as follows:

- (A) ██████████ (the “*Initial New Investment Amount*”) within 15 Business Days of the execution and delivery of this Agreement (the “*Initial New Investment Payment Date*”), and
- (B) a maximum of ██████████, in periodic installments (each, an “*Additional Payment*”) of ██████████ each, in accordance with clause (iv) of this Section 2.1(a), to be used solely for the payment of reasonable Claim Costs (as defined in Section 5.3(b)) incurred by the Counterparty in connection with the Claims other than the Chickens Claim.

- (iv) *Manner of Provision of Additional Payments.* Each Additional Payment shall be made within 15 Business Days of the Capital Providers’ receipt of a written request from the Counterparty stating that the remaining balance of previously provided Additional Payments is less than ██████████ (provided that the first such request shall require no such statement). The Counterparty shall hold all Additional Payments in a segregated account dedicated to paying fees and expenses of the Claims (other than the Chickens Claim).

- (b) Allocation of Funding. All Capital Amounts shall be provided by the Capital Providers in accordance with the following allocation:

- (i) Capital Provider No. 1: ██████████
- (ii) Capital Provider No. 2: ██████████
- (iii) Capital Provider No. 3: ██████████

- (c) Transaction Costs. To cover their closing and other costs, the Capital Providers retained ██████████ of the Capital Amounts provided under the Original Agreement and ██████████ of the Capital Amounts provided under the First Amended Agreement. The Capital Providers shall retain an additional ██████████ from the Initial New Investment Amount to cover their closing and other costs in connection with this Agreement. All such amounts shall be deemed included in the Capital Amounts for all purposes under this Agreement.

2.2 Capital Providers’ Entitlement

In consideration of their agreement to provide the Capital Amounts, the Capital Providers shall be entitled to receive the amounts set forth below.

(a) Generally.

- (i) *Amount of Capital Providers' Entitlement.* The “*Capital Providers' Entitlement*” is equal to the sum of the following:

[REDACTED]

[REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

- (b) Chickens Waterfall. All Proceeds of the Chickens Claim (“*Chickens Proceeds*”) shall be distributed as follows:

[REDACTED]

- [illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (d) New Claims Waterfall. All Proceeds of the Beef Claim, the [REDACTED], and the [REDACTED] (“*New Claim Proceeds*”) shall be distributed as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (e) Hypothetical Illustration. Annex III sets forth certain hypothetical scenarios, for illustration purposes only, demonstrating the application of the waterfalls set forth in clauses (b), (c), and (d) of this Section 2.2.
- (f) Allocation of Entitlement Among Capital Providers. Capital Provider No. 1, Capital Provider No. 2, and Capital Provider No. 3 shall each be entitled to a pro rata portion of the Capital Providers’ Entitlement based on the respective Capital Amounts provided by each of them.

3. PAYMENT OBLIGATIONS OF THE COUNTERPARTY

3.1 Payments

- (a) *Non-Recourse Agreement.* The Capital Amounts are provided to the Counterparty on a non-recourse basis, and the Capital Providers' Entitlement is exclusively derived from, computed on the basis of, and paid from Proceeds. If there are no Proceeds, the Counterparty shall not have any obligation to pay the Capital Providers' Entitlement (including any repayment of Capital Amounts provided).
- (b) *Notice.* If at any time Proceeds arise, the Counterparty shall immediately notify the Capital Providers of the amount of such Proceeds and the Claim to which such Proceeds relate.
- (c) *Due Date for Payment of Entitlement.* Except as otherwise set forth in Section 3.2(a)(ii), within three (3) Business Days of the Counterparty's (or the Payment Agent's) receipt of any Proceeds, the Counterparty (or the Payment Agent) shall pay such Proceeds to the Capital Providers in accordance with Section 2.2 until the Capital Providers' Entitlement has been paid in full. Such payment obligation shall be absolute and unconditional and shall not under any circumstances (including a dispute about the payment) be delayed, suspended, or avoided. The only basis for not making such payment directly to the Capital Providers in accordance with the timeframe set forth in this clause (c) shall be pursuant to Section 29(c) or 3.2(a)(ii).
- (d) *Circumstances of All Payment Obligations.* The Counterparty shall be obligated to make a payment to the Capital Providers hereunder only upon (i) the receipt of Proceeds, (ii) an award of Proceeds that, due to a set-off for counterclaims or any other reason, does not result in a receivable from the applicable Adverse Party but is a positive amount pursuant to clause (v) of the definition of "Proceeds" herein (also deemed a "receipt" by the Counterparty of Proceeds hereunder), or (iii) a payment obligation having arisen under Section 4.2, 10, 11(c), 13 or 25(b).

3.2 Proceeds to Payment Agent, etc.

- (a) *Payment and Delivery of Proceeds.*
 - (i) Prior to any payment or delivery of Proceeds, if such Proceeds shall be delivered in cash or by check or other instrument, then the Counterparty shall direct the payor to pay or deliver such Proceeds not to the Counterparty but rather directly to the Payment Agent (with proper endorsements if by check or other instrument).
 - (ii) If all or a portion of Proceeds consist of property other than cash, then the Capital Providers shall be entitled to receive, at their option, either (A) an immediate payment in cash of the full portion of the Capital Providers' Entitlement due at the time such Proceeds are received, calculated based on

the present value of any non-cash Proceeds or (B) an undivided interest in any such non-cash Proceeds in the amount of the full portion of the Capital Providers' Entitlement due at the time such Proceeds are received, whereupon the Counterparty shall (A) diligently take any and all such actions as are necessary to receive and monetize such property in a commercially reasonable manner at prevailing market rates, that has been approved by the Capital Providers in their sole discretion, and (B) cause the prompt payment of the applicable portion of the Capital Providers' Entitlement from the cash realized from such monetization in accordance with this Agreement.

- (b) *Proceeds Held in Trust, etc.* If, notwithstanding Section 3.2(a), any Proceeds are instead received by the Counterparty or a third party other than the Payment Agent on the Counterparty's behalf, the Counterparty shall, or shall direct such third party to, (i) hold such Proceeds in trust for the benefit of the Capital Providers consistent with Section 2.2; (ii) segregate such Proceeds from all other funds and property; and (iii) forthwith pay or deliver such Proceeds to the Payment Agent in accordance with clauses (i) and (ii) of Section 3.2(a).

4. PAYMENTS GENERALLY

4.1 Place and Account for Payment

Each payment to a party required under this Agreement shall be made (a) to the payment account for such party (or the Payment Agent, as the case may be) specified on Annex II or in the Escrow Agreement, as applicable; (b) in the currency specified in Section 2; (c) on the due date for value on that date in the place where such account is located; (d) unless otherwise agreed in writing, by wire transfer of freely transferable and immediately available funds; and (e) otherwise in the manner customary for payments in the specified currency.

4.2 Interest on Overdue Amounts

If the Counterparty defaults in the performance of any payment obligation under this Agreement, the Counterparty shall on demand pay interest (before as well as after judgment, if applicable) at the Default Rate on the overdue amount to the Capital Providers for the period from (and including) the original due date for payment to (but excluding) the date of actual payment.

4.3 Waiver of Right of Set-Off

Each amount that the Counterparty is obligated to pay under this Agreement shall be paid without set-off, deduction, or counterclaim.

5. COVENANTS

5.1 Covenants of Each Party

The Counterparty, on the one hand, and each Capital Provider, on the other hand, agree that, so long as such party has or may have any obligation to the other under this Agreement or any other Transaction Document:

- (a) it shall preserve and maintain its corporate existence, except to the extent that the failure to do so would not have a Material Adverse Effect;
- (b) it shall use all reasonable efforts to maintain in full force and effect all consents, approvals, actions, authorizations, exceptions, notices, filings, and registrations of or with any Governmental Authority that are required to be obtained by it with respect to this Agreement or any other Transaction Document and shall use all reasonable efforts to obtain any that may become necessary in the future; and
- (c) it shall comply with all applicable laws and orders of any Governmental Authority to which it may be subject if failure to so comply could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

5.2 Covenants of the Capital Providers

With respect to the Claims, each Capital Provider agrees with the Counterparty that:

- (a) such Capital Provider and its respective Affiliates are not, and shall not by virtue of entering into this Agreement or any other Transaction Document become, a party to the Claims;
- (b) without limiting the obligations of the Counterparty under Section 5.3(b) or the rights granted to the Capital Providers under Section 13.1(b), such Capital Provider shall not be entitled to control or direct the conduct of the Claims, or to require settlement thereof;
- (c) the Counterparty shall have day-to-day and overall control over the conduct of, and responsibility for, the Claims and neither the Capital Providers nor their respective Affiliates shall exercise, or seek to exercise, any such control over the Claims;
- (d) such Capital Provider and its respective Affiliates shall do nothing that compromises the professional duties of any of the Nominated Lawyers;
- (e) such Capital Provider and its respective Affiliates shall act in good faith in all of its dealings with the Counterparty and shall comply diligently with this Agreement.

5.3 Covenants of the Counterparty

The Counterparty agrees with the Capital Providers that, so long as the Counterparty has or may have any obligation under this Agreement or any other Transaction Document:

- (a) subject to Section 17 of this Agreement, the Capital Amounts shall be used solely for the purchase of merchandise and services; and without limiting the generality of the foregoing, Additional Amounts shall be used as specified in Section 2.1(a)(iii)(B);
- (b) with respect to each Claim, the Counterparty:
 - (i) shall use all commercially reasonable efforts to: (A) pursue such Claim and all of the Counterparty's legal and equitable rights arising in connection with such Claim; (B) bring about the reasonable monetization of such Claim through a Claim Resolution; and (C) collect and enforce any settlement, final judgment or award;
 - (ii) shall, at its own expense (taking into account the Capital Amounts) and in a timely manner: (A) retain and remunerate the applicable Nominated Lawyers to prosecute such Claim vigorously in a commercially reasonable manner in order to bring about the reasonable monetization of such Claim through a Claim Resolution; (B) subject to the Engagement Agreement, cooperate with such Nominated Lawyers in all matters pertaining to such Claim (including providing documents and information, appearing and causing others within the Counterparty's power to appear for examinations and hearings), including promptly authorizing and discharging all fees, expenses, and other payment obligations necessarily or reasonably recommended or incurred in association with pursuing such Claim to a Claim Resolution; (C) take all actions necessary or appropriate to collect and enforce any settlement, final judgment or award (the costs and expenses of doing all of the foregoing described in clauses (A) – (C), "**Claim Costs**"); and (D) actively manage the incurrence of Claim Costs with the goal of achieving a Claim Resolution, and the collection and enforcement thereof, efficiently and cost-effectively;
 - (iii) subject to Section 9.4, shall itself, or cause the applicable Nominated Lawyers to, within the five (5) Business Days preceding the end of each calendar month, (A) provide the Capital Providers with a report containing the information described on Exhibit B (each, a "**Monthly Report**") and (B) with respect to items (1) and (2) thereon, provide a copy to the Nominated Lawyers unless such items were prepared by the Nominated Lawyers;
 - (iv) subject to Section 9.4, shall itself, and cause the applicable Nominated Lawyers to, (A) keep the Capital Providers fully and promptly apprised of each material development in relation to such Claim and (B) respond fully

and promptly to any request by the Capital Providers, their Affiliates, or Representatives for any information regarding such Claim;

- (v) shall provide immediate notice by email to the Capital Providers of any settlement offer made by the Adverse Party and shall in good faith give the Capital Providers an opportunity to discuss such settlement offer prior to the Counterparty accepting or rejecting it, provided however, that the Capital Providers (and their respective Affiliates) shall have no right to exercise control over the independent professional judgment of the Counterparty and its Nominated Lawyers and shall not seek to coerce the Counterparty and its Nominated Lawyers with respect to settlement;
 - (vi) shall provide immediate notice by email to the Capital Providers of a Claim Resolution or any receipt of any Proceeds, or of any event that is expected to generate a Claim Resolution or the receipt of any Proceeds;
 - (vii) shall not do anything to prejudice any benefits, rights or causes of action sought or advanced in connection with, or the general pursuit of, such Claim;
 - (viii) other than with the prior written consent of the Capital Providers, shall not dispose of, transfer, encumber or assign, nor otherwise create, incur, assume, or permit to exist any Adverse Claim with respect to, all or any portion of such Claim (or any interest therein) or any Proceeds thereof (or any right to such Proceeds);
 - (ix) shall not set off or agree to set off any amounts against such Claim;
 - (x) shall not, prior to a Claim Resolution with respect to all Claims, agree to settle or otherwise resolve any separate action, claim, suit, or arbitration brought by or against any Adverse Party or any of the Adverse Party's Affiliates in a manner that would impact the Counterparty's performance of its covenants in clauses (i) or (ii) of this Section 5.3(b), a potential Claim Resolution of one or more Claims, and/or the Capital Providers' Entitlement; and
 - (xi) shall at its sole cost maintain in place the effective, enforceable Escrow Agreement.
- (c) Within two (2) Business Days after the Counterparty knows or has reason to believe that any of the following has occurred or is likely to occur, the Counterparty shall deliver to the Capital Providers a notice describing the same in reasonable detail and, together with such notice or as soon thereafter as possible, a description of any action that the Counterparty has taken or proposes to take with respect thereto:
- (i) any Potential Remedy Event or Remedy Event;

- (ii) any action, suit, or proceeding of the kind described in Section 6.3(b) has been or shall be brought; or
 - (iii) a material failure by the Counterparty, or any Nominated Lawyers on the Counterparty's behalf, to pay when due any undisputed amounts owing to any litigation services providers (e.g., experts) retained in connection with a Claim (after giving effect to any applicable notice requirement or grace period).
- (d) The Counterparty shall not, without the Capital Providers' prior written consent (which consent shall not unreasonably be withheld), directly or indirectly, permit any amendments to the economic terms or scope of representation set forth in any Engagement Agreement.
- (e) If the Nominated Lawyers in respect of any Claim cease to act as the Counterparty's legal counsel for such Claim for any reason (including the Counterparty's decision to replace such Nominated Lawyers, which decision the Counterparty is free to make at any time), or the Counterparty needs to retain new legal counsel for a Claim outside the scope of the Engagement Agreement(s) with such Nominated Lawyers, then the Counterparty shall, subject to the Capital Providers' prior written consent (with respect to which the Capital Providers shall be free to apply their own experience and subjective judgment, but which consent shall not unreasonably be withheld), appoint successor attorneys or new attorneys to act as its counsel who have a similar level of quality and reputation as such Nominated Lawyers. The Counterparty shall not grant successor attorneys or any new attorneys economic compensation associated with a Claim that, standing alone or when considered together with any economic compensation to which current Nominated Lawyers would remain entitled, is superior to the compensation set forth in the Engagement Agreement(s) with such current Nominated Lawyers without the Capital Providers' prior written consent, which shall not be unreasonably withheld or delayed. The Counterparty will promptly deliver to the Capital Providers a copy of any Engagement Agreement with any successor or new attorney. If such successor attorney or any new attorney, as applicable, are appointed, all references to "Nominated Lawyers" in respect of the applicable Claim will be deemed to refer to and include such successor, replacement or additional counsel.
- (f) The Counterparty shall retain Nominated Lawyers for each New Claim on an hourly fee basis unless the Capital Providers have given their consent in writing to an alternative fee arrangement. Prior to appointing Nominated Lawyers for each of the New Claims, the Counterparty shall consult with the Capital Providers in good faith and obtain the Capital Providers' prior written consent (with respect to which the Capital Providers shall be free to apply their own experience and subjective judgment, but which but which consent shall not unreasonably be withheld). Upon retaining counsel for such Claims, (i) the Counterparty will promptly deliver to the Capital Providers a copy of the applicable Engagement Agreement and (ii) all references to "Nominated Lawyers" hereunder will be deemed to refer to such

counsel with respect to the applicable Claim.

(g)



- (h) The Counterparty shall ensure that, at all times, all payment obligations of the Counterparty under this Agreement shall rank in right of payment at least *pari passu* with all unsecured, unsubordinated indebtedness of the Counterparty.
- (i) The Counterparty has, and reasonably expects to continue to have, sufficient assets available to it with which to discharge such Claim Costs as may be necessary to comply with its covenants under this Agreement, including those set forth in Section 5.3(b)(ii), in the event the Additional Amounts are exhausted.

6. REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of Each Party

On each Representation Date, the Counterparty, on the one hand, and each Capital Provider, on the other hand, represents and warrants to the other as follows:

- (a) It (i) is duly organized or formed and validly existing under the laws of the jurisdiction of its organization or formation and, if relevant under such laws, in good standing, (ii) is qualified to do business in each jurisdiction in which the nature of its business so requires, and (iii) has not filed any certificates of dissolution or liquidation, or any certificates of domestication, transfer or continuance in any jurisdiction.
- (b) It has the power to execute this Agreement and the other Transaction Documents to which it is a party, to deliver this Agreement and the other Transaction Documents it is required by this Agreement to deliver, and to perform its obligations under this Agreement and the other Transaction Documents; and, to the extent necessary, it has taken all necessary action to authorize such execution, delivery and performance.
- (c) Such execution, delivery and performance do not and shall not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other Governmental Authority applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its

assets (including, with respect to the Counterparty, the Engagement Agreement(s) and any provisions therein).

- (d) All consents, approvals, actions, authorizations, exceptions, notices, filings, and registrations that are required to have been obtained by it with respect to this Agreement or any other Transaction Document have been obtained and are in full force and effect, and all conditions of any such consents, approvals, actions, authorizations, exceptions, notices, filings and registrations have been complied with.
- (e) This Agreement and the other Transaction Documents constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization or similar laws and to general equitable principles).
- (f) It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and the other Transaction Documents, and the transactions contemplated hereby and thereby, and as to whether this Agreement and the other Transaction Documents and such transactions are appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary.
- (g) No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of this Agreement or any other Transaction Document, or any of the transactions contemplated hereby or thereby.
- (h) No party has given any investment advice or rendered any opinion to the other party as to whether entering into this Agreement in exchange for the rights received is prudent.
- (i) It is capable of assessing the merits of and understanding (on its own behalf or through independent professional legal advice), and understands and accepts, the terms, conditions and risks of this Agreement and the other Transaction Documents, and the transactions contemplated hereby and thereby.
- (j) The Parties' representations to one another shall remain true, correct, and complete at all times during the term of this Agreement.

6.2 Representations and Warranties of the Capital Providers

- (a) On the Representation Date coinciding with the date of this Agreement, the Capital Providers each represent and warrant to the Counterparty, on behalf of themselves and their Affiliates, as follows:
 - (i) They have received sufficient information concerning the Claims to make

an informed decision regarding the transactions contemplated with respect to the Claims under this Agreement, and have had the opportunity to access, and have accessed, due diligence information and to make related inquiries regarding the Claims. On the basis of such information and diligence as they have deemed appropriate in their independent judgment, they have independently and without reliance on the Counterparty, either for information (other than the covenants, representations, and warranties contained herein) or investment advice, made their own analysis and decision to enter into this Agreement.

- (ii) They are sophisticated investors and have such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of entering into this Agreement; (i) bearing the risks of an investment in the Claims; (ii) making an informed investment decision regarding their investment in the Claims; and (iii) analyzing and protecting their own interests in deciding whether to enter into the transactions contemplated under this Agreement.
- (b) On each Representation Date (except as otherwise specifically provided below), the Capital Providers each represent and warrant to the Counterparty, on behalf of themselves and their Affiliates, as follows:
- (i) They have been represented by such legal and tax counsel and any other advisors selected by them as they found necessary to consult concerning the transactions contemplated under this Agreement and to review and evaluate the tax, economic, and other ramifications of same.
 - (ii) They have been advised and understand that their participation in the transactions contemplated under this Agreement involve a high degree of risk. They have the ability to bear the economic risk of entering into this Agreement, and at the present time and for an indefinite period of time can afford a complete loss of their investment in the Claims.

6.3 Representations and Warranties of the Counterparty

On each Representation Date (except as otherwise specifically provided below), the Counterparty represents and warrants to the Capital Providers as follows:

- (a) No Remedy Event or Potential Remedy Event has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other Transaction Document.
- (b) No litigation or other proceedings before any court or other Governmental Authority, official, tribunal, or arbitrator that could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, have been

commenced by or against the Counterparty or, to the best of the Counterparty's knowledge, are threatened against, the Counterparty, any other Person.

- (c) It is not insolvent, is not in the zone of insolvency, is able to pay its debts when due, and has no insolvency proceedings threatened or outstanding against it.
- (d) It is not materially overdue in the filing of any Tax return nor overdue in the payment of any material amount in respect of Tax.
- (e) As of the date of this Agreement, it has entered into the Engagement Agreements in respect of each Claim as described on Annex II. True and complete copies of all Engagement Agreements have been provided to the Capital Providers.
- (f) With respect to each Claim:
 - (i) it is the sole legal and beneficial owner of, has good title to, and possesses sole control of, such Claim, free and clear of any Adverse Claim;
 - (ii) (A) as of the date of this Agreement, it has not received any payments in connection with such Claim, and (B) any payments in connection with such Claim received after the date of this Agreement have been disclosed to the Capital Providers in accordance herewith;
 - (iii) it has full power and authority to bring such Claim and has obtained all necessary corporate and other authorizations to do so;
 - (iv) it has not disposed of, transferred, encumbered, or assigned all or any portion of such Claim (or any interest therein) or any Proceeds thereof, whether by way of security, subrogation, assignment to an insurer, or otherwise;
 - (v) it has not set off or agreed to set off any amounts against such Claim, and there exist no rights of set-off or similar rights against the Counterparty that could permit any set-off of or counterclaim against such Claim;
 - (vi) (A) it has not taken any steps or executed any documents which could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect; (B) it has disclosed to the Capital Providers in accordance with its reporting obligations hereunder any instances in which anyone else has done or purported to do so; and (C) it has disclosed to the Capital Providers in accordance with its reporting obligations hereunder any asserted or unasserted claim, lien, or judgment against it which could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect; and
 - (vii) subject to Section 9, it has disclosed to the Capital Providers all information (in any and all media) in the knowledge, possession, or control of the

Counterparty or any of its Representatives that is or is likely to be material to the Capital Providers' assessment of such Claim (including the enforcement and collection of any related settlement, award, or judgment); any and all such information has been provided to the Capital Providers in its true, complete, and correct form and is, to the knowledge of the Counterparty, accurate; the Counterparty believes (and does not have, and has not been informed by any of its Representatives of, any belief to the contrary) that such Claim is meritorious; and the Counterparty has not been advised by the applicable Nominated Lawyers or any other legal counsel or litigation funder that the Claim is unlikely to succeed.

- (g) It is not relying on any communication (written or oral) of any Capital Provider or any of their respective Affiliates as legal advice or as a recommendation to enter into this Agreement or any other Transaction Document, or any of the transactions contemplated hereby or thereby, it being understood that information and explanations related to the terms and conditions of this Agreement and the other Transaction Documents, and the transactions contemplated hereby and thereby, shall not be considered legal advice or as such a recommendation.
- (h) Based on the Counterparty's review of its corporate governance documents and policies, and after consultation with its legal counsel, the Counterparty has determined that the execution, delivery and performance of this Agreement and the Transaction Documents is authorized without any specific corporate action or authorization.

7. MATERIAL NON-PUBLIC INFORMATION

The Counterparty acknowledges that it may from time to time be in possession of material non-public information relating to the Capital Providers and their Affiliates, their business, prospects, financial condition, results of operations, and strategy, including information about each Claim and its progress and prospects; and the Counterparty shall not, and shall direct its Representatives not to, disclose such information or trade (or encourage others to trade) securities of the Capital Providers or their Affiliates, to the extent publicly traded, on the basis of such material non-public information.

8. CONFIDENTIALITY

8.1 Exclusive Ownership of Information by Disclosing Party

Each recipient of Confidential Information hereunder (the "**Recipient**") agrees that all Confidential Information provided to it is and shall remain at all times the exclusive property of and owned by the other party (the "**Disclosing Party**"), or any of its Affiliates or contract counterparties, as the case may be; and that the Recipient's use or awareness of such Confidential Information shall create no rights, at law or in equity, in the Recipient in or to such information, or any aspect or embodiment thereof. Neither the execution of this Agreement or any other Transaction Document, nor the furnishing of any Confidential

Information hereunder, shall be construed as granting, whether expressly or by implication, estoppel or otherwise, any license to distribute or title to any patent, trademark, copyright, service mark, business and trade secret or other proprietary right, title or interest in or to such Confidential Information, or to use such Confidential Information for any purpose other than as specified in this Agreement or any other Transaction Document, or to constitute a waiver of any attorney-client privilege or work product protection.

8.2 Non-Disclosure of Information

- (a) Other than pursuant to Section 8.4, the Recipient shall not for any reason (i) disclose, reveal, report, publish, transfer or make available, directly or indirectly, to any Person other than its Representatives authorized pursuant to Section 8.3, nor use for any purpose other than the fulfillment or enforcement of its obligations hereunder (collectively, “**Disclose**”), any Confidential Information provided to it by the Disclosing Party until the later of (A) the seventh (7th) anniversary of the date of this Agreement or (B) the second (2nd) anniversary of a Claim Resolution of all Claims to which such Confidential Information relates; nor (ii) in perpetuity Disclose any Protected Material provided to it by the Disclosing Party.
- (b) To the extent the Counterparty provides the Capital Providers or any of their Affiliates with any material that is subject to the Agreed Confidentiality Order, the Capital Providers and their Affiliates agree to abide by the terms of such Agreed Confidentiality Order. The decision to provide the Capital Providers or any of their Affiliates with material that is subject to the Agreed Confidentiality Order shall be at the sole discretion of the Counterparty and the applicable Nominated Lawyers unless and until the Capital Providers or their designated agent(s) execute Attachment A to the Agreed Confidentiality Order pursuant to paragraph 6(b)(6) thereof, which they shall be entitled to do at their sole discretion.
- (c) Moreover, notwithstanding any other provision of this Agreement, at no time shall the Recipient knowingly disclose any Confidential Information or Protected Material to any Adverse Party or any other adversary, potential adversary, or conduit to an adversary of the Counterparty, and the Recipient shall treat such materials in a manner that does not substantially increase the likelihood that any of the foregoing shall come into possession of it.
- (d) No press release or other announcement concerning the existence of this Agreement, the parties to this Agreement, or the funding provided under this Agreement shall be made by any party without the prior written consent of the other party; provided however, that (i) the Capital Providers shall have the limited right to, at any time, describe the general nature of the funding provided under this Agreement on their or their Affiliates’ websites or in filings and disclosures required by law, so long as such description does not identify the Counterparty or make express reference to a Claim; and (ii) the Counterparty shall be free, at any time, to disclose such information regarding the nature, terms and existence of this Agreement and the other Transaction Documents as the Counterparty, in its sole

discretion, determines it is required to disclose under the federal securities laws of the United States, provided that the Counterparty has provided the Capital Providers or its Affiliates a copy of such disclosure sufficiently in advance of the time such disclosure will be included in any report to be filed or furnished with the Securities and Exchange Commission such that the Capital Providers may consult with the Counterparty with respect thereto prior to the filing or furnishing of such report.

8.3 Confidentiality Procedures

The Recipient shall ensure that the Confidential Information it receives is not divulged or disclosed to any Person except its Representatives who have a “need to know” such information. The Recipient shall procure its Representatives’ compliance with this Section 8 and shall be responsible for its or its Representatives’ failure to so comply.

8.4 Judicial and Official Disclosure Requests

- (a) If a Recipient receives a request, including in any judicial, arbitral, or administrative proceeding or by any Governmental Authority, to disclose any Confidential Information, then such Recipient shall, before complying with such request if legally permitted, promptly provide written notice of such request, including a copy of such request, to the Disclosing Party, sufficiently in advance so that the Disclosing Party may contest the requested disclosure. If, upon such notice, the Disclosing Party elects to contest the requested disclosure (all such contests being at the Disclosing Party’s expense and under its control; provided that the Disclosing Party shall consult with the Recipient about such contests), to the extent legally permitted the Recipient shall not disclose any Confidential Information until such time as a final, non-appealable, or non-stayed order has been entered compelling such disclosure, and the Recipient shall cooperate with the Disclosing Party in its contest.
- (b) If any such request for the disclosure of Confidential Information seeks disclosure of this Agreement, any other Transaction Document, any terms hereof or thereof, the identities of the Capital Providers or the Counterparty, or any communications between the Counterparty and the Capital Providers, then the Recipient shall (i) notify the other parties immediately; (ii) object to such disclosure on all applicable bases, including work product doctrine, common interest privilege, and relevance, as applicable; and (iii) cooperate in good faith with the other parties regarding the management of such objections.
- (c) Should the Disclosing Party not contest the requested disclosure, the Recipient shall not have any obligation to do so; the Recipient may, however, contest the requested disclosure even if the Disclosing Party elects not to do so.
- (d) Notwithstanding anything herein to the contrary, the obligations of the Recipient in connection with requests for the disclosure of Confidential Information described

in this Section 8.4 shall not apply with respect to requests made by a regulatory or self-regulatory body having jurisdiction over the Recipient when such disclosures are required by law as a matter of general or routine examinations in which no specific request is made for Confidential Information relating to the Disclosing Party or the Claim(s).

9. LEGAL PRIVILEGE

9.1 Common Interest Privilege Applies

The parties agree that the Counterparty, the Capital Providers, and the Capital Providers' Affiliates have a "common legal interest" in each Claim and its successful prosecution, this Agreement, the other Transaction Documents, and any discussion, evaluation and negotiation and other communications and exchanges of information relating thereto. The parties further agree that in providing to the Capital Providers or the Capital Providers' Affiliates any documents or information about any Claim, the Counterparty does not intend to waive any applicable Privilege or protection that may attach to the documents or information.

9.2 Information Subject to Privilege Protection

Notwithstanding any contrary provision of this Agreement, the parties agree that any Protected Material shall at all times remain subject to all applicable Privileges, it being the express intent of the parties and their Affiliates to preserve intact to the fullest extent applicable, and not to waive, by virtue of this Agreement or otherwise, in whole or in part, any and all Privileges to which Protected Material, or any part of it, is, may be or may in the future become subject. It is the good faith belief of the Disclosing Party that Privileges, including the common interest privilege, attach to the Protected Material and disclosure of Protected Material is made in reliance on that good faith belief.

9.3 Information Subject to Work Product Protection

The parties agree that without limiting the foregoing, any materials prepared in anticipation of litigation by or for the Counterparty, the Capital Providers, any of their respective Affiliates, or any of their respective Representatives shall remain subject to work product protection. The Capital Providers and their Affiliates shall be considered "representatives" of the Counterparty given that the Counterparty requested assistance and advice from them regarding the plausibility of the Counterparty's obtaining external capital to finance its legal claims. Moreover, the parties agree that information shared between the Counterparty and the Capital Providers is shared pursuant to a common interest and non-disclosure agreement (as set forth herein), and the exchange of such information does not increase the risk of disclosure, inadvertent or otherwise, to any Adverse Party or any other adversary and does not lessen or waive the protection secured under work product doctrine. Disclosure of work product is made in reliance on that good faith belief.

9.4 No Obligation to Provide Privileged Information

Notwithstanding other provisions of this Agreement, the Counterparty is not obliged to provide to the Capital Providers any information that is subject to attorney-client privilege; provided that if the Counterparty withholds from the Capital Providers information otherwise required by this Agreement on the basis of attorney-client privilege, any other Privilege, or any similar doctrine of confidentiality, it shall provide prompt notice thereof to the Capital Providers.

10. INDEMNIFICATION OF THE CAPITAL PROVIDERS

- (a) The Counterparty agrees to indemnify, defend and hold each Capital Provider and its Representatives (“**Indemnitees**”) free and harmless from and against any and all losses, costs, charges, damages, and expenses (including reasonable attorneys’ fees and costs of experts and advisors) (collectively, “**Losses**”) that may be imposed on, incurred by or asserted against any Indemnatee in any matter relating to any Transaction Document, Claim, or actual or prospective investigation, litigation or other proceeding relating to a Transaction Document or Claim; provided that (i) any Losses arising from the gross negligence or willful misconduct of a Capital Provider or any of its Representatives, as determined by a court of competent jurisdiction in a final non-appealable judgment or order, shall be excluded from the foregoing indemnification and (ii) if a Capital Provider suffers any loss of its investment due to insufficient Proceeds, such loss shall not constitute indemnified Losses hereunder unless (and only to the extent that) such insufficiency was caused by a material breach of this Agreement caused by the Counterparty.
- (b) Any amounts owed as a result of the indemnification obligations set forth in this Section 10 are independent of the Counterparty’s obligation to pay the Capital Providers’ Entitlement. Any Indemnatee who receives notice of a claim for which it shall seek indemnification hereunder shall promptly notify the party from which the Indemnatee shall seek indemnification (the “**Indemnifying Party**”) of such claim in writing. The Indemnifying Party shall have the right to assume the defense of such action at its cost with counsel reasonably satisfactory to the Indemnatee, but shall not have the right to settle or compromise any claim or action without the written consent of the Indemnatee. The Indemnatee shall have the right to participate in such defense with its own counsel at its cost. Any failure by the Indemnatee to give prompt notice of a claim hereunder shall not relieve the Indemnifying Party of its indemnification obligation except to the extent the Indemnifying Party is actually prejudiced by such failure.

11. EXCULPATION; REINSTATEMENT

- (a) Other than its obligations to provide the Capital Amounts to the Counterparty, no Capital Provider shall have any obligation to fund any fees, expenses, or other sums in relation to any Claim, and all such fees, expenses, or other sums shall be the sole responsibility of the Counterparty. Without limiting the generality of the foregoing,

no Capital Provider shall have any obligation to pay any sums awarded against, or penalties incurred by, the Counterparty, including any costs orders, awards, interest, damages, expenses, or penalties against the Counterparty, nor to fund any legal fees or any other costs whatsoever incurred as a result of defending any counterclaim brought against the Counterparty in relation to any Claim or defending any enforcement or other proceedings against the Counterparty.

- (b) The liability of each Capital Provider under this Agreement and the other Transaction Documents (and the transactions contemplated hereby and thereby) in relation to any Claim is equal to the aggregate of all Capital Amounts committed by such Capital Provider in relation to such Claim, except in the event of any fraud of such Capital Provider or reckless activity of such Capital Provider amounting to fraud. This limitation of liability is absolute and applies to liability for (without limitation) breach of contract, negligence and gross negligence, and for any damages that may constitute compensatory damages, lost profit, expenses, costs, losses or charges, or consequential, exemplary or punitive damages or otherwise. This limitation of liability extends to each Capital Provider and its Representatives.
- (c) To the extent any payment received by the Capital Providers, or obligation incurred by the Counterparty pursuant to any of the Transaction Documents, is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid in whole or in part by the Capital Providers or paid over to a trustee, receiver or any other entity, whether under any bankruptcy law, insolvency, fraudulent transfer law or otherwise (any such payment or obligation being hereinafter referred to as a “**Challenged Item**”), then the obligations of the Counterparty pursuant to this Agreement with respect to such Challenged Item shall (i) be fully reinstated and revived, as the case may be, notwithstanding such payment or incurrence, and (ii) to the extent of each such Challenged Item, remain effective and continue in full force and effect as if said Challenged Item had not occurred or been made. The Counterparty shall indemnify each Capital Provider on demand for all reasonable third party costs and expenses (including the reasonable fees and disbursements of outside counsel) incurred by such Capital Provider in connection with such rescission or revival, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer, or similar payment.

12. REMEDY EVENTS

The occurrence at any time with respect to the Counterparty of any of the following events constitutes a “**Remedy Event**”:

12.1 Failure to Pay or Deliver

The Counterparty fails to make, when and where due, any payment owing to a Capital Provider hereunder.

12.2 Breach or Repudiation

Other than the obligations referenced in Section 12.1, which is governed by such section, the Counterparty fails to comply with or perform any of its obligations in accordance with this Agreement or any other Transaction Document if (a) such failure, if remediable, is not remedied within (subject to Section 13.3) ten (10) Business Days after written notice thereof is given to the Counterparty and (b) (i) such failure could reasonably be expected to have a Material Adverse Effect; or (ii) the Counterparty or any of its Representatives disaffirms, disclaims, repudiates, or rejects in writing, in whole or in part, or challenges the validity of, this Agreement or any other Transaction Document.

12.3 Misrepresentation

A representation by the Counterparty in this Agreement or any other Transaction Document proves to have been incorrect or misleading in any material respect when made or deemed to have been made.

12.4 Bankruptcy

Any of the following occurs with respect to the Counterparty: (a) the voluntary or involuntary commencement of a case or proceeding by or against it under any applicable bankruptcy, insolvency or similar law affecting creditors' rights now or hereafter in effect, or any other procedure under any law of any jurisdiction having a similar or analogous nature or effect, and such case, proceeding or procedure is not dismissed or otherwise terminated within sixty (60) days of its commencement; or entry of a decree or order by a court of competent jurisdiction, appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or similar official having powers over it or all or a substantial part of its property; (b) the inability or failure generally, or admission in writing of its inability, to pay its debts as they become due; (c) dissolution (other than pursuant to a consolidation, amalgamation or merger); or (d) the adoption of any resolution or other authorization, or the taking of any action in furtherance of, or indicating its consent or intent to consent to, approve of, or acquiesce in, any of the foregoing by its board of directors (or similar governing body) or any committee thereof or by its equityholders entitled to vote on and authorize the same.

12.5 Reorganization Without Assumption

The Counterparty consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganizes, reincorporates, reconstitutes or divides into or as, another entity (or other entities) and as a direct or indirect result of such consolidation, amalgamation, merger, transfer, reorganization, reincorporation, reconstitution or division, either (a) no single resulting, surviving or transferee entity (a "Counterparty Successor") has assumed all the obligations of the Counterparty under this Agreement and/or the other Transaction Documents; or (b) the assets against which the Capital Amounts have been committed are no longer held by such a Counterparty Successor.

13. REMEDIES

13.1 Available Remedies Generally

If at any time a Remedy Event has occurred with respect to one or more Claims, the Capital Providers shall be entitled to (except as otherwise provided in this Section 13) exercise one or more of the following remedies (in each case without thereby relieving the Counterparty of any of its obligations under Section 3):

- (a) with respect to those Claim(s) to which the Remedy Event relates, the Capital Providers may take any and all actions on behalf of the Counterparty that the Capital Providers may deem necessary or advisable in order to prosecute the Claim(s) to bring about the monetization thereof through a Claim Resolution and to collect and enforce any settlement, final judgment or award; and, in connection therewith, the Counterparty hereby (i) irrevocably appoints Capital Provider No. 1 as the Counterparty's attorney-in-fact, with full authority in the place and stead of the Counterparty and in the name of the Counterparty or otherwise, from time to time following the date such Remedy Event occurred, in Capital Provider No. 1's discretion, to take any such actions to the extent consistent with the Counterparty's interests in the Claim, including to settle or compromise the Claim or to appoint new Nominated Lawyers, and (ii) agrees to, and to cause its Affiliates and its and their Representatives to, cooperate fully with the Capital Providers and counsel in all matters pertaining to the Claim(s), including producing necessary documents, submitting to examination for the preparation of written statements and subscribing to the same under oath if required, consulting with counsel and its designees as they require for purposes of prosecuting such Claim(s) and enforcing any award, and appearing at any hearings in connection with such statements or such Claim(s) generally; and
- (b) subject to the provisions of Section 29, the Capital Providers may pursue all other legal and equitable remedies available to the Capital Providers under applicable law in connection with the enforcement of its rights under this Agreement and the other Transaction Documents.

13.2 Remedies Cumulative

Except as provided otherwise in this Agreement, the rights, powers, remedies and privileges provided in this Agreement and the other Transaction Documents are cumulative; may be exercised singularly, concurrently, or successively at the Capital Providers' option; and may be exercised or enforced without constituting a bar to the exercise or enforcement of any other such rights, powers, remedies and privileges.

13.3 Cure Periods

If the failure to cure a Remedy Event described in Section 12.2 within a period of time shorter than ten (10) Business Days would be reasonably likely to result in an adverse effect

on a Claim or the value or collectability thereof due to exigencies of the litigation or arbitration process, the Capital Providers may by notice to the Counterparty shorten the cure period to the extent necessary to avoid or minimize such likelihood.

14. ENFORCEMENT OF CLAIM RESOLUTION

If, for any reason other than the bankruptcy or liquidation of an Adverse Party, or the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or similar official having powers over it or all or a substantial part of an Adverse Party's property, by the date that is one-hundred-eighty (180) days after the date of any Claim Resolution, any portion of a judgment, award, or settlement payment owing to the Counterparty as a result thereof remains unsatisfied, the Capital Providers shall, at their option and upon notice to the Counterparty, be entitled to engage judgment enforcement professionals of their own choosing (including those affiliated with the Capital Providers) to pursue enforcement of the same. In the event the Capital Providers elect to do so, (a) they shall pay their designated judgment enforcement professionals their reasonable and customary fees and expenses, (b) any and all costs incurred by the Capital Providers in such regard shall constitute Capital Amounts in respect of the Claim to which such enforcement activities relate, and (c) in consideration of their provision of such Capital Amounts, the Capital Providers' Entitlement shall be increased by an amount equivalent to such additional Capital Amounts plus a rate of return on such additional Capital Amounts equal to the highest effective rate of return applicable to any Capital Amounts set forth in Section 2.

15. TERMINATION BY THE COUNTERPARTY

The Counterparty shall have the right, but not the obligation, to terminate the Counterparty's obligations under this Agreement upon ten (10) Business Days' written notice to the Capital Providers from and after the Capital Providers' failure to pay the full Initial New Investment Amount by the Initial New Investment Payment Date, provided that such failure is continuing at the end of the ten (10) Business-Day period. In the event of such termination by the Counterparty, this Agreement shall be deemed null and void, provided however that the First Amended Agreement shall remain in full force and effect. In the event the Capital Providers have made a partial payment of the Initial New Investment Amount (and/or any Additional Payment), the Counterparty shall return such partial payment to the applicable Capital Provider(s) before the Counterparty exercises its termination rights hereunder.

16. LIMITATIONS ON TRANSFER, SUCCESSORS AND ASSIGNS; THIRD PARTY BENEFICIARIES

- (a) Neither this Agreement nor any other Transaction Document, nor any right or obligation in or under this Agreement or any other Transaction Document, may be transferred (whether by way of security or otherwise) or delegated by the Counterparty without the prior written consent of the Capital Providers, except that upon written notice to the Capital Providers, the Counterparty may (without

prejudice to any other right or remedy of the Capital Providers under Section 12 or 13) make a transfer of all (but not less than all) of its rights and obligations under this Agreement and the other Transaction Documents pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity other than an Adverse Party or an Affiliate of an Adverse Party, provided that such transfer would not cause a Material Adverse Effect. Each Capital Provider may assign its rights and obligations under this Agreement and the other Transaction Documents, in whole or in part, to another Person without the consent of the Counterparty. Any purported transfer that is not in compliance with this provision shall be void.

- (b) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- (c) No Person other than the parties hereto (and the Indemnitees and any permitted transferee hereunder) shall have any rights under this Agreement.

17. TAX WITHHOLDING

The Counterparty shall make all payments under or in connection with this Agreement without any deduction or withholding for or on account of any Tax, save only as may be required by applicable law. If any such deduction or withholding is required by law to be made, the Counterparty shall (a) promptly notify the applicable Capital Providers upon becoming aware that it must make such a deduction or withholding; (b) pay to the relevant authorities (within the time allowed) the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by the Counterparty to the applicable Capital Providers under clause (d) of this Section 16); (c) promptly provide an official receipt (or a certified copy or such other evidence reasonably acceptable to the applicable Capital Providers) evidencing the relevant withholding and payment to such authorities; and (d) pay to the applicable Capital Providers such additional amounts as are necessary to ensure that (after making any such withholdings or deductions) the net amount actually received by such Capital Providers in respect of the payment due from the Counterparty equals the amount which such Capital Providers would have received if no such withholdings or deductions had been required.

18. ANTI-CORRUPTION; DATA PROTECTION

- (a) The Counterparty acknowledges that the Capital Providers seek to comply with all applicable anti-money laundering, sanctions, anti-corruption, and anti-bribery laws and regulations (collectively, “**Anti-Corruption Rules**”). In furtherance of these efforts, the Counterparty represents and warrants as follows:
 - (i) it is not the target of any economic or financial sanctions with respect to the United States Government (including the U.S. Department of Treasury Office of Foreign Assets Control), the United Nations Security Council or the European Union; and

(ii) neither it nor any of its Affiliates, nor to its knowledge anyone acting on its behalf, has at any time:

- (A) violated, or engaged in any activity, practice or conduct which would violate, any applicable Anti-Corruption Rule;
- (B) used funds or assets for any unlawful contribution, gift, entertainment or other unlawful expense, or made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment; or
- (C) directly, or indirectly through its agents, Representatives or any other Person authorized to act on its behalf, offered, promised, paid, given, or authorized the payment or giving of money or anything else of value to any government official or other Person while knowing or having reason to believe that some portion or all of the payment or thing of value will be offered, promised, or given, directly or indirectly, to a government official or another Person for the purpose of influencing any act or decision of such government official or such Person in his/her or its official capacity, including a decision to do or omit to do any act in violation of his/her or its lawful duties or proper performance of functions or inducing such government official or such Person to use his/her or its influence or position with any Government Authority or other Person to influence any act or decision,

in each case in order to obtain or retain business for, direct business to, or secure an improper advantage for, the Counterparty or any of its Affiliates.

- (b) The Counterparty will not engage in any business or other activities, including through agents or subcontractors, that could cause a Capital Provider to be in direct or indirect violation of any applicable Anti-Corruption Rule.
- (c) The Counterparty acknowledges and agrees that, notwithstanding anything to the contrary, the Capital Providers shall have no obligation to make or receive any payment or take any other action if the Capital Providers conclude in good faith that making or receiving such payment or taking such action would violate any applicable Anti-Corruption Rule.
- (d) In connection with the exchange of information under this Agreement, each of the Counterparty and the Capital Providers will comply with all applicable data protection laws, including the General Data Protection Regulation (GDPR), as required, and not process any personal data other than instructed unless processing required by applicable law to which the contracted processor is subject. Each will safeguard all data, including implementing appropriate security measures, as required under applicable data protection laws.

19. NOTICES

19.1 Effectiveness of Notices

Any notice or other communication in respect of this Agreement shall be in writing and may be given in any manner described below to the address or number provided for the recipient in Annex I and shall be deemed effective as indicated:

- (a) if delivered in person or by courier, on the date it is received;
- (b) if sent by certified or registered mail or the equivalent (return receipt requested), on the date it is received; or
- (c) if sent by email, on the date sent in the absence of any immediate automated response indicating the message was not received or would not be timely read, and if such an immediate automated response is received by the sender, on the date the sender receives an acknowledgement from the recipient,

unless the date of receipt is not a Business Day or the communication is received after the close of business on a Business Day, in which case such communication shall be deemed given and effective on the first following day that is a Business Day. Notices to the Counterparty shall be copied to the applicable Nominated Lawyers, and the time of effectiveness of each such notice shall be the effective time of receipt by either the Counterparty or such Nominated Lawyers, whichever occurs earlier.

19.2 Change of Details

Either party may by notice to the other in accordance with Section 18.1 change the address or email details at which notices or other communications are to be given to it.

20. AMENDMENTS

No amendment, modification or waiver in respect of this Agreement shall be effective unless in writing and executed by the Counterparty and the Capital Providers.

21. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and is the final and complete expression of their intent. The parties represent and warrant that no prior or contemporaneous negotiations, promises, agreements, covenants or representations of any kind or nature, whether made orally or in writing, have been made or relied upon by them, whether in negotiations leading to this Agreement or relating to the subject matter hereof, which are not expressly contained herein, or which have not become merged and finally integrated herein; it being the intention of the parties that in the event of any subsequent litigation, controversy or dispute concerning the terms and provisions of this Agreement, no party shall be permitted to offer or introduce oral or

extrinsic evidence concerning the terms and conditions hereof that are not included or referred to herein and not reflected in writing.

22. COUNTERPARTS

This Agreement and the other Transaction Documents (and each amendment, modification and waiver in respect thereof) may be executed and delivered in counterparts (including by facsimile or digital transmission), each of which shall be deemed an original.

23. SURVIVAL OF OBLIGATIONS

With respect to each Claim, the rights and obligations of the parties under Sections 3, 4, 6, 7, 8, 9, 10, 11 and 13 through 30 in relation to such Claim shall survive any Claim Resolution or the exercise by the Capital Providers of any remedies with respect to such Claim pursuant to Section 13.

24. NO WAIVER

A failure or delay in exercising any right, power or privilege in respect of this Agreement or any other Transaction Document shall not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege shall not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

25. SEVERABILITY

If any term of this Agreement or any other Transaction Document, or the application thereof to either party or any circumstance, is held to be unenforceable, invalid or illegal (in whole or in part) for any reason (in any relevant jurisdiction), the remaining terms, modified by the deletion of the unenforceable, invalid or illegal portion, shall continue in full force and effect, and such unenforceability, invalidity, or illegality shall not otherwise affect that of the remaining terms, so long as this Agreement and the other Transaction Documents as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the deletion of such portion of this Agreement or any other Transaction Document shall not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties shall endeavour in good faith negotiations to replace any prohibited or unenforceable provision with a valid provision the economic effect of which comes as close as possible to that of the prohibited or unenforceable provision.

26. EXPENSES

- (a) Except as otherwise expressly provided in this Agreement or any other Transaction Document, each party shall bear its own expenses in connection with the

negotiation, execution, delivery and performance of this Agreement and the other Transaction Documents.

- (b) The Counterparty shall, on demand, indemnify and hold harmless the Capital Providers for and against all reasonable out-of-pocket expenses, including legal fees and disbursements, incurred by the Capital Providers by reason of the enforcement and protection of their rights under this Agreement or any other Transaction Document, including costs of collection and of the enforcement of this Section 25(b).

27. RELATIONSHIP OF PARTIES

- (a) The Capital Providers and certain of their Affiliates are engaged in a capital provision and advisory business principally focused on assets connected to litigation, arbitration or mediation; one or more other Affiliates focus on investment in assets connected to litigation, arbitration or mediation. The Capital Providers and their Affiliates are not law firms and are not engaged in the practice of law with respect to any Claim or the Counterparty. The Counterparty may not, and shall not, rely on any of the Capital Providers or their Affiliates for legal advice.
- (b) Nothing in this Agreement or any other Transaction Document shall give rise to or be construed to create a fiduciary, lawyer-client, lender-borrower, agency, or other non-contractual relationship between the Counterparty and any Capital Provider.
- (c) Neither this Agreement nor any other Transaction Document creates any partnership, joint venture, or any other type of affiliation between the Counterparty and any Capital Provider, nor does this Agreement or any other Transaction Document create a joint interest in any Claim for any purpose, including for U.S. federal, state and local income tax purposes. The Capital Providers are not partners, nor are they engaged in any partnership or joint venture with one another.

28. GOVERNING LAW

Except as set forth otherwise in Section 29, this Agreement shall be construed in accordance with, and this Agreement and all matters arising out of or relating in any way whatsoever to this Agreement (whether in contract, tort or otherwise) shall be governed by, the law of the State of New York (without reference to any conflict of law principles or choice of law doctrine that would have the effect of causing this Agreement to be construed in accordance with or governed by the law of any other jurisdiction).

29. DISPUTE RESOLUTION

- (a) Any and all of the following shall (to the exclusion of any other forum except as set forth herein) be referred to and finally resolved by arbitration under the LCIA Arbitration Rules (2014) of the London Court of International Arbitration (the “*Rules*” and the “*LCIA*”), which Rules are deemed to be incorporated by reference

into this clause: any dispute, controversy or claim arising out of or in connection with (i) this Agreement (including this Section 29); (ii) any other Transaction Document; (iii) any relationship or interaction between the Counterparty, on the one hand, and any Capital Provider(s), on the other hand; or (iv) a claim or assertion by any other Person of any right arising out of or in connection with this Agreement (including this Section 29) or any other Transaction Document, including, as to all such disputes, claims and controversies, any question regarding (x) the existence, arbitrability, validity or termination of this Agreement (including this Section 29) or any other Transaction Document, (y) any relationship or interaction between the above identified parties, or (z) the obligation of any Person to arbitrate any such dispute.

- (b) Except as otherwise specifically provided in this Agreement (including this Section 29) or any other Transaction Document, (i) the arbitral tribunal (the “***Tribunal***”) shall have the exclusive power to grant any remedy or relief that it deems appropriate, whether provisional or final, including but not limited to emergency relief, injunctive relief and/or any other interim or conservatory measures or other relief permitted by the Rules (collectively, “***Conservatory Measures***”), and any such measures ordered by the Tribunal shall, to the extent permitted by applicable law, be deemed to be a final award on the subject matter of such measures and shall be enforceable as such in any court of appropriate jurisdiction; and (ii) prior to the formation or expedited formation of the Tribunal (under Article 5 or 9A of the Rules), the provisions of Article 9B of the Rules shall apply to any request for Conservatory Measures.
- (c) The referral of a dispute to arbitration shall not suspend or interfere with the Counterparty’s (or the Payment Agent’s) obligation to make timely payment to the Capital Providers of the Capital Providers’ Entitlement (or any portion thereof); provided that if the Counterparty disputes its (or the Payment Agent’s) obligation hereunder to pay any amount to the Capital Providers, the Counterparty must (or, as applicable, cause the Payment Agent to) (i) commence an arbitral proceeding pursuant to this Section 29 within two (2) Business Days after the date such amount was (but for the dispute) due, (ii) make timely payment to the Capital Providers of any undisputed amounts and (iii) immediately deposit any and all disputed amounts in a dedicated account with the LCIA as fund holder, which amounts shall be released, including any interest thereon, as directed in writing by the Tribunal in any award, order or decision, unless the parties expressly agree otherwise in writing.
- (d) Any request for arbitration or response thereto submitted to the LCIA may be delivered by any means (including email) set forth in Section 18 (Notices) or any other means that is reasonably likely to achieve actual service.
- (e) The number of arbitrators shall be three. Subject to Article 8 of the Rules, each party to the arbitration shall nominate one arbitrator and the two arbitrators nominated by the parties shall, within ten (10) days of the nomination of the second

party-nominated arbitrator, agree upon and nominate a third arbitrator who shall act as Chairman of the Tribunal. If no agreement is reached within ten days or at all, the LCIA Court shall select and appoint a third arbitrator to act as Chairman of the Tribunal.

- (f) The seat, or legal place, of arbitration shall be New York, New York. Notwithstanding the terms of Section 27 (Governing Law), the U.S. Federal Arbitration Act shall govern the interpretation, application and enforcement of this Section 29 and any arbitration proceedings conducted hereunder. The language to be used in the arbitral proceedings shall be English.
- (g) In addition to the confidentiality requirements imposed on the parties by Article 30 of the Rules, each party is obligated to keep confidential the existence and content of any arbitral proceedings initiated hereunder and any rulings or award except (i) to the extent that disclosure may be required of a party to fulfill a legal duty, protect or pursue a legal right, or enforce or challenge an award in *bona fide* legal proceedings before a state court or other judicial authority, (ii) with the consent of all parties, (iii) where needed for the preparation or presentation of a claim or defense in such arbitral proceedings, (iv) where such information is already in the public domain other than as a result of a breach of this clause (g), or (v) by order of the Tribunal upon application of a party.
- (h) In addition to the authority conferred upon the Tribunal by the Rules, the Tribunal shall have the authority to order production of documents in accordance with the IBA Rules on the Taking of Evidence in International Arbitration as current on the date of the commencement of the arbitration. No other form of disclosure or discovery shall be permitted.
- (i) The judgment of any court of appropriate jurisdiction shall be entered upon any award made pursuant to an arbitration conducted pursuant to the terms of this Section 29.
- (j) Any attempt by the Counterparty, a Capital Provider, or any other Person subject to this Section 29 to seek relief or remedies in any forum that contravenes this Section 29 shall constitute a breach of this Agreement and entitle the non-breaching party to damages, equitable relief, and full indemnification against all costs and expenses incurred in connection therewith.
- (k) The parties, being sophisticated commercial entities with access to counsel, irrevocably waive and forever and unconditionally release, discharge, and quitclaim any claims, counterclaims, defenses, causes of action, remedies and/or rights that they have or may have in the future arising from any doctrine, rule or principle of law or equity that this Agreement or any other Transaction Document, or any of the relationships and transactions contemplated hereby or thereby, (i) are against the public policy of any relevant jurisdiction; (ii) are unconscionable or contravene any laws relating to consumer protection; (iii) are usurious or call for payment of

interest at a usurious rate; (iv) were entered into under duress; (v) were entered into as a result of actions by a Capital Provider that violated its obligations of good faith and/or fair dealing; (vi) constitute illegal gambling or the sale of unregistered securities; (vii) constitute malicious prosecution, abuse of process or wrongful initiation of litigation; or (viii) constitute champerty, maintenance, barratry or any impermissible transfer, assignment or division of property or choses in action. The parties specifically agree that any issues concerning the scope or validity of the foregoing waiver shall be within the exclusive jurisdiction of the Tribunal.

30. ADMINISTRATIVE AND COLLATERAL AGENT

- (a) Each of Capital Provider No. 2 and Capital Provider No. 3 hereby appoints Capital Provider No. 1 as administrative and collateral agent for the Capital Providers hereunder. As such, Capital Provider No. 1 is hereby authorized to act on behalf of Capital Provider No. 2 and Capital Provider No. 3 for the purpose of (i) giving and receiving notices, waivers, consents, approvals and instructions; (ii) acquiring, holding and enforcing any and all liens on collateral granted by the Counterparty to secure the Capital Providers' rights hereunder; (iii) enforcing any other rights of the Capital Providers under this Agreement and any other Transaction Document, including filing and proving a claim for the aggregate amount of the Counterparty's obligations to the Capital Providers hereunder in the event of any bankruptcy or insolvency proceeding relating to the Counterparty; and (iv) taking such other actions as Capital Provider No. 1 deems appropriate to administer this Agreement and the other Transaction Documents; in each case together with such powers and discretion as are reasonably incidental thereto.
- (b) The use of the term "agent" or any similar or equivalent term in connection with the foregoing appointment is not intended to imply any fiduciary or other duties arising under legal principles governing agency relationships. Capital Provider No. 1 shall not have any duties or obligations in its capacity as administrative and collateral agent except those expressly set forth herein, and its appointment and all rights and duties of it as an agent hereunder shall be ministerial and administrative in nature. Notwithstanding the appointment of Capital Provider No. 1 as administrative and collateral agent, Capital Provider No. 1 shall have the same rights and powers in its capacity as a Capital Provider hereunder as Capital Provider No. 2 and Capital Provider No. 3, and Capital Provider No. 1 may exercise all such rights and powers as though it were not administrative or collateral agent. The provisions of this Section 29 are for the benefit of the Capital Providers; no other party shall have any rights as a third party beneficiary of any provision of this Section 29, provided that the Counterparty shall be entitled to rely on any notices, waivers, consents, approvals or instructions provided to it by Capital Provider No. 1 as being on behalf of all the Capital Providers.
- (c) Capital Provider No. 1 may perform any and all of its duties and exercise its rights and powers as administrative and collateral agent hereunder by or through any one or more sub-agents or servicing entities appointed by it. The exculpatory provisions

in the following clause (d) shall apply to any such sub-agent or servicing entity.

- (d) Capital Provider No. 1 shall not be liable for any action taken or not taken by it (i) with the consent or at the request of Capital Provider No. 2 and Capital Provider No. 3, (ii) as Capital Provider No. 1 believed in good faith was necessary under the circumstances or (iii) in the absence of its own gross negligence or willful misconduct. In its capacity as administrative and collateral agent, Capital Provider No. 1 shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person.

31. RULES OF CONSTRUCTION

Unless the context otherwise clearly requires: (a) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined; (b) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms; (c) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”; (d) the word “shall” shall be construed to have the same meaning and effect as the word “will”; (e) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented, restated or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein); (f) any reference herein to any Person shall be construed to include such Person’s successors and assigns; (g) the phrase “to its knowledge” and phrases of similar import shall be construed to mean the best knowledge, after due inquiry, of any director, officer, manager, member, partner, principal or employee of the entity to which the phrase refers; (h) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof; (i) all references herein to Sections, Annexes, Exhibits and Schedules, as applicable, shall be construed to refer to Sections of, and Annexes, Exhibits and Schedules to, this Agreement, and the same are incorporated herein as part of this Agreement; and (j) the headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

[Remainder of this page intentionally left blank.]

Signature page to Second Amended and Restated Capital Provision Agreement – 1 of 2

IN WITNESS WHEREOF, the parties have executed and delivered this Amended and Restated Capital Provision Agreement as of the date first written above.

Capital Provider No. 1:

ROSLINDALE LLC

By: 

Name:

Title: Authorized Signatory

Capital Provider No. 2:

POSEN INVESTMENTS LP

By: Chicago Onshore Funding Limited,
Its General Partner



Name:

Title: Director

Capital Provider No. 3:

KENOSHA INVESTMENTS LP

By: Green Bay GP LLC,
Its General Partner



Name:

Title: Authorized Signatory

Signature page to Second Amended and Restated Capital Provision Agreement – 2 of 2

IN WITNESS WHEREOF, the parties have executed and delivered this Amended and Restated Capital Provision Agreement as of the date first written above.

Counterparty:

SYSCO CORPORATION

DocuSigned by:

By:



Name: Eve M. McFadden

Title: Senior Vice President, General Counsel
and Corporate Secretary

EXHIBIT A

Defined Terms

“Additional Payment” has the meaning set forth in Section 2.1(a)(iii).

“Advanced Expenses” means the total amount of reasonable unreimbursed expenses (e.g. experts, court reporters, travel expenses) incurred by the applicable Nominated Lawyers in connection with the Chickens Claim.

“Adverse Claim” means, with respect to any Claim or any interest therein or any Proceeds thereof, (i) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or affecting such Claim or any interest therein or any Proceeds thereof, (ii) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such Claim or any interest therein or any Proceeds thereof, (iii) any purchase option, call or similar right of a third party with respect to such Claim or any interest therein or any Proceeds thereof and (iv) any other claim that a claimant has an interest in such Claim or any interest therein or any Proceeds thereof or that it is a violation of the rights of the claimant for another person to hold, transfer or deal with such Claim or any interest therein or any Proceeds thereof.

“Adverse Party” means, with respect to any Claim, individually and collectively, the Person(s) named as defendants or counterclaim defendants in such Claim, as set forth on Annex II, and any other Person added or joined to the Claim from time to time as a defendant or indemnitor or against whom proceedings are asserted or threatened even if such Person is not named or served, and in each case their respective Affiliates and successors.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. For this purpose, ***“Control”*** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise, and ***“Controlling”*** and ***“Controlled”*** have meanings correlative thereto.

“Agreed Confidentiality Order” means the Agreed Confidentiality Order issued in connection with the Chickens Claim on November 8, 2016.

“Anti-Corruption Rules” has the meaning set forth in Section 17.

“Applicable Proceeds” has the meaning set forth in Section 2.2(d)(ii).

“Beef Claim” has the meaning set forth in the Recitals hereto.

“Business Day” means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in New York.

“Capital Amounts” means the amounts set forth as such in Section 2.1.

“Capital Providers”, “Capital Provider No. 1”, “Capital Provider No. 2” and “Capital Provider No. 3” have the meanings set forth in the introductory paragraph of this Agreement.

“Capital Providers’ Entitlement” has the meaning given thereto in Section 2.2(a).

“Chickens Claim” has the meaning set forth in the Recitals hereto.

“Chickens Invested Amount” means the sum of all amounts actually paid to the Counterparty by the Capital Providers hereunder in respect of the Chickens Claim.

“Chickens Multiple” has the meaning given thereto in Section 2.2(b).

“Chickens Percentage Return” has the meaning given thereto in Section 2.2(b).

“Chickens Preferred Return” has the meaning given thereto in Section 2.2(b).

“Chickens Proceeds” has the meaning given thereto in Section 2.2(b).

“Claim” means any of the Chickens Claim, Pork Claim, Beef Claim, [REDACTED], or [REDACTED], as applicable; and **“Claims”** means, collectively, the Chickens Claim, Pork Claim, Beef Claim, [REDACTED], and [REDACTED].

“Claim Costs” has the meaning set forth in Section 5.3(b).

“Claim Resolution” means either full and final settlement of a Claim or the entry of a final, non-appealable and enforceable award or judgment, in either case resolving with prejudice all aspects and elements of a Claim. In circumstances where a final, non-appealable and enforceable award or judgment does not automatically come into being upon the rendering of a dispositive decision, a Claim Resolution shall be deemed to have occurred on the date that is sixty (60) days following such dispositive decision in the absence of any subsequent challenge thereto.

“Confidential Information” means any non-public, confidential or proprietary information relating to: (i) a Capital Provider and its Affiliates and Representatives, information provided by them about their business and operations or the structures and economic arrangements they use in their business, including the nature, terms and existence of this Agreement and the other Transaction Documents, the existence of any relationship between the Counterparty and a Capital Provider or any of its Affiliates or Representatives, and the discussions and negotiations related thereto; (ii) any Claim, including the names of the parties and potential other parties to such Claim; the factual, legal, technical, economic

and financial background of such Claim; and the procedural status, theories, strategies and tactics for the prosecution or defense of such Claim; (iii) billing arrangements, rates, financial or fee arrangements; (iv) any financial statements, accounts or other similar information or materials; (v) business or financial information, business plans and relationships, marketing or product data; (vi) algorithms, computer databases, computer programs, computer software and systems, intellectual property, trade secrets and trademarks; (vii) research, scientific data, specifications, technical data, techniques and technology; and (viii) other proprietary or non-public information, data or material; in all cases regardless of whether such information is (A) written or oral, irrespective of the form or storage medium, or (B) specifically identified as “Confidential”. Notwithstanding the foregoing, Confidential Information does not include information that (x) was or becomes generally available to the public other than as a result of a disclosure by the Recipient; (y) was available to the Recipient on a non-confidential basis prior to its disclosure; or (z) was developed independent of the information derived from the Confidential Information.

“**Conservatory Measures**” has the meaning set forth in Section 29.

“**Counterparty**” has the meaning set forth in the introductory paragraph of this Agreement.

“**Default Rate**” means a rate per calendar month of 2.5%, compounded daily, or the maximum rate permitted by law, whichever is lower.

“**Disclosing Party**” has the meaning set forth in Section 8.1.

“**Engagement Agreement**” means any engagement, retainer or similar agreement between the Counterparty and Nominated Lawyers (including any successor or new Nominated Lawyers designated in accordance with Section 5.3(e)) governing or purporting to govern the terms of the representation of the Counterparty by such legal counsel with respect to a Claim, as provided to the Capital Providers and set forth on Annex II. In the case of any Engagement Agreements amended or entered into after the date hereof, Annex II shall be deemed amended to include such agreements only upon the Capital Providers’ approval, respectively, of the relevant amendments in accordance with Section 5.3(d) or of the retention of the successor or new counsel in accordance with Section 5.3(e) or (f).

“**Escrow Agreement**” means an escrow agreement, in form and substance reasonably satisfactory to the Capital Providers in all respects, among the Counterparty, the Capital Providers and a third party escrow agent, pursuant to which the escrow agent agrees to serve as Payment Agent under this Agreement, including the obligations to receive Proceeds of all Claims from the Adverse Parties on the Counterparty’s behalf and distribute such Proceeds in accordance with Section 2.2.

“**First Amended Agreement**” has the meaning given thereto in the Recitals hereto.

“**Governmental Authority**” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising

executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Initial New Investment Amount” has the meaning set forth in Section 2.1(a)(iii).

“Initial New Investment Payment Date” has the meaning set forth in Section 2.1(a)(iii).

“Invested Amount” means the sum of the Chickens Invested Amount and the Pork Invested Amount.

“[REDACTED]” has the meaning set forth in the Recitals hereto.

“LCIA” has the meaning set forth in Section 29.

“Material Adverse Effect” means, with respect to any event or circumstance and either party, one or more of (i) the material impairment of its ability to perform any of its obligations under this Agreement or any other Transaction Document, (ii) the material impairment of the rights or remedies available under this Agreement or any other Transaction Document to the other party and (iii) solely in the case of the Counterparty, an adverse effect on any Claim or the value or collectability thereof.

“Monthly Report” has the meaning set forth in Section 5.3(b).

“New Capital Multiple” has the meaning given thereto in Section 2.2(d).

“New Capital Preferred Return” has the meaning given thereto in Section 2.2(d).

“New Claim Proceeds” has the meaning given thereto in Section 2.2(d).

“New Claims” means, collectively, the Beef Claim, the [REDACTED] and the [REDACTED]
[REDACTED]

“New Invested Amount” means the sum of all amounts actually paid to the Counterparty by the Capital Providers hereunder in respect of the Beef Claim, [REDACTED] and [REDACTED]
[REDACTED]

“Nominated Lawyers” means, with respect to any Claim, the Person or Persons identified as such on Annex II and/or any successor or new legal counsel appointed as described herein.

“Nominated Lawyers Contingency Percentage” means the percentage of Proceeds that the Nominated Lawyers for the Chickens Claim are entitled to receive pursuant to their Engagement Agreement.

“Original Agreement” has the meaning set forth in the Recitals hereto.

“Payment Agent” means, with respect to any Claim, the escrow agent under the Escrow Agreement.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership or other entity or Governmental Authority.

“Pork Claim” has the meaning set forth in the Recitals hereto.

“Pork Invested Amount” means the sum of all amounts actually paid to the Counterparty by the Capital Providers hereunder in respect of the Pork Claim.

“Pork Multiple” has the meaning set forth in Section 2.2(c).

“Pork Percentage Return” has the meaning set forth in Section 2.2(c).

“Pork Preferred Return” has the meaning set forth in Section 2.2(c).

“Pork Proceeds” has the meaning set forth in Section 2.2(c).

“Potential Remedy Event” means any event which, with the giving of notice or the lapse of time or both, would constitute a “Remedy Event”.

“Privileges” has the meaning set forth in the definition of “Protected Material”.

“Proceeds” means, collectively: (i) any and all gross, pre-tax monetary awards, damages, recoveries, judgments or other property or value awarded to or recovered by or on behalf of (or reduced to a debt owed to) the Counterparty on account or as a result or by virtue (directly or indirectly) of a Claim, whether by negotiation, arbitration, mediation, diplomatic efforts, lawsuit, settlement, or otherwise; and includes all of the Counterparty’s legal and/or equitable rights, title and interest in and/or to any of the foregoing, whether in the nature of ownership, lien, security interest or otherwise; (ii) any consequential, rescissory, punitive, exemplary or treble damages, pre-judgment interest (including damages comparable to pre-judgment interest), post-judgment interest, penalties, and attorneys’ fees and other fees and costs awarded or recovered on account thereof; (iii) any recoveries against attorneys, accountants, experts, directors, officers or other related parties in connection with any of the foregoing or the pursuit of a Claim; (iv) without limiting any of the foregoing, any value conveyed to any Person in connection with a Claim or the resolution or termination thereof; and (v) the amount of any reduction in the amount of any award by reason of a set-off for any reason, including counterclaims and third party claims, or as a result of a costs order against the Counterparty or as result of any other quantifiable order. All of the foregoing constitute Proceeds in any form, including cash, real estate, negotiable instruments, intellectual or intangible property, choses in action, contract rights, membership rights, subrogation rights, annuities, claims, refunds, prospective price reductions, volume purchase commitments, exclusive dealing arrangements and any other rights to payment of cash and/or transfer(s) of things of value or other property (including

property substituted therefor), whether delivered or to be delivered in a lump sum or in installments.

“Protected Material” means any Confidential Information that is the work product of qualified legal advisers and/or attorney work product, protected by the attorney-client privilege or any similar privilege in any jurisdiction including, for the avoidance of doubt, legal professional privilege and/or litigation or arbitral privilege, or that is protected by any rules of professional secrecy in any jurisdiction (collectively, ***“Privileges”***), including: (i) information prepared by a party to a Claim or any of its Affiliates or their counsel, advisors, consultants or agents; or (ii) information prepared by a Capital Provider or any of its Representatives in connection with the review of a Claim, including legal and factual memoranda, case analyses and evaluations.

“Recipient” has the meaning set forth in Section 8.1.

“Remedy Event” has the meaning set forth in Section 12.

“Representation Date” means (i) the date hereof, (ii) each date on which the parties agree to cause any Claim to become subject to this Agreement, (iii) each date on which the Capital Providers are obligated to or do make any payment of Capital Amounts and (iv) in the case of the Counterparty, each date on which a Monthly Report is delivered (provided that, in the event of a failure to deliver any Monthly Report by its due date, the Representation Date shall instead be such due date); provided that, for the avoidance of doubt, even though an agreement or payment referred to in clause (ii) or (iii) above relates to a specific Claim, a “Representation Date” shall be deemed to occur with respect to each Claim that is then subject to this Agreement.

“Representatives” means, with respect to any person or entity, as applicable, its directors, officers, managers, members, partners, principals, employees, shareholders and participants (or potential shareholders and participants), Affiliates, related entities, agents, assignees (or potential assignees), reinsurers, lawyers, accountants, consultants, advisors, auditors, and independent contractors.

“Rules” has the meaning set forth in Section 29.

“Tax” means any tax, duty, contribution, impost, withholding, levy or other charge or withholding of a similar nature (including use, sales and value added taxes), whether domestic or foreign, and any fine, penalty, surcharge or interest in connection therewith.

“Tier 1 Capital Providers Percentage” means [REDACTED]

“Tier 2 Counterparty Percentage” means [REDACTED]

“Transaction Documents” means, collectively, this Agreement, the Escrow Agreement and any other agreements, documents, instruments, or certificates entered into or delivered in connection with this Agreement.

“Tribunal” has the meaning set forth in Section 29.

“[REDACTED]” has the meaning set forth in the Recitals hereto.

EXHIBIT B**Form of Monthly Report**

Item:	Response:
1. Description of the status of each Claim and any meaningful developments during the preceding calendar month, including copies of any pleadings, court filings or similar documents.	
2. The billings and accrued expenses of the Nominated Lawyers and any Claim-related fees and expenses paid by or on behalf of the Counterparty to any other Person, in each case attributable to the preceding calendar month.	
3. Any noncompliance by the Counterparty with its obligations to the Nominated Lawyers under any Engagement Agreement.	

ANNEX I**Counterparty: Sysco Corporation**

1. Type of Entity:	Corporation
2. Jurisdiction of Organization or Formation:	State of Delaware
3. Notice Information:	<p>Address: 1390 Enclave Parkway, Houston, TX 77077</p> <p>Fax Number: 281-584-2510</p> <p>Email Address: eve.mcfadden@corp.sysco.com</p> <p>Attn: Eve McFadden</p>
4. Notice Information for Nominated Lawyers for Chickens and Pork Claims:	<p>Address: 1401 New York Ave., NW, Washington, DC 20005</p> <p>Fax Number: 202-237-6131</p> <p>Email Address: sgant@bsfllp.com</p> <p>Attn: Scott Gant / Boies Schiller Flexner LLP</p>
5. Notice Information for Nominated Lawyers for Beef, [REDACTED], and [REDACTED]:	In each case to be provided by the Counterparty in writing upon designation of Nominated Lawyers in accordance with Section 5.3(f).

Capital Provider No. 1: Roslindale LLC

6. Type of Entity:	Limited liability company
7. Jurisdiction of Organization or Formation:	State of Delaware
8. Notice Information:	<p>Roslindale LLC</p> <p>251 Little Falls Drive</p> <p>Wilmington, DE 19808</p> <p>Email Address: info@litfinsolutions.com</p> <p>Attn: Manager</p>

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Capital Provider No. 2: Posen Investments LP

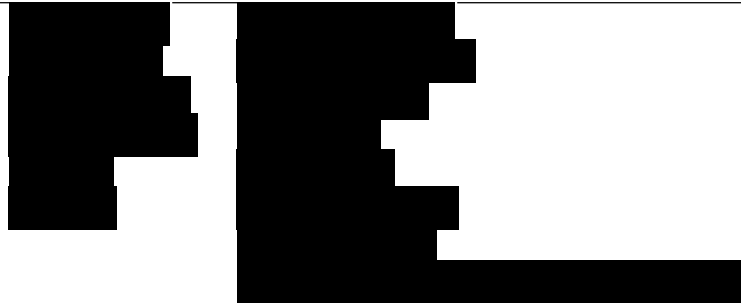
9. Type of Entity:	Limited partnership
10. Jurisdiction of Organization or Formation:	Delaware
11. Notice Information:	Posen Investments LP 251 Little Falls Drive Wilmington, DE 19808 Email Address: info@litfinsolutions.com Attn: Manager

Capital Provider No. 3: Kenosha Investments LP

12. Type of Entity:	Limited Partnership
13. Jurisdiction of Organization or Formation:	Delaware
14. Notice Information:	Kenosha Investments LP 251 Little Falls Drive Wilmington, DE 19808 Email Address: info@litfinsolutions.com Attn: Manager

ANNEX II

1. Description of the Claims:	<p>Each and every claim or counterclaim made or to be made by the Counterparty in, or in any action arising from or related to the facts and claims asserted in,</p> <ul style="list-style-type: none"> (i) the Chickens Claim: the matter captioned <i>Sysco Corp. v. Tyson Foods, et al.</i>, Case No. 18cv700 (N.D. Ill.); (ii) the Pork Claim: an opt-out direct action to be filed related to the putative class action in <i>In re Pork Antitrust Litigation</i>, Case No. 18cv1776 (D. Minn.); (iii) the Beef Claim: an opt-out direct action to be filed in <i>In re DPP Beef Litigation</i>, Case No. 20-cv-1319 (D. Minn.); (iv)  (v)  <p>in the event the Counterparty fails to file an opt-out direct action in any of the foregoing class actions, then the Claims include the Counterparty's claims and counterclaims as a class member therein.</p>
	<p>Each Claim also includes any variations or expansions of the above claims by the addition of any claims and/or parties from time to time, as well as the following:</p> <ul style="list-style-type: none"> (i) any and all related pre- and post-trial proceedings or processes (or pre- and post-hearing proceedings or processes, where applicable) in or in connection with such claim(s), including the pursuit of costs or post-judgment or post-arbitral award remedies; (ii) all proceedings seeking to appeal, challenge, confirm, enforce, modify, correct, vacate, or annul

	<p>a judgment or award, as well as proceedings on remand or retrial or rehearing;</p> <p>(iii) all ancillary, parallel, or alternative dispute resolution proceedings and processes arising out of or related to the acts or occurrences alleged in such claim(s) (including conciliation or mediation or court filings seeking discovery for or filed in aid of a contemplated or pending arbitration);</p> <p>(iv) remands, re-filings or parallel filings of such claim(s), and any other legal, diplomatic, or administrative proceedings or processes founded on the same or related underlying facts giving rise to or forming a basis for such claim(s);</p> <p>(v) ancillary or enforcement proceedings related to the facts or claims alleged from time to time or that could have been alleged in such claim(s) at any time;</p> <p>(vi) all arrangements, settlements, negotiations, or compromises made between the Counterparty and any adverse party having the effect of resolving any of the Counterparty's claims against any adverse party that are or could be or could have been brought in such claim(s); and</p> <p>(vii) all rights of the Counterparty to collect any damages or awards or otherwise exercise remedies in connection with any of the foregoing.</p>
2. Payment account of the Counterparty:	
3. Payment accounts of each of Capital Provider Nos. 1, 2 and 3:	To be provided in writing.

<p>4. Identity of the Adverse Parties:</p>	<p>Chickens Claim:</p> <p> TYSON FOODS, INC.; TYSON CHICKEN, INC.; TYSON BREEDERS, INC.; TYSON POULTRY, INC.; PILGRIM'S PRIDE CORPORATION; KOCH FOODS, INC.; JCG FOODS OF ALABAMA, LLC; JCG FOODS OF GEORGIA, LLC; KOCH MEAT CO., INC.; SANDERSON FARMS, INC.; SANDERSON FARMS, INC. (FOOD DIVISION); SANDERSON FARMS, INC. (PRODUCTION DIVISION); SANDERSON FARMS, INC. (PROCESSING DIVISION); HOUSE OF RAEFORD FARMS, INC.; MAR-JAC POULTRY, INC.; PERDUE FARMS, INC.; PERDUE FOODS, LLC; WAYNE FARMS, LLC; FIELDALE FARMS CORPORATION; GEORGE'S, INC.; GEORGE'S FARMS, INC.; SIMMONS FOODS, INC.; SIMMONS PREPARED FOODS, INC.; O.K. FOODS, INC.; O.K. FARMS, INC.; O.K. INDUSTRIES, INC.; PECO FOODS, INC.; HARRISON POULTRY, INC.; FOSTER FARMS, LLC; FOSTER POULTRY FARMS; CLAXTON POULTRY FARMS, INC.; MOUNTAIRE FARMS, INC.; MOUNTAIRE FARMS, LLC; MOUNTAIRE FARMS OF DELAWARE, INC.; AGRI STATS, INC. </p> <p>Pork Claim:</p> <p> AGRI STATS, INC. CLEMENS FOOD GROUP, LLC HORMEL FOODS CORPORATION </p>
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INDIANA PACKERS CORPORATION
JBS USA
SEABOARD FOODS, LLC
SMITHFIELD FOODS, INC.
TRIUMPH FOODS, LLC
TYSON FOODS, INC.
THE CLEMENS FAMILY CORPORATION
HORMEL FOODS, LLC
JBS USA FOOD COMPANY
JBS USA FOOD COMPANY HOLDINGS
MITSUBISHI CORPORATION (AMERICAS)
SEABOARD CORPORATION
TYSON FRESH MEATS, INC.
TYSON PREPARED FOODS, INC.
HATFIELD QUALITY MEATS, INC.
ERBERT & GERBERT'S, INC.

Beef Claim:

JBS USA FOOD COMPANY HOLDINGS
TYSON FOODS INC.
CARGILL INC.
NATIONAL BEEF PACKING COMPANY

[REDACTED]

[REDACTED]

	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
5. Identity of the Nominated Lawyers:	<p>Chickens Claim:</p> <p>Boies Schiller Flexner LLP</p> <p>Pork Claim:</p> <p>Boies Schiller Flexner LLP</p> <p>Beef Claim:</p> <p>To be determined in accordance with Section 5.3(f).</p> <p>[REDACTED]</p> <p>To be determined in accordance with Section 5.3(f).</p> <p>[REDACTED]</p> <p>To be determined in accordance with Section 5.3(f).</p>
6. Engagement Agreements:	<p>Chickens Claim:</p> <p>Engagement Letter, dated November 16, 2017, from Nominated Lawyers to Counterparty, as modified by the Addendum to Engagement Letter, dated September 9, 2019, from the Nominated Lawyers to Counterparty</p> <p>Pork Claim:</p> <p>Engagement Letter, dated April 18, 2020, from the Nominated Lawyers to the Counterparty</p> <p>Beef, [REDACTED], and [REDACTED] Claims:</p> <p>In each case to be provided by the Counterparty upon designation of Nominated Lawyers in accordance with Section 5.3(f).</p>

ANNEX III

(Waterfall Illustrations)

The hypotheticals below are solely for the purposes of demonstrating how the waterfalls described in Section 2.2(b)-(d) would work in practice:

Scenario 1:

Assumptions:

[illegible]

¹ Months calculated from anniversary date of the First Amended Agreement, June 9, 2020.

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		
Pork Proceeds Distribution	Recipient	Reference
[REDACTED]	[REDACTED]	[REDACTED] proceeds – 2.2(c)(vi)
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	
[REDACTED]		

Scenario 2:

Assumptions:

[REDACTED]

Chicken Proceeds Distribution	Recipient	Reference
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		
Pork Proceeds Distribution	Recipient	Reference
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		
Beef, [REDACTED] & [REDACTED] Proceeds Distribution	Recipient	Reference
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		

Scenario 3:

Assumptions:

[REDACTED]

Pork Proceeds Distribution	Recipient	Reference
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Chicken Proceeds Distribution	Recipient	Reference
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
Beef, [REDACTED] & [REDACTED] Proceeds Distribution	Recipient	Reference
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Scenario 4:

Assumptions:

[REDACTED]

Chicken Proceeds Distribution	Recipient	Reference
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		
Beef, [REDACTED] & [REDACTED] Proceeds Distribution	Recipient	Reference
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	
[REDACTED]		

EXHIBIT D

**Glaz LLC
Posen Investments LP
Kenosha Investments LP**

March 31, 2022

Sysco Corporation
1390 Enclave Parkway
Houston, TX 77077
Attn: Eve McFadden

Re: Amendment No. 1 to Second Amended and Restated Capital Provision Agreement

Dear Eve:

We refer to the Second Amended and Restated Capital Provision Agreement, dated as of December 22, 2020, between Sysco Corporation (the “**Counterparty**” or “**you**”) and each of Glaz LLC (fka Roslindale LLC), a Delaware limited liability company (“**Capital Provider No. 1**”), Posen Investments LP, a Delaware limited partnership (“**Capital Provider No. 2**”), and Kenosha Investments LP, a Delaware limited partnership (“**Capital Provider No. 3**”) (the “**Existing CPA**”), pursuant to which the Capital Providers provided capital to the Counterparty to finance certain of its food antitrust legal claims. Capitalized terms used herein but not defined have the meanings given thereto in the Existing CPA.

Capital Provider No. 1 and Capital Provider No. 3 now wish to provide to the Counterparty, and the Counterparty wishes to accept, additional capital to further monetize the Counterparty’s food antitrust legal claims. This letter agreement sets forth the terms and conditions of the incremental investment and, upon its due execution and delivery by all parties hereto, constitutes Amendment No. 1 to the Existing CPA (“**Amendment No. 1**”). As amended by this Amendment No. 1, the agreement between the Counterparty and the Capital Providers is referred to herein as the “**2021 Amended CPA**”.

In their capacity as the providers of capital to the Counterparty under the Existing CPA, each of Capital Provider No. 1, Capital Provider No. 2 and Capital Provider No. 3 is referred to herein as an “**Existing Capital Provider**”. In their capacity as the providers of capital to the Counterparty under this Amendment No. 1, each of Capital Provider No. 1 and Capital Provider No. 3 is referred to herein as a “**2021 Capital Provider**”.

Pursuant to the Existing CPA, the Existing Capital Providers have provided a total of
[REDACTED] allocated as follows: [REDACTED]
[REDACTED]

1. 2021 Capital Amounts.

a. Within 10 Business Days of the execution and delivery of this Amendment No. 1, the 2021 Capital Providers shall provide Capital Amounts to the Counterparty in respect of all Claims in the aggregate amount of [REDACTED] (upon provision to the Counterparty, the “**2021 Invested Amount**”), upon which the total amount provided to the Counterparty by all Capital Providers pursuant to the 2021 Amended CPA shall be \$137,500,000, allocated as follows:

[REDACTED]

b. [REDACTED]

c. The 2021 Capital Providers shall retain [REDACTED] from the 2021 Invested Amount to cover their closing and other costs in connection with this Amendment No. 1. Such amount shall be deemed included in the Capital Amounts for all purposes under the 2021 Amended CPA.

2. Outstanding Capital Commitment. The Counterparty and the Existing Capital Providers acknowledge that, pursuant to Section 2.1(a)(iii) of the Existing CPA and subject to all terms and conditions thereof, as of the date hereof the Capital Providers are committed to providing up to an additional [REDACTED]

3. Amendments to Definitions.

a. References to the term “**Capital Providers’ Entitlement**” shall mean the Capital Providers’ Entitlement as defined in the Existing Agreement or the sum of all amounts payable to the Capital Providers pursuant to Section 6 of this Amendment No. 1, as the context requires.

b. The following defined term is hereby added to Exhibit A of the Existing Agreement, in alphabetical order: “**Applicable Purchases**” means, in respect of any Claim, the recorded volume of sales between the Counterparty and an Adverse Party of the product at issue in such Claim during the time period of the alleged conspiracy as stated in the operative putative class complaint.

c. Each of the defined terms “**Chickens Claim**”, “**Pork Claim**”, “**Beef Claim**”, “[REDACTED]” and “[REDACTED]” is hereby amended to exclude from its respective description in item 1 of Annex II any portion of the Counterparty’s purchases assigned by the Counterparty for purposes of their assertion under federal antitrust laws to [REDACTED]

4. Hypothetical Illustration. The hypothetical illustrations set forth in Annex III of the Existing CPA are hereby replaced in their entirety with the hypothetical illustrations set forth in Annex I hereto, which demonstrates, for illustration purposes only, the application of the waterfall set forth in Section 6 of this Amendment No. 1. Section 2.2(e) of the Existing CPA is hereby deemed amended accordingly.

5. Continuing Interest in Litigation. The Counterparty intends by this Amendment No. 1 to preserve and maintain its economic and business interests in the Claims, including but not limited to its economic interest in the Claims and its business interest in the vigorous enforcement of antitrust laws.

[REDACTED]

6.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7. Maximization of Litigation Outcome; Non-circumvention.

a. In addition to and without limiting the obligations of the Counterparty to the Capital Providers pursuant to Section 5.3(b) of the Existing Agreement, the Counterparty shall take such actions as are reasonable and appropriate to maximize the Proceeds received from each Claim, giving priority to cash Proceeds.

b. Section 5.3(b)(v) of the Existing CPA shall be amended and restated in its entirety as follows:

- (v) shall provide immediate notice by email to the Capital Providers of any settlement offer made by the Adverse Party and shall not accept a settlement offer without the Capital Providers' prior written consent, which shall not be unreasonably withheld, provided however, that the Capital Providers (and their respective Affiliates) shall have no right to exercise control over the independent professional judgment of its Nominated Lawyers and shall not seek to impose a commercially unreasonable result with respect to settlement;

c. The Counterparty shall not, directly or indirectly, by any acts or omissions circumvent, or attempt to circumvent, the obligations set forth in this paragraph 5 or in Section 5.3(b) of the Existing CPA or the intent of the transactions contemplated by the 2021 Amended CPA.

8. Reversion to Existing CPA. In the event a court or tribunal of competent jurisdiction holds or decides (as applicable) that this Amendment No. 1 deprives the Counterparty of standing in a Claim against any Adverse Party or otherwise forecloses the Counterparty from prosecuting a Claim against any Adverse Party, this Amendment No. 1 shall be null and void ab initio and the Existing CPA shall immediately be deemed in full force and effect, without any action by any party, as if this Amendment No. 1 had never taken effect; provided, however, that the 2021 Invested Amount shall become part of the New Invested Amount for purposes of calculating the Capital Providers' Entitlement thereunder.

9. Reaffirmation, etc. Each Capital Provider, on the one hand, and the Counterparty, on the other hand, hereby (i) reaffirms to the other(s), as of the date hereof, the representations and warranties, covenants and agreements made by it in each Transaction Document; and (ii) forever waives and releases any claims they may have against the other(s), to the extent based on conduct or omissions predating the date of execution of this Amendment No. 1, whether known or unknown, suspect or unsuspected, including but not limited to any claims related to the 2021 Amended CPA and all other claims arising under state, federal or other law. Except to the limited extent amended hereby, all provisions of the Transaction Documents remain in full force and effect, and continue to be the legal, valid, and binding obligations of the parties thereto.

[Signature page follows.]


*Signature page to Amendment No. 1 to
Second Amended and Restated Capital Provision Agreement*

If you agree with the terms set forth above, kindly execute this Amendment No. 1 in the spaces provided below and return a copy to us. Please retain a copy for your records.

Very truly yours,

Capital Provider No. 1:

GLAZ LLC

By: 
Name: _____
Title: Authorized Signatory

Capital Provider No. 2:

POSEN INVESTMENTS LP


By: Chicago Onshore Funding Limited,
its General Partner

By: 
Name: _____
Title: Director

Capital Provider No. 3:

KENOSHA INVESTMENTS LP

By: Green Bay GP LLC,
its General Partner

By: 
Name: _____
Title: Authorized Signatory

Acknowledged and agreed,

Counterparty:

SYSCO CORPORATION

By: 
Name: Eve M. McFadden
Title: Senior Vice President,
General Counsel and
Corporate Secretary

ANNEX I**(Waterfall Illustrations)**

The hypotheticals below are solely for the purposes of demonstrating how the waterfall described in Section 6 of Amendment No. 1 would work in practice:

Scenario 1:

Assumptions:



Chicken Proceeds Distribution	Recipient	Reference
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

¹ Months calculated from anniversary date of the First Amended Agreement, June 9, 2020.

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
Pork Proceeds Distribution	Recipient	Reference
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Scenario 2:

Assumptions:

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

Chicken Proceeds Distribution	Recipient	Reference
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
Pork Proceeds Distribution	Recipient	Reference
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
Beef & [REDACTED] Proceeds Distribution	Recipient	Reference
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Scenario 3:

Assumptions:

[REDACTED]

[REDACTED]

Pork Proceeds Distribution	Recipient	Reference
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
Chicken Proceeds Distribution	Recipient	Reference
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
Beef & [REDACTED] Proceeds Distribution	Recipient	Reference
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

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

Scenario 4:

Assumptions:

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

Chicken Proceeds Distribution	Recipient	Reference
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		
Beef & [REDACTED] Proceeds Distribution	Recipient	Reference
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	

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<div></div>	<div></div>	<div></div>

EXHIBIT E

A

Litigation Funding Agreement

LITIGATION FUNDING AGREEMENT

This Litigation Funding Agreement ("Agreement") is entered into this 1st day of Nov., 2016, by and between Vicki Mize ("Claimant") and Litigation Management and Financial Services, LLC ("Company") (collectively referred to herein as "Parties") as follows:

RECITALS

1. On July 26, 1990, the Americans with Disabilities Act ("ADA") was signed into law. The ADA is a comprehensive civil rights law prohibiting discrimination on the basis of disability.
 - a. The ADA contains four sub-parts. The first three sections of the statute, Titles I, II, and III, bar discrimination on the basis of disability in different areas of public life. ADA Title III addresses disability discrimination in public accommodations, defined to include places of education including post-graduate private schools, and bars disability discrimination by "any person who owns, leases (or leases to), or operates a place of public accommodation." §§ 12181(7)(J), 12182. The enforcement provision of Title III, § 12188, incorporates the remedies of Title II of the Civil Rights Act, 42 U.S.C. § 2000a-3.
2. Title III of the ADA contains a list of general activities that it defines as discrimination: the denial of an opportunity to participate, 42 U.S.C. §§ 12182(b)(1)(A)(i), 12182(b)(1)(C); the provision of an unequal benefit, *id.* § 12182(b)(1)(A)(ii); and the provision of a separate benefit, unless doing so is necessary to provide a benefit that is as effective as that provided to others. *Id.* § 12182(b)(1)(A)(iii).¹³ Furthermore, the statute requires benefits provided to people with disabilities to be afforded in the most integrated setting appropriate to the needs of the individual. *Id.* § 12182(b)(1)(B).
3. Title III of the ADA prohibits discrimination on the basis of disability by those who own or operate places of public accommodation. 42 U.S.C. § 12182(a). In enacting the ADA, Congress found that "historically, society has tended to isolate and segregate individuals with disabilities." 42 U.S.C. § 12101(a)(2). The ADA's legislative history states that "[i]ntegration is fundamental to the purposes of the ADA. Provision of segregated accommodations and services relegate persons with disabilities to second-class citizen status." H. Rep. 101-485(III), 101st Cong., 2d Sess., at 56, *reprinted in* 1990 U.S.C.C.A.N. 445, 479. "[T]he goal [is to] eradicat[e] the 'invisibility of the handicapped.'" Separate-but-equal services do not accomplish this central goal and should be rejected." *Id.* at 50, 1990 U.S.C.C.A.N. at 473. The ADA provides a "broad mandate" to "eliminate discrimination against disabled individuals, and to integrate them 'into the economic and social mainstream of American life.'" *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 675, 121 S.Ct. 1879, 149 L.Ed.2d 904 (2001) (quoting H.R.Rep. No. 101-485, pt. 2, p. 50 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 332).
4. This integration mandate is found in two sections of the statute. Title III makes it discriminatory to provide individuals with disabilities "with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other

Litigation Funding Agreement

individuals, unless such action is necessary” to provide facilities, accommodations and the like that are as effective as those provided others. 42 U.S.C. § 12182(b)(1)(A)(iii). It also requires that “[g]oods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.” *Id.*, § 12182(b)(1)(B).

5. Section 303 of the ADA required that all facilities designed and constructed after January 26, 1993 must be “readily accessible to and useable by” individuals with disabilities. 42 U.S.C. § 12183(a)(1). The statute further instructed the DOJ to adopt implementing standards and regulations. 42 U.S.C. § 12186(b). On July 26, 1991, the DOJ adopted the Americans with Disabilities Act Accessibility Guidelines as the 1991 Standards. 28 C.F.R. § 36.406(a) (1991). The 1991 Standards are now published as Appendix D to title 28, part 36 of the Code of Federal Regulations. On September 15, 2010, the DOJ amended its regulations and adopted the 2010 Standards.
6. The ADA also provides a private right of action for preventative relief, including an application for a permanent or temporary injunction or restraining order for “any person who is being subjected to discrimination on the basis of disability in violation of” Title III.” 42 USC §§ 12182(a)(1), 2000a-3(a)).
7. Virtually all individual States have passed legislation similar in intent and scope to the ADA.
8. Private enforcement suits are the primary method of obtaining relief under the ADA.
9. The Claimant wishes to pursue Claims including private rights of action against places of public accommodation with barriers to people with disabilities.
10. Claimant wishes to pursue Claims on their own behalf, but with the understanding that enforcement of Claims may cause compliance by places of public accommodation which may lead to the removal of barriers to other persons with disabilities who have not yet, or could not bring their own claims.
11. Claimant wishes to pursue the Claims. However, Claimant does not wish to carry the financial burden of the litigation, nor the risk associated with legal costs.
12. Company is not entitled to or obliged to provide legal advice to Claimant. The preparation and conduct of litigation which is funded by Company is the responsibility of the Claimant and the Claimant’s lawyer.

NOW, THEREFORE, the Parties enter the following

AGREEMENT

1. **Object and Limitations of Engagement:** This Agreement is limited to providing funding to Claimant and to Claimant’s attorney for legal services. The Claimant does not wish to bear the litigation risk in pursuing the Claims. For this reason, the Parties have agreed that

Litigation Funding Agreement

Company shall bear the costs so that Claimant may pursue the Claims. This cooperation commences on the date indicated above in this Agreement and ends once the Claims have been determined and the Proceeds have been distributed or this agreement is terminated by Company. If the Claims are successful, the Proceeds will be distributed in accordance with this Agreement.

2. Duties and Representations

a. The Claimant represents:

- i. that it has the full right, power and authority to pursue the Claims and that it has not sold, transferred, assigned, or otherwise disposed of its interest in the Claims;
- ii. there is no agreement with a third party preventing the Claimant from assigning the Claims or its financial interest in the Claims and the Claimant is free to assign Claims or financial interests without obtaining the consent of a third party;
- iii. the Claimant is not aware of any circumstances other than those listed in the recital above, which could affect the validity or enforceability of the Claims.
- iv. The documents which the Claimant has supplied, or will supply, provide a true, accurate and complete representation of the circumstances giving rise to the Claims;
- v. There is no other dispute between the Claimant and the Opponent, whether past, current, or future, which could have an impact on the Claims;
- vi. There are no enforceable judgment against the Claimant which may result in insolvency proceedings being commenced against the Claimant.

b. Claimant Duties

- i. Claimant shall carry out all appropriate and necessary acts which support the favorable determination of the Claims with reasonable care and will fully support the proceedings
- ii. Claimant shall obtain Company's consent in advance of incurring costs. The Claimant shall pass this obligation on to its lawyer.
- iii. Claimant shall obtain Company's consent before disposing of the Claims.
- iv. Claimant may only discontinue the Claims with the prior consent of Company.
- v. Claimant is obliged at the request of Company to pursue enforcement of any judgments obtained.
- vi. Claimant hereby releases its lawyer from any duties of confidentiality as concerns communication and disclosure between the lawyer and Company of information relating to the Claims.
- vii. Claimant shall inform Company promptly and on an ongoing basis via its lawyer on the status of proceedings and shall send to Company, promptly and without need for Company request, of new circumstances which have come to light and which have an impact on the assessment of the merits or the validity of the Claims or the legal risk. The Claimant shall pass on these obligations to its lawyer. The Claimant agrees to execute a separate power

Litigation Funding Agreement

of attorney which shall entitle Company to request and view official and/or court documents.

c. Company Duties

- i. Company shall carry out a review free of charge to assess whether the Claims are capable of funding. Company shall not provide legal advice to Claimant. Company's review is purely for its own benefit and for the purposes of assessing the prospects of success of the Claims. Company is not obliged to justify its acceptance or rejection of any case.
- ii. Funding: Subject to the terms set out in this agreement, Company shall pay the costs of pursuing the Claims including costs of legal advice and representation, court fees, costs arising from a court order in relation to evidence and costs payable to the Opponent, providing the costs arise after this agreement comes into force. Costs of legal advice and representation must be pre-approved by Company including a review of Claimant's attorney-client agreement. Company shall make such payments for costs directly to Claimant's lawyer. The Claimant hereby authorizes its lawyer to accept receipt of the payments.
- iii. Subject to the terms set out in this agreement, Company shall pay to Claimant \$50.00 for each of Claimant's claims that result in a filed complaint initiating a civil action. This advance of costs is not required to be repaid to Company and is to be kept by Claimant regardless of the outcome of the action
 - I. Pay Schedule: Company shall pay to Claimant \$20.00 for each of Claimant's claims that result in a filed complaint within twenty-one (21) calendar days of filing a complaint. Company shall thereafter pay Claimant \$30.00 for each of Claimant's claims that result in a filed complaint within sixty (60) calendar days of filing a complaint.
- iv. Company shall not be obligated to pay Claimant's travel costs, transfer fees or other bank charges, costs arising from a set-off, or any other costs or fees not specifically outlined in this agreement.
- v. Company shall pay the prescribed costs of enforcing a judgment where Company deems enforcement to be necessary and to have sufficient prospects of success.

3. Distribution of Proceeds

- a. From the Proceeds of any successful Claims, Company shall first be entitled to deduct all costs which Company has already incurred and any costs which it has yet to pay in accordance with this Agreement.
- b. Claimant shall be entitled to all remaining Proceeds.
- c. Claimant hereunder acknowledges the existence of an attorney-client agreement. This Agreement, including this section discussing the distribution of Proceeds, shall

Litigation Funding Agreement

not supersede any promise of payment made between Claimant and his/her attorney.

- d. Claimant hereunder fully consents and agrees for Company to pay to Claimant's attorney all or any portion of Claimant's promised fee to Claimant's attorney as agreed in Claimant's attorney-client agreement.
 - e. The term Proceeds shall include financial gains (including interest) which the Claimant's attorney is able to recover as a result of the court's or any other official judgment, a court approved or out-of-court settlement, or an admission by the Opponent. Proceeds, as described in this Agreement, shall only refer to monetary funds and shall not include causes of action for the Claimant's benefit, financial gain which is the result of being released from a claim, or the expiration of a claim against Claimant.
 - f. Each party shall be responsible for the taxation of its share of the Proceeds.
 - g. Company, in its judgment, is entitled to determine the date on which Proceeds are to be paid, but shall be paid no later than 60 days after Proceeds are in the control of Claimant, Claimant's agent, or Claimant's attorney.
 - h. The Claimant is obliged to provide information to Company, whether requested by Company or not, confirming the receipt, the nature and the value of any Proceeds, including any pecuniary advantage obtained as a result of the successful Claims funded by Company.
 - i. Payment of the Proceeds shall be made into the Claimant's lawyer's client account and shall remain held until the distribution of the Proceeds has been calculated and approved by Company. The Claimant shall require all Proceeds to be paid directly to its lawyer.
4. Assignment of Claims to Company as Security
- a. The Claimant shall assign all Claims, rights to claim costs and all subsidiary rights to Company by way of security if at any point an assignment agreement is requested by Company
 - b. The Claimant shall, if so required by Company, execute a deed or other notarized document which gives effect to such assignment.
 - c. The Claimant shall, if so required by Company, execute and convey power of attorney to Company.
5. Confidentiality
- a. All discussions between Company with Claimant, Company with Claimant's attorney, and any of Company's representative with any of Claimant's representatives, including this agreement are confidential and intended to remain confidential. Except as expressly permitted herein, The Parties agrees not to disclose the existence of this Agreement, any of its terms, or any other details learned while engaged with one another, to any person or entity not a party to this Agreement excepting the Parties' legal representatives. The Parties shall maintain in strict confidence any and all information disclosed. The Parties agree that if asked about directly, the Parties may state that they entered into a confidential agreement for litigation support.
6. Termination
- a. Claimant shall only be entitled to terminate this agreement for good cause. The Parties agree that improved prospects of success in relation to the Claims or a

Litigation Funding Agreement

change in Claimant's financial standing are not good causes. Death of Claimant shall not result in a termination of this agreement. All rights and obligations under this agreement shall pass to the Claimant's personal representatives.

- b. Following termination of this agreement by Claimant, Company, at its own risk and for its sole benefit may continue the proceedings without the participation of Claimant. Company shall be entitled to require Claimant to continue proceedings if Company does not wish to continue proceedings in its own name and if Company does not wish to disclose the fact that the proceedings are being funded. In this case, Company will indemnify Claimant for all legal costs associated with the proceedings and the Proceeds shall be paid in full to Company.
- c. Company has taken on the legal costs risks known as of the date of this Agreement. In the event that new circumstances come to light or are brought to Company's attention for the first time, and as a result of such circumstances the prospect of success are lower than at the time of entering into this agreement, Company shall be entitled to terminate this agreement in whole or in part without notice and to cease any further funding of Claimant's Claims.
- d. In any event, Company shall be entitled to terminate this Agreement in whole or in part at the conclusion of proceedings at each instance and to cease funding from that point onwards.
- e. In the event of termination of this agreement by Company, Company shall pay the costs incurred to the date of termination and which apply to discontinue the Claims or part of the Claims immediately and most cost-effectively. The Claimant shall be entitled to continue with the proceedings to pursue the Claims at its own costs. In the event that the Claimant succeeds, the Claimant shall reimburse Company for all costs incurred by Company.
- f. Company shall release or return any such securities as have been provided to Company once Company has no further interest in or reason to require a security.

7. Settlement

- a. Claimant affirms that it has had full and lengthy opportunity to discuss with Company the options for and likelihood of settlement of Claims. Claimant believes that settlement of Claims gives the greatest chance that defendants will comply with the ADA.
- b. Claimant therefore gives Company full and complete authorization to negotiate and accept any settlements of Claims. Claimant agrees to cooperate and consent to any settlement deemed reasonably by Company.
- c. Claimant agrees to direct his/her attorney to settle Claims as directed by Company if so directed.
- d. Claimant and Company jointly reaffirm their mutual goal to bring about ADA compliance through the filing of complaints asserting Claimant's Claims, and entering into settlement agreements with covenants to rectify ADA violations.

8. Dispute Resolution

- a. In the event of disagreement arising during the negotiation, execution or performance of this agreement, the Parties shall first attempt to find an amicable solution by submitting a notice of dispute in writing.
- b. If the Parties are unable to find an amicable solution within 30 days of a notice of dispute, the Parties agree to submit to a private and confidential mediation and

Litigation Funding Agreement

shall mediate the matter no later than 120 days after the date of the notice of dispute.

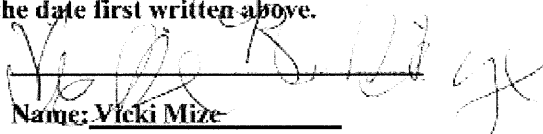
- c. If the Parties are unable to successfully mediate any dispute the parties agree to submit any claims or causes of action to private binding arbitration.
- d. Each party shall bear their own costs at mediation and shall share the costs of the mediator.
- e. If arbitration is necessary, the successful party shall be entitled to recover from the losing party its costs, fees, and expenses related to the arbitration.

9. Miscellaneous

- a. This agreement constitutes the entire Agreement between the parties and supersedes and terminates any previous agreements whether written or oral. Any modification or variation to this Agreement must be in writing.
- b. If any portion of this agreement is found to be void or unenforceable or a provision of the Agreement is missing, the remaining provisions of this Agreement shall continue in full force and effect.
- c. The Parties agree that this agreement shall be governed by Arizona law with venue of any dispute resolution proceeding to take place in the state and county in which Claimant resides at the time the Agreement was executed.

The parties have executed this Agreement as of the date first written above.

Name: _____


Name: Vicki Mize

**On behalf of Litigation Management
and Financial Services, LLC**

EXHIBIT F



Therium Finance AG IC
Charter Place, 23/27 Seaton Place, St Helier, Jersey JE1 1JY
An Incorporated Cell Registered in Jersey number []

DATE: 2015

LITIGATION FUNDING AGREEMENT

- (1) THERIUM FINANCE AG IC
- (2) DOMINION MINERALS CORP
- (3) []
- (4) []

DATE: 2015

PARTIES:

- (1) THERIUM FINANCE AG IC (an incorporated cell registered in Jersey number [] of Charter Place, 23/27 Seaton Place, St Helier, Jersey, JE1 1JY ("Therium");
- (2) DOMINION MINERALS CORP, a company incorporated in [] with registered number [] whose registered office is 410 Park Avenue, 15th Floor, New York, NY 10022 (the "Client");
- (3) [] of []; and
- (4) [] of [] (together with the third party, 'the Directors').

RECITALS:

- (A) The Claimant has taken legal advice on the merits of the Claim from the Solicitors.
- (B) In order to facilitate access to justice, the Claimant has sought the agreement of Therium to provide Funding in respect of the costs and expenses of pursuing the Claim as set out in the Project Plan. The Claimant and Therium have therefore agreed that Therium will provide funding in respect of the Claim in accordance with the terms of this Agreement.
- (C) In order to pursue the Claim, the Claimant has engaged the Solicitors to act as its representative on its behalf. The Solicitors have agreed to act for the Claimants on a Contingency Fee Agreement ("CFA") pursuant to which the Solicitors will be entitled to payment of a proportion of their fees together with all disbursements from the Funding plus the Solicitors' Contingency Fee. The Solicitors have agreed with the Claimant that the Solicitors' Contingency Fee (net of any VAT payable thereon) shall be paid to Therium on its behalf, in full and final discharge of the Claimant's obligation to pay the Solicitor's Contingency Fee pursuant to the CFA, and Therium will agree to give credit to the Claimant, against its entitlements under this Agreement, for any amount of the Solicitors' Contingency Fee paid to Therium on behalf of the Solicitors pursuant to the CFA. Therium and the Solicitors have agreed that, in consideration for the Solicitors sharing the costs and risk of the Claim with Therium, Therium will account to the Solicitors for their share of Therium's entitlements under this Funding Agreement.

OPERATIVE PROVISIONS:

1. Interpretation

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

"Adverse Costs" means the costs which the Claimant or Therium is ordered to pay to an opponent or which, with Therium's approval, the Claimant:

- (i) agrees; or
- (ii) becomes liable for by making or accepting a settlement offer; or
- (iii) becomes liable for by discontinuing the Proceedings;

"Adverse Costs Order" means any order of a Court requiring the Claimant or Therium to pay Adverse Costs;

“Agreed Percentage” means 75%;

“Appeal” means an appeal of a judgment or award in the Proceedings, including any cross-appeal of the Claimant and the Claimant’s response to any appeal of the Defendant.

“Application” means any application form submitted to by or on behalf of the Claimant together with all materials and documents submitted to Therium prior to the Commencement Date in connection with the Claimant’s application;

“Base Costs” means the total of Solicitors’ fees (calculated based on the time spent multiplied by the applicable hourly rates, as if the fees had been incurred on a standard retainer and not the Contingency Fee Agreement), together with any VAT applicable to each of these, to the extent those fees are properly and reasonable incurred by the Solicitors on behalf of the Claimant on relation to the Claim and are incurred in accordance with the Project Plan and in accordance with the terms of this Agreement;

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

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

“Claim” means the claim, details of which are set out in the Schedule;

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

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

“Commencement Date” means the date specified in the Schedule;

“Committed Funds” means, in relation to each tranche of Funding incepted, the Committed Funds for that tranche of Funding as detailed in the Schedule;

“Contingency Fee” means, in respect of all tranches of Funding incepted, the total of:

- (i) The total of 2.5x the total Funding (as defined in this Agreement) for all tranches of Funding incepted; plus
- (ii) The applicable percentage share of each increment of the net Claim Proceeds as set out in the Schedule;

less deduction of the amount of any Solicitors’ Contingency Fee Proceeds received by Therium, and plus any VAT payable on the amount due under (i) or (ii);

“Costs” means the Solicitors’ entitlement pursuant to the CFA to be paid the Agreed Percentage of any Base Costs, plus 100% of the Disbursements;

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

“CPR” means the Civil Procedure Rules and supporting Practice Directions;

“Defendant” means the defendants specified in the Schedule;

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

“Funding” means the total of:

- (a) the amount of the Committed Funds for all tranches of Funding incepted as detailed in the Schedule; and
- (b) the total amount of the Unfunded Costs.

“Legal Expenses Insurance” means an after the event legal expenses insurance policy in respect of Adverse Costs on terms and with an insurer approved by Therium, such approval not to be unreasonably withheld;

“Non-Monetary Proceeds” shall mean any Claim Proceeds received in non-monetary form;

“Notice” means a notice given in accordance with clause 23;

“Notice of Interest” means a notice of interest given pursuant to clause 12.3;

“Notice of Release of Interest” means a notice of release of interest given pursuant to clause 15.6;

“Party” means a party to this Agreement;

“Priorities Agreement” means a priorities agreement substantially in the form appended to this Agreement as Appendix 3, to be executed by the Claimants in accordance with clause 6.1;

“Proceedings” means each and every litigation or arbitral proceeding issued or arising out of or in connection with the Claim including any pre-action correspondence, settlement negotiations or mediation, brief details of which are included in the Schedule and any other proceedings which Therium agrees in writing shall be the subject of this Agreement pursuant to clause 4.3. For the avoidance of doubt “Proceedings” does not include an Appeal unless specifically agreed by Therium pursuant to clause 4.2;

“Project Plan” means the project plan for the Claim, including the Solicitors’ estimate of the Funding required to pursue the Claim and an outline timetable, appended to this Agreement as Appendix 1, as may be varied by agreement between the Parties from time to time in accordance with clause 19;

“Reasonable Costs” means the amount of any Costs to the extent that those costs are reasonably incurred by the Claimant in accordance with the terms of this Agreement, up to a maximum of the amount of the Committed Funds for the tranches of Funding incepted;

“Reasonable Costs Sum” means a sum equal to the total of the following:

- (i) all Reasonable Costs, and all other Base Costs and Disbursements, whether or not those costs were reasonably incurred by the Claimant in accordance with this Agreement, paid or otherwise funded by Therium pursuant to this Agreement; and
- (ii) the Unfunded Costs;

“Recovery” means the receipt of any Claim Proceeds;

“Solicitors” means the firm of solicitors instructed by the Claimant to act on its behalf in connection with the Claim and identified as such in the Schedule;

“Solicitor’s Contingency Fee” means the success fee payment due from the Claimant to the Solicitors pursuant to the CFA, being a proportion of the Claim Proceeds and disregarding any fees payable during the course of the Proceedings;

“Solicitor’s Contingency Fee Proceeds” means the amount of the Solicitors’ Contingency Fee, net of VAT, as is received by Therium;

“Tranche 1” means the phase in the Proceedings and the Funding requirement, as detailed in the Project Plan, up to the maximum of the Committed Funds in respect of that first tranche;

“Tranche 2” means the phase in the Proceedings and the Funding requirement, as detailed in the Project Plan, up to the maximum of the Committed Funds in respect of that second tranche;

“Tranche 3” means the phase in the Proceedings and the Funding requirement, as detailed in the Project Plan, up to the maximum of the Committed Funds in respect of that third tranche;

“Trust Period” means the period of 80 years from the date of this Agreement;

“Unfunded Costs” means the amount of the Base Costs together with any VAT applicable, which have not been advanced to the Solicitors by Therium or the Claimant, plus any Disbursements and any other sums incurred by the Solicitors and which have not been paid to the Solicitors by Therium or the Claimant; and

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

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

the words following those terms.

2. Agreement to Fund

- 2.1. Subject to clause 2.2 below, in return for the Claimant's agreement to pay to Therium, where there is a Recovery, from and limited to the extent of any such Recovery, the Reasonable Costs Sum, the Solicitors Contingency Fee (net of any VAT payable thereon) and the Contingency Fee in accordance with the terms of this Agreement, Therium agrees with effect from the Commencement Date to pay the Claimant's Reasonable Costs incurred in respect of Tranche 1 up to the amount of the Committed Funds for that tranche in accordance with the terms of this Agreement.
- 2.2. If the Recovery is insufficient to pay the Reasonable Costs Sum and the Contingency Fee in full then the Recovery shall be applied in accordance with the priority as set out in the Priorities Agreement until the Recovery has been fully applied, after which no further sum shall be payable pursuant to this Agreement.
- 2.3. At the option of Therium, exercisable on the exhaustion of Tranche 1 (unless otherwise waived by Therium), and at Therium's sole discretion, Therium shall have the exclusive right but not the obligation to incept Tranche 2 on the terms set out in this Agreement.
- 2.4. At the option of Therium, exercisable on the exhaustion of Tranche 2 (unless otherwise waived by Therium), and at Therium's sole discretion, Therium shall have the exclusive right but not the obligation to incept Tranche 3 on the terms set out in this Agreement.
- 2.5. The option(s) set out as clause 2.3 and 2.4 above shall be exercisable from and including the date they arise and remain open and exclusive for 2 calendar months from that date. Time shall only start running for the purposes of this sub-clause when the Claimant or its Solicitors have notified Therium in writing that the preceding Tranche has been exhausted. If the period of 2 months expires without Therium exercising the option, the Claimant may enter into alternative arrangements for that and any subsequent tranche, save that Therium shall continue to be entitled to exercise that option at any time up until the Claimant enter into a binding obligation which puts alternative Funding in place for that and every subsequent tranche, at which point the option shall lapse.

3. Payment Terms and Interest

- 3.1. The Reasonable Costs Sum and Contingency Fee shall become payable only in the event that the Claimant achieves a Recovery and shall be paid in accordance with clause 13.5.
- 3.2. In the event that any sum payable under this Agreement is not paid by its due date, interest will be payable on such sum at the rate of 4% per annum above National Westminster Bank Plc's base rate for the time being in force, compounded annually, from the date on which payment was due to the date payment is received, or for such other period as may be specified in this Agreement.

4. Changes to the Project Plan

- 4.1. In the event that the Defendant brings a counterclaim in the Proceedings, then the Claimant may request Therium to provide Funding in respect of the Costs of defending the counterclaim. If Therium consents to this request, then the Funding for defending the counterclaim shall form part of the Committed Funds and be incorporated into the Project Plan (which, along with the Schedule, shall be deemed amended accordingly).
- 4.2. In the event of an Appeal, then the Claimant may request Therium to provide Funding in respect of dealing with the Appeal. If Therium consents to this

request, then the Funding for the Appeal shall form part of the Committed Funds and be incorporated into the Project Plan (which, along with the Schedule, shall be deemed amended accordingly).

- 4.3. In the event that proceedings involving the Claimant and relating to the Claim, other than the Proceedings, are begun, the Claimant may request Therium to provide Funding for any or all of such proceedings. If Therium consents to this request (and for the avoidance of doubt Therium may consent to providing Funding in respect of any or all of such proceedings (or none of them)) the Funding for the proceedings shall form part of the Committed Funds and be incorporated into the Project Plan (which, along with the Schedule, shall be deemed amended accordingly).

5. Excluded Costs and Liabilities

- 5.1. Unless agreed otherwise (individually at its entire cost or together), Therium will not pay nor be liable under this Agreement for any of the following costs, sums or liabilities incurred by the Claimant:

- 5.1.1. Costs and/or other sums incurred as a result of the Claimant's failure (on any one or more occasions) to co-operate with or to follow the advice of the Solicitors;
- 5.1.2. Costs and/or other sums incurred as a result of any default by the Claimant;
- 5.1.3. any liability for payment of the Defendant's costs or the Claimant's liability for fines or penalties;
- 5.1.4. Costs and/or other sums incurred as a result of any unreasonable failure by the Claimant to comply with an order of the Court during the Proceedings;
- 5.1.5. Costs and/or other sums incurred prior to the Commencement Date (save to the extent that those costs are included in the Project Plan) or after termination of this Agreement;
- 5.1.6. any element of VAT where otherwise recoverable by the Claimants;
- 5.1.7. any Costs incurred in excess of the Reasonable Costs; or
- 5.1.8. save if and to the extent ordered by the Court, any Adverse Costs incurred by the Claimant as a result of steps taken before the Commencement Date or after the date of termination of this Agreement.
- 5.1.9. save to the extent set out in the Project Plan, any premium for Legal Expenses Insurance.

6. Conditions Precedent and Warranties

- 6.1. This Agreement shall not come into force unless and until all parties have executed and completed the Priorities Agreement.
- 6.2. The Claimant acknowledges and accepts that Therium's decision to enter into this Agreement is

solely based on the information and materials made available in and with the Application (which shall include copies of all legal advice to the Claimant relating to the Claim and all correspondence with the Defendant relating to the Claim) and other documents and materials made available to Therium and its representatives prior to the Commencement Date and that if any such information, documents and/or materials are inaccurate, untrue, incomplete or have not been disclosed to Therium or its representatives, this may affect Therium's decision to provide or continue to provide Funding under this Agreement. The Claimant confirms that to the best of its knowledge and belief, the information and materials provided in and with the Application, and the documents and materials made available to Therium and its representatives prior to the Commencement Date are accurate, complete and true in all material respects and that the Claimant has not failed to disclose any information, document and/or material which would be relevant to Therium's decision to enter into and remain bound by this Agreement.

6.3. Except as may already have been fully disclosed in writing to Therium prior to the execution of this Agreement, the Claimant warrants that:

6.3.1. as at the Commencement Date the Claimant has not granted (or purported to grant) any charge, lien or other security in favour of a third party over the Claim or the Claim Proceeds (or otherwise dealt with the same in any way); and

6.3.2. it will not grant (or purport to grant) any such charge, lien or other security until all payments due to Therium under this Agreement have been met or otherwise extinguished.

6.4. Therium and the Claimant each warrants that the execution and performance of, and compliance with, their respective obligations under this Agreement is fully authorised by each of them and the persons executing the Agreement have the necessary and appropriate authority to do so.

6.5. The Claimant warrants and acknowledges that it has taken legal advice from the Solicitors or otherwise on the terms of this Agreement prior to entering into it.

7. Payment of Reasonable Costs

7.1. The Claimant shall instruct the Solicitors and any other suppliers of services provided for in the Project Plan to address invoices relating to the work described in the Project Plan (in the case of the Solicitors, limited to the Agreed Percentage of the Base Costs) to the Claimant but marked payable by Therium and to deliver those invoices to Therium (copied to the Claimant) for payment. In the case of the Solicitors' own costs, these shall be paid monthly or on such other terms as are agreed between the Claimant, Therium and the Solicitors.

7.2. If in the reasonably held opinion of Therium, any Costs invoiced by the Solicitors or any other supplier of services are not Reasonable Costs, Therium shall serve a Challenge Notice on the Claimant, with a copy to the relevant supplier, within 20 Business Days of delivery of the relevant invoice.

7.3. In the event of a Challenge Notice being served, the Claimant agrees to raise any queries identified in the Challenge Notice with the relevant supplier with the aim of reaching an agreement as to the disputed Costs. Where an agreement, satisfactory to Therium, cannot be reached within 10 Business Days of service of the Challenge Notice, the decision as to whether such Costs are Reasonable Costs shall be taken by an independent legal costs draftsman within 20 Business Days of his appointment. The Costs Draftsman so appointed shall be a member of the Association of Law Costs Draftsmen (the "Draftsman") and shall be appointed by Therium. Therium and the Claimant agree to be bound by such decision, and the Claimant shall procure the agreement of the relevant supplier to be bound by such decision. Unless the Draftsman directs another person to pay his costs, Therium agree to meet his costs which shall be treated as part of the Reasonable Costs.

- 7.4. Pending resolution of a Challenge Notice, Therium shall pay all Costs that are not subject to challenge.
- 7.5. Within 5 Business Days of receiving the Draftsman's decision, Therium will pay any sum owing to either the relevant supplier and/or the Draftsman if directed by the Draftsman.
8. Adverse Costs Orders
- 8.1. Unless agreed by the Parties in writing, the Claimant shall take out and maintain one or more Legal Expenses Insurance policies sufficient throughout the Proceedings to meet Adverse Costs. The Claimants shall procure that any insurer providing such Legal Expenses Insurance policy shall execute the Priorities Agreement on terms acceptable to Therium prior to incepting the Legal Expenses Insurance policy.
- 8.2. The Claimant agrees to indemnify Therium against any Adverse Costs Orders or liability for Adverse Costs as may be made against or attach to Therium.
- 8.3. Nothing in this Agreement shall prejudice:
- 8.3.1. Therium's right to such an indemnity or contribution from the Claimant in respect of any Adverse Costs Orders; or
- 8.3.2. Therium's contentions in relation to any application by any party to the Proceedings for an Adverse Costs Order against Therium.
9. Claimants' Obligations
- 9.1. The Parties recognise that the Solicitors must at all times act independently and in the best interests of the Claimant and in accordance with their other professional duties. Nothing in this Agreement entitles Therium to interfere in the conduct of the Claim and/or the Proceedings.
- 9.2. The Claimant shall:
- 9.2.1. instruct the Solicitors to provide Therium, prior to execution of this Agreement, with a reliance letter substantially in the form of that annexed to this Agreement at Appendix 2;
- 9.2.2. irrevocably instruct the Solicitors to conduct the Proceedings in accordance with the procedural rules applicable in the Court and comply with any judgment, order or award made in the Proceedings;
- 9.2.3. irrevocably instruct the Solicitors to provide Therium with any documents or information relating to the Claim and Proceedings as may be reasonably requested by Therium;
- 9.2.4. irrevocably instruct the Solicitors to provide Therium, insofar as is reasonably practicable and proportionate, with copies of draft pleadings, witness statements, expert reports and significant correspondence or documents, prior to issue;
- 9.2.5. irrevocably instruct and authorise the Solicitors to take such steps and perform such actions as may be required and/or desirable in order to perform and/or give effect to this Agreement, including discharging any obligations of the Claimant on its behalf as its agent in all respects;
- 9.2.6. through instructions to the Solicitors and/or on its own account:

- (a) diligently prosecute the Proceedings and seek to enforce and recover any Claim Proceeds in the Proceedings;
 - (b) keep Therium promptly informed of any significant developments in the Proceedings (including any settlement discussions, any offers received and any information, evidence or advice coming to the attention of the Claimant or the Solicitors which may be material either to the prospects of success of the Claim or of enforcing any judgment or award), including any material adverse change in the prospects of success or if the prospects of success have deteriorated to a level where the case is unlikely to be successful; and
 - (c) make a monthly summary report to Therium in such form as Therium may reasonably require regarding the overall progress and conduct of the Proceedings, the prospects of success of the Claim, the Costs incurred against the Project Plan and the expected level of exposure to Adverse Costs;
- 9.2.7. comply with the terms of the Legal Expenses Insurance (including as to payment of any premium as and when due) and any duty owed to the insurer providing such cover, not take or omit to take any step which might potentially lead to withdrawal, avoidance or cancellation of cover, and supply to Therium a copy of any correspondence from the Legal Expenses Insurance provider threatening to or withdrawing cover;
- 9.2.8. take and follow the legal advice of the Solicitors at all appropriate junctures, including whether it would be appropriate to make or accept any offer to settle the Claim;
- 9.2.9. co-operate fully and at all times throughout the proceedings with, and promptly provide such instructions and assistance to the Solicitors as they may require for pursuing the Claim, including providing, or procuring the provision of, documents in the possession or control of the Claimant or any subsidiaries or associated companies of the Claimant and, in so far as advised by the Solicitors, including providing access to witnesses for the purpose of preparing witness statements and procuring the attendance of those witnesses at trial to give evidence on the Claimant's behalf; and
- 9.2.10. give reasonable notice of and permit Therium, where reasonably practicable, to attend as an observer at internal meetings which include meetings with experts and send an observer to any mediation or hearing relating to the Claim.
- 9.3. The Claimant hereby irrevocably instructs the Solicitors to notify Therium in the event that the Claimant breaches its obligations under this Agreement including but not limited to:
 - 9.3.1. revoking its instructions made pursuant to clauses 9.2 and this clause 9.3;
 - 9.3.2. threatening to cease or ceasing to instruct the Solicitors in its dispute;
 - 9.3.3. disputing any invoice or part of any invoice issued by the Solicitors to them or challenging the validity or efficacy of the CFA in any way;
 - 9.3.4. failing to follow the advice of the Solicitors in any material way; and/or
 - 9.3.5. where the Claimant has made any material misrepresentation or non-disclosure in its application for funding or otherwise during the course of the operation of this Agreement.
- 9.4. Subject to clause 19.2 below, the Parties agree not to do or permit to be done anything likely to deprive each other of any benefit for which the other has entered into this Agreement.

- 9.5. Therium acknowledges the Claimant's right to seek advice in relation to the Claim from whichever solicitors they may choose. In the event, however, that the Solicitors cease to have conduct of the Claim, then the Claimant shall obtain Therium's consent to the instruction of any additional or alternative solicitors proposed by the Claimant in place of the Solicitors before they are instructed.
- 9.6. The Claimant agrees that if Therium require any advice given by the Solicitors to the Claimant in respect of the Claim and/or the Proceedings to be confirmed by Counsel, the Claimant will instruct the Solicitors to instruct counsel to provide an opinion to the Claimant on such advice and to provide a copy of such opinion to Therium. Therium agrees to bear the costs of such opinion.
- 9.7. For the avoidance of doubt, subject to Therium's rights to termination pursuant to clause 15, nothing in this Agreement shall permit Therium to override any advice given by the Solicitors to the Claimant. This includes any opinion given pursuant to clause 9.6 of this Agreement.
- 9.8. The Directors agree and covenant that they shall, in so far as permissible, exercise their powers as directors and/or shareholders of the Claimant to ensure and at all times procure that the Claimant complies with its obligations under this Agreement and any Priorities Agreement.
10. Appeals
- 10.1. If one or more of Therium agrees to provide some or all of the Funding in respect of an Appeal (there being no obligation on them to do so), then the Claimant shall instruct the Solicitors to act on the Appeal.
- 10.2. Where Therium elects not to provide any Funding in respect of the Costs of any Appeal:
- 10.2.1. the Claimant shall not be obliged to pursue or defend the Appeal but, if they do so, shall comply with their obligations set out in clause 9;
- 10.2.2. subject to any contrary order of the Court, and their right to be indemnified by the Claimant, Therium shall have no liability for any Adverse Costs or any Adverse Costs Order made in relation to the Appeal; and
- 10.2.3. if the Appeal was brought by the Claimant and the Claim Proceeds are reduced as a result of the Appeal, the Contingency Fee shall be calculated by reference to the amount of the Claim Proceeds immediately prior to the Appeal.
- 10.3. Where Therium elects to provide Funding in respect of the Costs of any Appeal;
- 10.3.1. clause 10.2.1 will apply;
- 10.3.2. clause 8 shall apply in relation to the Adverse Costs of the Appeal;
- 10.3.3. if the Claim Proceeds are reduced as a result of the Appeal then the Contingency Fee due to Therium shall be recalculated to reduce the amount due to Therium following the Appeal; and
- 10.3.4. following recalculation in accordance with clause 10.3.3, Therium shall repay any sums paid to it in excess of their entitlement under this Agreement.

11. Recovery

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

12. Security for costs

- 12.1. Where specified in the Project Plan or as otherwise agreed, in the event of an order of the Court that the Claimant shall provide security for the costs of a party to the Proceedings, Therium will discharge that order to the satisfaction of the Court.
- 12.2. The Claimant agrees to hold the Legal Expenses Insurance policy and all proceeds payable under it on trust for Therium throughout the Trust Period on terms that Therium shall be entitled to such part or all of any proceeds of the Legal Expenses Insurance which become payable as a consequence of an Adverse Costs Order as shall be equal to the amount of any security posted by Therium pursuant to clause 12.1 used to discharge the Claimant's liability (either entirely or in part) in respect of any Adverse Costs Order.
- 12.3. The Claimant agrees that within 2 Business Days of whichever is the later of:
 - 12.3.1. the date on which this Agreement is executed; or
 - 12.3.2. the date on which the Legal Expenses Insurance policy comes on risk, the Claimant will send to the insurer(s) providing the Legal Expenses Insurance a written Notice of Interest in duplicate for noting on the insurer's records and will provide a copy of such Notice of Interest, duly acknowledged by the insurer, to Therium within 5 Business Days of receipt of the same by the Claimant.

13. Treatment of Claim Proceeds

- 13.1. The Claimant agrees to hold any Claim Proceeds received by it or by the Solicitors or any third party on their behalf, upon trust for Therium throughout the Trust Period on terms that Therium shall be entitled to such part of the Claim Proceeds as shall be equal to the total of all amounts due under the terms of this Agreement to Therium (as the same may be reduced in accordance with the Priorities Agreement).
- 13.2. The Parties agree that any Claim Proceeds received in monetary form shall be paid into the Solicitors' client account immediately upon receipt. In the case of any Claim Proceeds received in non-monetary form, the Claimant shall either deliver the Claim Proceeds to the Solicitors or pay to the Solicitors as soon as is reasonably practicable the market value of the Claim Proceeds determined in accordance with clause 13.3.
- 13.3. If the Claimant receives any Non-Monetary Proceeds (which, for this purpose, shall include non-monetary Claim Proceeds resulting from any order for rectification), the Parties agree that the Non-Monetary Proceeds shall be valued by an independent valuer agreed by the Parties with the cost of that valuation to be met by the Claimant. The Parties shall use their respective reasonable endeavours to agree on the appointment of the independent valuer and to agree his terms of appointment. Where the Parties cannot agree on the identity of the independent valuer within 20 Business Days of receipt of the Non-Monetary Proceeds, the President of the Law Society from time to time shall be requested by any of the Parties to recommend a valuer who shall be the independent valuer for the purposes of this clause and clauses 13.4 to 13.6 inclusive.
- 13.4. The Parties shall be entitled to make written submissions to the independent valuer (provided such submissions are received by the independent valuer within 10 Business Days of his appointment) and shall use their reasonable endeavours to provide the independent valuer with such assistance and documents as the independent valuer reasonably requires for the purpose of reaching a determination as to the value of the Non-Monetary Proceeds.
- 13.5. To the extent not provided for by clause 13.4 above, the independent valuer may, in his reasonable discretion, determine such other procedures to assist with the conduct of the determination as

he considers just or appropriate, including (to the extent he considers necessary) instructing professional advisers to assist him in reaching his determination.

- 13.6. In making his determination the independent valuer will act as an expert and not as an arbitrator. The independent valuer shall prepare a written determination and give notice (including a copy) of that determination to the Parties within 2 months of the matter being referred to him. The independent valuer's written determination on the matters referred to him shall be final and binding on the Parties in the absence of manifest error or fraud.
 - 13.7. If the independent valuer dies or becomes unwilling or incapable of acting, or does not deliver his determination within the time required by clause 13.6 then either party may apply to the President from time to time of the ICAEW to discharge the independent valuer and to appoint a replacement independent valuer and clauses 13.3 to 13.7 shall apply in relation to the new independent valuer as if he were the first Independent valuer appointed.
 - 13.8. If any payment due to Therium from the Claim Proceeds or Insurance Proceeds is delayed due to action or failure to act on the part of the Claimants, the Claimants shall compensate Therium for the delay in making payment by paying to Therium interest on the sum delayed for the period of the delay calculated in accordance with clause 3.2.
 - 13.9. On notification of receipt of Claim Proceeds by the Solicitors, Therium shall prepare a draft Claim Proceeds Account and shall deliver that draft Claim Proceeds Account to each of the parties to the Priorities Agreement for agreement.
 - 13.10. Once the draft Claim Proceeds Account is agreed or deemed to be agreed pursuant to the Priorities Agreement (whichever is the earlier), the Parties agree that the Solicitors shall forthwith pay out the Claims Proceeds in accordance with the agreed Claim Proceeds Account.
 - 13.11. Any damages awarded against the Claimant in respect of a counterclaim funded pursuant to clause 4.1 shall be deducted from the Claim Proceeds for the purposes of calculating the distribution under the Claims Proceeds Account. For the avoidance of doubt, such deduction of damages shall not apply where Therium have not funded the cost of defending the counterclaim.
 - 13.12. If any payment due to Therium from the Claim Proceeds is delayed due to action or failure to act on the part of the Claimants, the Claimants shall compensate Therium for the delay in making payment by paying to Therium interest on the sum delayed for the period of the delay calculated in accordance with clause 3.2.
14. Privilege and Agency
- 14.1. The Claimant hereby appoints Therium as the Claimant's agent for the sole purpose of holding, reviewing, and commentating on the documents and information provided, including any privileged documents and information, and deciding whether to fund the Proceedings. The express and only terms of that agency were and are that Therium agreed to all take reasonable steps in respect of those documents and that information to:
 - 14.1.1. maintain their confidentiality;
 - 14.1.2. protect and not waive any privilege attaching to them;
 - 14.1.3. keep them secure and safe; and
 - 14.1.4. use them only in connection with Therium's business as a litigation funder in connection with the Proceedings to enable the parties to decide whether Therium should be involved

in funding and continuing to fund the Proceedings and in accordance with clause 16 below.

- 14.2. The Claimant and Therium do not waive any legal professional privilege, common interest privilege or other privilege or protection attaching to any documents and information disclosed to Therium. Any privileged information and documents disclosed at any time to Therium have been or will be disclosed on the additional basis that Therium has, or will have, a common interest in the pursuit and success of the Proceedings and will at all times take all reasonable steps to maintain that privilege.
- 14.3. Therium shall, for the purposes of clauses 14.1. and 14.2, include Therium's directors, officers, employees, investment advisers, attorneys, consultants, solicitors, counsel, associated companies, insurers, shareholders and agents.

15. Confidentiality

- 15.1. Without prejudice to clause 14 above, the Parties agree to keep confidential and, where appropriate maintain any privilege belonging to the Claimant, in all documents and information supplied by the Claimant, Therium or the Solicitors, including (unless otherwise agreed) the existence and / or terms of this Agreement. It is agreed that the provision of privileged documents does not amount to any waiver of privilege, and the Parties shall not use these for any purpose other than in respect of this Agreement, except a purpose to which the Parties have consented or as required by law or regulation. The Claimant agrees that Therium may disclose such documents and information:
- 15.1.1. to their investment advisers, auditors, brokers, legal advisers, investors and potential investors, insurers and potential insurers;
 - 15.1.2. where Therium is under a legal or regulatory obligation to make such disclosure, but limited to the extent of that legal obligation;
 - 15.1.3. to the extent that it is already in the public domain (other than as a result of Therium's breach of this Agreement);
 - 15.1.4. with the prior written consent of the Claimant; or
 - 15.1.5. to the extent necessary to take legal action to enforce Therium's rights under this Agreement or to defend such action.
- 15.2. Therium shall procure that any persons receiving confidential documents or information pursuant to sub-clause 14.1.1 shall comply with the obligations imposed on Therium pursuant to sub-clause 14.1.
- 15.3. Nothing in this Agreement shall prevent Therium instructing one or more agents to undertake any action or review documents, evidence or information which Therium would be entitled to undertake pursuant to this Agreement save that Therium shall procure that any agent acting on its behalf shall comply with the obligations imposed on Therium by clause 14.1.
- 15.4. Therium will immediately inform the Claimant of any request or order to disclose their privileged documents or any other privileged information held by Therium, except where informing the Claimant would contravene any law or regulation.

16. Termination

- 16.1. Without prejudice to clause 6.1 and subject to earlier termination of this Agreement pursuant to clauses 16.2 to 16.6, this Agreement shall continue in full force and effect until payment of any and all sums due to Therium pursuant to this Agreement and in any event clauses 1, 3.2, 6.2, 6.3, 6.4,

8.2 to 8.6, 12.2, 14 to 18, 21 to 24, and 26 to 28 shall continue in full force and effect notwithstanding Termination of this Agreement. For the avoidance of doubt, the option(s) at clauses 2.3 and 2.4 above shall not remain open for exercise by Therium after termination of this Agreement.

- 16.2. The Claimant and Therium may at any time agree, by mutual consent in writing, to suspend or terminate this Agreement in which event they shall serve Notice of such suspension or termination on the Solicitors.
 - 16.3. If Therium reasonably ceases to be satisfied as to the merits of the Claim or Therium reasonably believes that the Claim is no longer commercially viable, then Therium shall be entitled to suspend until further notice by Therium or terminate this Agreement by giving 5 Business Days' Notice to the Claimant. Following such termination or during the period of suspension, Therium shall have no further liability to fund the Reasonable Costs not yet incurred but such suspension or termination shall not affect any accrued rights or entitlements of Therium.
 - 16.4. In the event that Therium reasonably considers that there has been a material breach of this Agreement by the Claimant, Therium may notify the Claimant that Therium requires the Claimant to remedy the breach within 20 Business Days. In the event that the breach is not remedied within that period, Therium shall be entitled to suspend until further notice by Therium or terminate this Agreement forthwith by giving Notice to the Claimant, copied to the Solicitors. Following such termination or during the period of suspension under this clause 16.4, Therium shall have no further liability to fund the Reasonable Costs not yet incurred. Within 5 Business Days of termination under this clause 16.4 by Therium, the Claimant shall pay to Therium the Reasonable Costs Sum calculated as at that date, together with interest calculated in accordance with clause 3.2 from the date of this Agreement to the date of payment. Following such termination, Therium shall remain entitled to the Solicitors Contingency Fee (net of any VAT payable thereon) and Contingency Fee upon Recovery and, for the purpose of calculating this, Therium shall be deemed to have exercised the option(s) set out above at clause 2.3 and 2.4. For the purposes of this clause 16.4, a material breach shall include, but not be limited to, any breach of any of the warranties set out in clauses 6.2 to 6.4.
 - 16.5. In the event of a material breach of this Agreement by Therium, the Claimant shall notify Therium that the Claimant requires Therium to remedy the breach within 20 Business Days. In the event that the breach is not remedied within that period, the Claimant shall be entitled to terminate this Agreement forthwith by giving Notice to Therium, copied to the Solicitors. Following such termination, Therium shall remain entitled to its share of the Reasonable Costs Sum, calculated as at the date of termination, and the Solicitors' Contingency Fee (net of VAT) upon Recovery. For the avoidance of doubt, save in relation to the Solicitors Contingency Fee, following such termination Therium shall have no future entitlement to the Contingency Fee.
 - 16.6. In the event of termination of this Agreement pursuant to clauses 16.2 to 16.5, the Claimant shall within 20 Business Days put in place alternative arrangements to discharge any order for security for costs and, at the end of the 20 Business Days period, Therium shall be entitled to terminate any such arrangements made on the Claimant's behalf pursuant to clause 12.1. Therium shall, on payment by the Claimant to Therium of an amount equal to the amount (if any) of any security for costs posted by Therium which has been used to discharge the Claimant's liability in respect of any Adverse Costs Order, provide the Claimant with a written Notice of Release of Interest in respect of the Legal Expenses Insurance.
 - 16.7. Termination of this Agreement shall not affect any accrued rights or liabilities nor will it affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination including but not limited to clauses 2.1, 7, 9 and 12 including in particular its right to information, to continue to hold its security and to be paid any amounts due to it including the Solicitors Contingency Fee and Contingency Fee.
17. Contracts (Rights of Third Parties) Act

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

18. Data Protection

In performing their respective obligations and exercising their respective rights under this Agreement, the parties agree to comply with the terms of the Data Protection Act 1998 and all regulations published pursuant to that Act.

19. Assignment

19.1. The Parties agree that Therium shall be entitled to assign to a third party any or all of their rights, interests and obligations pursuant to this Agreement upon giving 5 Business Days' Notice of its intention to do so to the other Parties to this Agreement.

19.2. Save as provided in clause 18.1, a Party shall not assign or transfer this Agreement or any of its rights under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement.

20. Variation

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

21. Waiver

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

22. Invalidity and severability

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

23. Succession

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

24. Notices

24.1. Any Notice to be served under this Agreement shall be in writing and may be delivered by hand or sent by pre-paid first class recorded delivery post to the Party to be served at the relevant address set out in this Agreement or any such other address as the Party to be served may have notified to the other Party for the purposes of this clause 24.1.

24.2. For the purpose of service of Notice or other documents on the Claimants, the Claimants agree that

service on the Solicitors shall be valid and adequate service on the Claimants.

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

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

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

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

25. Counterparts

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

26. Non-reliance and exclusion of liability

The Claimant accepts and agrees that it has taken such legal advice as they require prior to entering into this Agreement and have not relied on Therium, its directors, officers, shareholders or investors in deciding whether or not to enter into this Agreement and in deciding whether or not to pursue the Proceedings. By entering into this Agreement, the Claimant agrees and accepts that neither Therium nor its directors, officers, shareholders or investors owe any obligation, responsibility or duty to the Claimant save as expressly set out in this Agreement and the Priorities Agreement and do not accept any liability to the Claimant or any third party whatsoever save as expressly set out in this Agreement and the Priorities Agreement.

27. Dispute Resolution

29.1 The Parties agree that in the event of any dispute between Therium and/or the Claimant or any one or more of them relating to:

29.1.1 settlement of the Claim; or

29.1.2 termination of this Agreement under clause 16;

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

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

29.3 In the event of a dispute over termination of this Agreement, the Queen's Counsel shall be instructed to provide an opinion on the rights and entitlements of each of the Parties. The Parties agree that the Queen's Counsel's opinion on this issue in dispute shall be final and binding on each one of them.

29.4 In giving any opinion pursuant to clauses 29.2 and 29.3 above, Queen’s Counsel shall also be instructed to determine which one or more of the Parties should bear Queen’s Counsel’s fees of giving the Opinion (and, if more than one Party, the shares in which they are each to bear those fees) and the Parties agree to be bound by this determination as to liability for the Queen’s Counsel’s fees.

28. Law and jurisdiction

This Agreement is governed by and is to be construed in accordance with the law of England and Wales. Save for any dispute resolved finally pursuant to clause 28 above, any dispute arising out of or connected to this Agreement, including the validity or termination thereof, shall be finally resolved under the arbitration rules of the London Court of International Arbitration (the “LCIA”) by a panel of three arbitrators, with each side nominating one arbitrator which two nominees are to select a third, presiding arbitrator.. The seat of the arbitration shall be London, and the language of the arbitration shall be English. The arbitrators shall be appointed by the agreement of the Parties as per the above, provided that, if the Parties cannot reach agreement on the appointment of the arbitrator within 30 days, then any Party may apply to have an arbitrator appointed by the LCIA.

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

Signed for and on behalf of
THERIUM FINANCE AG IC

Signed for an on behalf of
DOMINION MINERALS CORP

THE SCHEDULE

Claim: Claims and causes of action against the Defendant pursuant to the United States – Panama Trade Promotion Agreement and the Treaty between the United States and Panama Concerning the Treatment and Protection of Investments arising out of the Claimant’s mining concession over the Cerro Chorchá region in Panama.

Commencement Date: The date of this Agreement.

Claimants’ Solicitors: Akin Gump Strauss Hauer & Feld LLP.

Defendant: Republic of Panama.

Committed Funds:

Tranche:	Committed Funds: the GBP equivalent cost to Therium of the following sums (calculated as at the date of inception of the tranche)
Tranche 1	\$1,029,500
Tranche 2	\$2,059,000
Tranche 3	\$2,059,000

Percentages applicable to the Contingency Fee as per Contingency Fee definition sub-para (ii):

Increment of net Claim Proceeds	\$0 up to and inclusive of \$70m	Above \$70m up to and inclusive of \$100m	Above \$100m and up to and inclusive of \$300m	Above \$300m
Tranche 1	0%	25%	10%	2%
Tranche 2	0%	30%	17.5%	4%
Tranche 3	0%	35%	25%	6%

APPENDIX 1

Project Plan

Phase I: Preparation (USD 250,000). This amount is to cover the costs of preparatory work prior to commencement of the arbitration, including preparation of the Notices of Arbitration under the US-Panama BIT and the US-Panama FTA.

Phase II: Arbitral Proceedings (USD 4.75 - 5.75 million). This element of the budget is composed of two parts:

- Akin Gump Attorney Fees (USD 3.5 – 4.5 million). We based this part of the budget on an estimate of the actual time needed to prosecute each of the anticipated steps in the arbitration process, based on our experience with these types of cases and the complexity of the dispute. These steps are likely to include drafting the demand for arbitration; conducting the jurisdictional phase (including two exchanges of memorials on jurisdiction, discovery, and a hearing on jurisdiction); conducting the written phase on the merits (including two exchanges of full-blown evidentiary submissions with witness statements and expert reports); conducting discovery on the merits; preparing for and conducting a two-week hearing on the merits; and drafting the post-hearing memorial.

- Other Costs (USD 1.25 million). This part of the budget comprises all of the other expected outlays to prosecute the arbitration as needed. These are likely to include the arbitrators' fees and expenses for a three-member arbitral panel; the hearing arrangements (including the costs of securing the hearing venue, accommodation for the legal team and witnesses, court reporter costs, etc.); and the costs of our experts, which are likely to include (i) an expert on Panamanian law, (ii) a mining expert, and (iii) a valuation expert.

Phase III: Post-Award Proceedings (USD 500,000). We have also budgeted for the costs of defending the award from the challenge action which Panama is likely to bring in the event Dominion succeeds on its claims. This challenge will take the form of (i) a legal challenge at the seat of the arbitration if the case goes to ad hoc UNCITRAL arbitration, or (ii) an annulment proceeding before an ICSID annulment panel if the case goes to ICSID arbitration.

APPENDIX 2

Specimen letter from Solicitors

TO BE PRINTED ONTO AKIN GUMP LETTERHEAD

From: Akin Gump Strauss Hauer & Feld LLP

To: Therium Finance AG IC

Dear Sirs

Re: Dominion Minerals Corp v Republic of Panama (“the Action”).

I refer to the above Action in which Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”) is acting for the Claimant. Therium Finance AG IC (“Therium”) has entered into a Funding Agreement (“the Funding Agreement”) and Priorities Agreement (“the Priorities Agreement”), in which Therium agrees to fund the Claimant’s costs and disbursements on the terms set out in those agreements.

At clause 6.2 of the Funding Agreement, the Claimant acknowledges that Therium has entered into the Funding Agreement solely based upon the information and materials made available to Therium and its representatives prior to the commencement date of the Funding Agreement and that, if any information, documents and/or materials are inaccurate, untrue, incomplete or have not been disclosed to Therium or its representatives, that this may affect Therium’s decision to provide (or continue to provide) Funding under the Funding Agreement. The Claimant warrants to the best of its knowledge and belief that the information and material made available to Therium and its representatives is accurate, complete and true in all material respects and that they have not failed to disclose any information, documents or material which would be relevant to Therium’s decision to enter into, and remain bound by, the Funding Agreement.

Save as provided elsewhere in this letter, insofar as the information, materials and/or documents made available to Therium and its representatives, prior to entering into the Funding Agreement, consist of information, documents or advice to the Claimant provided by Akin Gump, Akin Gump acknowledges and accepts that it has assumed a duty of care to Therium and its shareholders in respect of that information and/or advice, and Akin Gump acknowledges and accepts that neither Therium nor its shareholders have conducted any independent information gathering exercise, has not sought separate legal advice in relation to the merits of the Action brought by the Claimant and Therium and its shareholders have relied upon the information, documents and advice to the Claimant provided by Akin Gump. Furthermore, in continuing to fund the Action, Akin Gump accepts that Therium and its shareholders will continue to rely upon Akin Gump in respect of the advice the firm provides to the Claimant and its ongoing conduct of the Action while instructed by the Claimant.

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

Furthermore, insofar as Akin Gump accepts a duty of care to Therium and its shareholders in respect of the accuracy of any information, documents or advice provided, Akin Gump is unable to warrant the accuracy of the information provided to it by the Claimant, Defendant or third parties or the validity of the documents so

provided on which any advice may be based. However, so far as Akin Gump is aware, the information provided is accurate and the documents provided are valid.

Nothing in this letter shall impose any contractual duty on Akin Gump to advise Therium and its shareholders in relation to the above Action as a client of the firm. Akin Gump's only client in relation to the Action is (and will remain) the Claimant in that action and, in the event of any conflict between the Claimants and Therium, Akin Gump shall be under no duty to advise Therium, nor shall it be prevented from continuing to advise the Claimants as a result of that conflict arising.

Yours faithfully,

Akin Gump Strauss Hauer & Feld LLP

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EXHIBIT G

Litigation Funding Agreement

This Litigation Funding Agreement (“Agreement”) is made and entered into as of December 27, 2019 (the “Effective Date”) by and between LEGALIST FUND II, L.P., a Delaware limited partnership (the “Funder”), and DiaMedica Therapeutics Inc., a corporation organized under the laws of British Columbia, Canada and headquartered in Minnesota, United States of America (the “Plaintiff”). Each of the Funder and the Plaintiff is individually referred to as a “Party” hereunder and collectively, the “Parties” hereunder.

Recitals

A. The Plaintiff has filed a lawsuit against PRA Health Sciences, Inc. and Pharmaceutical Research Associates Group B.V. (collectively, the “Defendant”) in an action styled: *DiaMedica Therapeutics Inc. v. PRA Health Sciences, Inc., et al.*, Case No. 1:18-cv-01318-MN, currently pending in the United States District Court for the District of Delaware (the “Action”) in connection with the Claim(s) (as defined below) it has against the Defendant.

B. The Plaintiff is being advised on and/or represented in connection with the Claim(s) by Fisher Broyles LLP (the “Lead Counsel”).

C. The Plaintiff and the Funder have agreed that the Funder will provide certain funding to facilitate the prosecution of the Claim(s) in exchange for certain payments if any recovery is awarded to the Plaintiff in connection with the Claim(s).

Agreement

The Plaintiff and the Funder, in consideration of the foregoing recitals, the mutual covenants, promises, and agreements hereinafter set forth, the mutual benefits to be gained by the performance thereof, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and accepted, intend to be legally bound by the terms and conditions of this Agreement.

1.0 Definitions

“Agreement” has the meaning set forth in the introductory paragraph.

“Budget” means the Lead Counsel’s reasonable estimate of the funding required to pursue the Claim(s), which is attached hereto as Exhibit A and may be amended by the Parties from time to time in accordance with Section 9.8 of this Agreement.

“Claim(s)” means the claims and causes of action asserted by the Plaintiff in the Action, and in each and every Proceeding(s) (as defined below), as may be amended from time to time, arising out of or in connection with such claims and causes of action.

“Claim Proceeds” means any and all net proceeds, receivables, property, cash, and other consideration due to and/or received by, on behalf of, or in lieu of payment to, the Plaintiff arising out of or in connection with the Claim(s) as a result of any judgment, award, order, settlement arrangement, and/or compromise (including payment of any damages (whether treble, compensatory, punitive, or special), compensation, interest, restitution, recovery, judgment sum, arbitral award, settlement sum, compensation payment, costs, and interest on costs), whether in monetary or non-monetary form, whether actual or contingent, and before deduction of any taxes which the Plaintiff may be liable to pay in connection with such value due to and/or received by Plaintiff; but after deduction of recoupments or setoffs in respect of any claim or counterclaim asserted against Plaintiff by the Defendant; provided, however, that notwithstanding the foregoing, Claim Proceeds shall not include specific performance or any injunctive relief by the Defendant, including, without limitation, production of clinical records or performance of services.

“Committed Funds” means up to an aggregate of \$1,000,000.00.

“Common Interest Material” means any discussion, evaluation, negotiation, or any other communication or exchange of information relating to the Claim(s) in any way, whether written or oral, between or among the Plaintiff, the Lead Counsel, the Funder, and/or the Funder’s legal counsel, provided that such communication or exchange of information would be protected by attorney–client privilege between the Lead Counsel and the Plaintiff, the attorney work-product doctrine, or some other privilege or discovery protection if not disclosed to a third party lacking a common legal interest.

“Confidential Information” means the Common Interest Material and, to the extent not already covered as Common Interest Material, any communication or exchange of information relating to the Claim(s), including: (a) information, of any type, relevant to understanding the Claim(s); (b) the Lead Counsel’s or the Funder’s counsel’s strategies, tactics, analyses, or expectations of the Parties to the Proceeding(s), regarding the Claim(s) or Claim Proceeds; and (c) any professional work product relating to the Claim(s) or the Claim Proceeds, whether prepared for the Plaintiff, the Lead Counsel, the Funder, or the Funder’s counsel. Notwithstanding the foregoing, Confidential Information does not include information that (i) was or becomes generally available to the public other than by breach of this Agreement; (ii) was, as documented by the written records of the receiving Party, known by the receiving Party at the time of disclosure to it or was developed by the receiving Party or its representatives without using Confidential Information or information derived from it; or (iii) was disclosed to the receiving Party in good faith by a third party who has an independent right to such subject matter and information.

“Costs and Disbursements” means the legal fees, court costs, and other miscellaneous expenses specified in the Budget or approved by the Lead Counsel.

“Lead Counsel” has the meaning set forth in the recitals.

“Defendant” has the meaning set forth in the recitals.

“Effective Date” has the meaning set forth in the introductory paragraph.

“Funder” has the meaning set forth in the introductory paragraph.

“Funder Costs Amount” means the total of all Costs and Disbursements actually paid or otherwise funded by the Funder pursuant to this Agreement plus the reimbursement of \$10,000.00 to the Funder for its diligence and underwriting costs, whether or not those Costs or Disbursements were reasonably incurred by the Plaintiff in accordance with this Agreement, or whether or not they were specified in the Budget.

“Funder Recovery Amount” means the greater of: ^{1,2}

- (i) \$1,000,000.00 if repayment occurs within nine (9) months of the Transfer Date, \$2,000,000.00 if repayment occurs after nine (9) months from the Transfer Date but before trial has begun, or \$3,000,000.00 thereafter; or
- (ii) twenty percent (20%) of the Claim Proceeds.

“JAMS” has the meaning set forth in Section 9.5.

“Non-Monetary Claim Proceeds Fair Market Valuation” means the Plaintiff’s good faith determination of the fair market value of any and all non-monetary Claim Proceeds constituting real or personal property other than cash; provided, however, that such Non-Monetary Claim Proceeds Fair Market Valuation shall not include specific performance by the Defendant or any injunctive relief against any Defendants, including without limitation, production of clinical records or performance of services.

¹ Note that in all cases, this is the premium amount paid in addition to the repayment of actual funds spent.

² In the event of a termination of this Agreement by either or both of the Parties, the percentage in subsection Funder Recovery Amount will be multiplied by the percentage of the Committed Funds actually paid by the Funder prior to termination.

“Plaintiff” has the meaning set forth in the introductory paragraph.

“Proceeding(s)” means each and every litigation or alternative dispute resolution proceeding arising out of or in connection with the Claim(s), including any settlement negotiation, arbitration, mediation or appeal, as well as any other proceedings which Funder and Plaintiff agree in writing shall be the subject of this Agreement. For the avoidance of doubt, Proceedings shall not include any proceedings governed by Section 9.5 of this Agreement.

“Obligations” means (a) the obligation of the Plaintiff to pay the Funder Costs Amount and Funder Recovery Amount to the Funder, (b) all other debts, liabilities, obligations, covenants and duties of the Plaintiff to the Funder now or hereafter existing, whether joint or several, direct or indirect, absolute or contingent, or due or to become due, arising under or in connection with this Agreement, or any of the transactions contemplated thereby and including any interest due thereon all as set forth in this Agreement; (c) all debts, liabilities, obligations, covenants and duties of the Plaintiff to pay or reimburse the Funder for all expenses, including reasonable out-of-pocket and documented attorneys’ fees, incurred by the Funder in connection with the enforcement, attempted enforcement, or preservation of any rights or remedies under this Agreement, including all such costs and expenses incurred during any legal proceeding, including any proceeding under any applicable bankruptcy, insolvency or other similar debtor relief laws; and (d) all interest and fees on any of the foregoing, whether accruing prior to or after the commencement by or against Plaintiff of any proceeding under any applicable bankruptcy, insolvency, or other similar debtor relief laws naming Plaintiff as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“Transfer Date” means the date on which the Action is transferred to the U.S. District Court for the District of Minnesota.

2.0 Funding Terms

2.1 Agreement to Fund Plaintiff. In return for the Plaintiff’s agreement to pay from any Claim Proceeds recovered the Funder Costs Amount and the Funder Recovery Amount to the Funder in accordance with the terms of this Agreement, the Funder agrees to pay reasonable Costs and Disbursements in accordance with the terms of this Agreement.

2.1.1 Transfer of Case or Denial of Motion. Plaintiff has filed a motion to transfer venue of the Claims from Delaware to Minnesota. The Funder’s agreement to pay reasonable Costs and Disbursements is conditioned on the Claims being transferred to the U.S. District Court for the District of Minnesota. Plaintiff has an obligation to inform Funder when the motion is decided. The Funder shall promptly, no later than three (3) business days after receiving notice of the transfer, advance to the Plaintiff \$200,000.00 to an account designated in writing by the Plaintiff to the Funder, which sum represents fees and costs previously paid by Plaintiff in the Action.

2.2 Reasonable Costs and Disbursements Only. Unless otherwise agreed by the Funder, the Funder will not pay and will not be liable under this Agreement for any unreasonable Costs and Disbursements, including without limitation, the following costs, disbursements, or liabilities that may be incurred by the Plaintiff:

- 2.2.1 costs and/or other sums incurred as a result of the Plaintiff’s willful failure (on any one or more occasions) to cooperate with or to follow the advice of the Lead Counsel, subject to Section 6.4;
- 2.2.2 costs and/or other sums incurred as a result of any default by the Plaintiff under this Agreement after the expiration of any applicable grace or cure period hereunder;

- 2.2.3 any liability for payment of the Defendant's costs or the Plaintiff's liability for fines or penalties as set forth in a final non-appealable order or decision entered in the Action;
- 2.2.4 costs and/or other sums incurred as a result of any unreasonable failure by the Plaintiff or the Lead Counsel to comply with applicable law, an order or procedural rule of the applicable court during the Proceedings, or any discovery or other related obligations, in each instance, as set forth in a final non-appealable order or decision entered into in such Proceedings;
- 2.2.5 costs and/or other sums incurred as a result of any sanctions ordered against the Plaintiff or the Lead Counsel in the Proceedings;
- 2.2.6 costs and/or other sums incurred prior to the Effective Date (unless such costs are included in the Budget or in this Agreement) or after the term of this Agreement;
- 2.2.7 costs and/or other sums incurred over sixty (60) days prior to the date the invoice is submitted to the Funder, except as otherwise provided in Sections 2.2.1 and 2.2.6 above; or
- 2.2.8 any Costs or Disbursements in excess of the Committed Funds.

2.3 Payment Terms; Disputed Amounts. The Plaintiff shall instruct the Lead Counsel and any other service providers provided for in the Budget to address invoices relating to the work described in the Budget to the Plaintiff but mark such invoices payable by the Funder, and to deliver such invoices to the Plaintiff (with a copy delivered to the Funder simultaneously) for payment. After the Plaintiff approves such invoices and the Funder agrees that the Costs and Disbursements on an invoice are reasonable, the Funder shall promptly pay (without setoff, claims, defenses or any deduction) the applicable amount when due up to an aggregate amount not to exceed the Committed Funds. If the Funder, in its reasonable opinion, believes that some or all of the Costs and Disbursements on an invoice are unreasonable and are not required to be paid by the Funder pursuant to this Agreement, the Funder shall provide a written notice setting out the reasons for its belief to the Plaintiff (with a copy to the relevant billing party simultaneously) within twenty (20) days of receipt of the invoice. In the event the Funder provides such a notice, the Funder and the Plaintiff agree to work together with the relevant billing party to resolve the disputed amounts. Pending resolution of such disputed amounts, the Funder shall pay any Costs and Disbursements that are not subject to dispute. In the event that the Funder and Plaintiff are unable to resolve the disputed amounts within thirty (30) days, the Funder and the Plaintiff shall rely on the arbitration procedure set out in Section 9.5 for resolution. The Parties acknowledge and agree that the funding by the Funder to the Plaintiff shall be on a non-recourse basis except to the extent of the Funder's right to share in the Claim Proceeds as set forth in this Agreement.

2.4 Failure to Fund; Cessation of Funding. If the Funder fails to timely release and/or notifies the Plaintiff that it will cease to pay Costs and Disbursements in accordance with the terms of this Agreement, the Plaintiff shall thereafter exercise its reasonable best efforts to enter into alternative funding arrangements in connection with the Claim(s). Funder acknowledges and agrees that it will accept the subordination of its right or entitlement to the Funder Costs Amount or the Funder Recovery Amount to facilitate Plaintiff's ability to secure alternative funding arrangements.

2.5 Change to Lead Counsel Agreement. If Costs and Disbursements under this Agreement include fees for the Lead Counsel, the Plaintiff verifies that the Lead Counsel and the Plaintiff have modified their fee agreement for advice and/or representation in connection with the Claim(s) to convert 25 percent of the Lead Counsel's hourly rate to an alternative fee agreement, which does not affect the Funder's priority on the Funder Costs Amount or the Funder Recovery Amount.

3.0 Recovery Terms

3.1 Agreement to Pay Funder. The Funder Costs Amount and the Funder Recovery Amount shall become payable only in the event that the Plaintiff recovers Claim Proceeds and in all other circumstances shall be non-recourse. In return for the Funder's agreement to pay the Plaintiff's reasonable Costs and Disbursements incurred in accordance with the terms of this Agreement, the Plaintiff agrees to pay the Funder, upon recovery of Claim Proceeds, the Funder Costs Amount and the Funder Recovery Amount. The Plaintiff acknowledges and agrees that the Funder's entitlement to the Funder Costs Amount and the Funder Recovery Amount shall begin to accrue upon the Funder's payment of any portion of the Committed Funds and continue to accrue with subsequent payments by the Funder pursuant to this Agreement, whether or not the Funder provides the entirety of the Committed Funds but only for so long as this Agreement is not terminated by the Funder or by the Plaintiff as a result of the Funder's breach of this Agreement, in which event, Funder Costs Amount and Funder Recovery Amount will be proportionately reduced as noted above. If the Claim Proceeds are insufficient to pay in full both the Funder Costs Amount and the Funder Recovery Amount, then the Claim Proceeds shall be applied exclusively and entirely to paying these amounts to the Funder, after which no further sum shall be due and/or payable to the Funder by the Plaintiff or any other Person pursuant to this Agreement.

3.2 Payment of Claim Proceeds; Non-Monetary Claim Proceeds. The Plaintiff agrees that the Lead Counsel will hold any Claim Proceeds received by it or by the Lead Counsel on its behalf in trust for the Funder, on terms that shall entitle the Funder to receive such part of the Claim Proceeds as shall be equal to the total of the Funder Costs Amount and the Funder Recovery Amount to the extent of such Claim Proceeds. The Plaintiff shall use its good faith best efforts to release Claim Proceeds to the Funder to pay the Funder Costs Amount and the Funder Recovery Amount pursuant to this Agreement as promptly as possible. All Claim Proceeds received in monetary form shall be paid into the Lead Counsel's escrow account immediately upon receipt for further payment to the Funder. In the case of Claim Proceeds received in non-monetary form constituting real or personal property other than cash, as defined above, provided that monetary Claim Proceeds are inadequate to fund the Funder Costs and Funder Recovery Amounts, and unless otherwise agreed by the Funder and the Plaintiff in writing, the Plaintiff shall, as promptly as practicable, pay into the Lead Counsel's escrow account an amount equal to the Non-Monetary Claim Proceeds Fair Market Valuation and simultaneously provide to the Funder in writing (with a copy delivered to the Lead Counsel simultaneously) a statement of the details of the Non-Monetary Claim Proceeds Fair Market Valuation. If the Funder, in its reasonable opinion, disagrees with the Non-Monetary Claim Proceeds Fair Market Valuation, the Funder shall provide a written notice setting out the reasons for its belief to the Plaintiff (with a copy to the Lead Counsel simultaneously) within twenty (20) days of receipt of the Non-Monetary Claim Proceeds Fair Market Valuation statement. In the event the Funder provides such a notice, the Funder and the Plaintiff agree to work together to resolve the disputed fair market value determination of the non-monetary Claim Proceeds. In the event the Funder and the Plaintiff are unable to resolve the disputed fair market value determination of the non-monetary Claim Proceeds within thirty (30) days, the Funder and the Plaintiff shall rely on the arbitration procedure described in Section 9.5 for resolution. Notwithstanding anything to the contrary in this Agreement, no Claim Proceeds shall be released from the Lead Counsel's escrow account until such dispute is finally resolved in accordance with this Section 3.2.

3.3 Unexpected Delay. "Unexpected Delay" occurs when repayment has not occurred within three and one-half (3.5) years past the Transfer Date, and thereafter, the Funder shall receive interest on such unpaid amounts equal to 20% per annum commencing on the three and one-half year anniversary of the Transfer Date and which shall be added to the Funder Costs Amount and Funder Recovery Amount. Such interest will be calculated on an annual basis and will be added to the principal at the end of the prior year. End of year principal will include Funder Costs Amount and Funder Recovery Amounts due based on funding and recovery terms set forth above, plus additional interest accrued to date as provided in this Section 3.3.

4.0 Plaintiff's Representations and Warranties

The Plaintiff represents and warrants to the Funder as follows:

4.1 Full Disclosure. The Plaintiff and the Lead Counsel have provided the Funder with all material information relating to the Claim(s), as requested by the Funder, excluding information protected solely by the attorney–client privilege. To the Plaintiff's knowledge, all information the Plaintiff and the Lead Counsel have provided to the Funder is true and correct in all material respects.

4.2 No Impairment. Other than as already disclosed to the Funder in writing prior to the date hereof or as alleged by the Defendants in the Action, the Plaintiff has not taken any action (including executing documents) or failed to take any action to its knowledge that (a) would materially and adversely affect the Claim(s), or (b) would give any person or entity (other than the Funder and the Plaintiff) an interest in the Claim Proceeds.

4.3 Solvency. The Plaintiff has no bankruptcy proceedings outstanding and has not received any written notice of potential proceedings against it.

4.4 Authority. The Plaintiff is duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization. The Plaintiff has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate (or, if applicable, other entity) action on the part of the Plaintiff and no further corporate (or, if applicable, other entity) action is required on the part of the Plaintiff to authorize this Agreement and the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Plaintiff and constitutes the valid and binding obligations of the Plaintiff, enforceable in accordance with its terms, subject to (a) laws of general application relating to bankruptcy, insolvency, and relief of debtors and (b) rules of law governing specific performance, injunctive relief, and other equitable remedies.

4.5 Common Interest. The Plaintiff has received the advice of the Lead Counsel, or of another duly qualified law firm or attorney, regarding the common interest doctrine in California.

5.0 Funder's Representations and Warranties

The Funder represents and warrants to the Plaintiff as follows:

5.1 Committed Funds. The Funder has, and will continue at all times during the term of this Agreement to have, sufficient funds available to fulfill its obligations under this Agreement.

5.2 No Conflicts. Other than as already disclosed to Plaintiff, the Funder has not, as of the Effective Date, (a) paid a referral fee to the Lead Counsel in connection with the Claim(s), the Plaintiff, or this Agreement; (b) entered into any transaction with the Lead Counsel that has or would make the Lead Counsel a part owner of the Funder; (c) contracted with any other party or potential party to the Claim(s); (d) engaged in negotiations with any other party or potential party to the Claim(s); or (e) entered into any relationship with the Lead Counsel that conflicts with the Plaintiff's interests regarding the Claim(s). The Funder does not have a duty, contractual obligation, or other requirement to monetize its interest in the Claim(s) within any particular time frame or which would require the Funder to cease funding the Claim(s). For the avoidance of doubt, the preceding sentence does not include a fiduciary duty that would require the Funder to cease funding the Claim(s) pursuant to Section 8.2.3 because of the Funder's assessment of the viability of the Claim(s). In addition, the Funder has not instituted any action, suit, or arbitration separate from the Claim(s) arising from the same facts, circumstances or law giving rise to the Claim(s), and has not granted (or purported to grant) any charge, lien, or other security interest with respect to the Claim(s) and the Claim Proceeds in any way, other than such payments that would become due after all payments due to the Funder under this Agreement have been satisfied in full.

5.3 No Disclosure of Common Interest Material. The Funder and its legal counsel have not disclosed any Common Interest Material to anyone without the prior written consent of the Plaintiff and has and will continue to maintain at all times during the term of this Agreement the Common Interest Material strictly confidential. The disclosure of Common Interest Material to the Funder pursuant to this Agreement will not at any time result in any waiver of the attorney-client, work product or any other legal privileges that may attach to all or any portion of such Common Interest Material under any applicable law.

5.4 Authority. The Funder is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. The Funder has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Funder and no further corporate action is required on the part of the Funder to authorize this Agreement and the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Funder and constitutes the valid and binding obligations of the Funder, enforceable in accordance with its terms, subject to (a) laws of general application relating to bankruptcy, insolvency, and relief of debtors and (b) rules of law governing specific performance, injunctive relief, and other equitable remedies.

6.0 Additional Covenants

6.1 Accuracy of Representations and Warranties. Each of the Parties covenants and agrees that all of its representations and warranties made pursuant to this Agreement shall continue to be true and correct throughout the term of this Agreement. Each Party further agrees to promptly notify the other Party in the event a representation or warranty is no longer true and correct.

6.2 Duty to Cooperate. The Plaintiff covenants to cooperate in the prosecution of the Claim(s), including without limitation, that the Plaintiff will cause its officers, executives, and employees to promptly and fully assist the Lead Counsel as reasonably necessary to conduct and conclude the Claim(s). For the avoidance of doubt, such assistance includes all actions any plaintiff may reasonably expect undertaking, including, without limitation, submitting to examination, verifying statements under oath, and appearing at any Proceedings.

6.3 Duty to Conduct Claim(s). The Plaintiff covenants that it shall exercise its reasonable best efforts to continue to conduct its prosecution of the Claim(s) until their settlement or final resolution as long as the Lead Counsel continues to represent the Plaintiff on a contingency basis or the Funder continues to fund the Claim(s) in accordance with this Agreement.

6.4 Control of Claim(s). The Plaintiff shall retain control over the conduct of the Claim(s) and in particular over settlement of the Claim(s) with the Defendant. Without limiting the previous sentence, however, the Plaintiff agrees to take and follow the legal advice of the Lead Counsel at all appropriate junctures (excluding, however, the Lead Counsel's advice whether to make or accept any offer to settle the Claim(s), which shall be decided by the Plaintiff in its sole and absolute discretion).

6.5 No Interference. The Parties recognize that the Lead Counsel must at all times comply with its ethical duties to act in the best interests of the Plaintiff and in accordance with its other professional responsibilities and duties. Nothing in this Agreement entitles the Funder to interfere in the conduct of the Claim(s) and/or the Proceedings.

6.6 Duty to Inform. The Plaintiff agrees and undertakes to keep the Funder reasonably informed about the progress of the Claim(s) insofar as is proportionate, reasonably practicable, and in a manner consistent with maintaining applicable privileges and all applicable laws. In providing to the Funder any documents or information about the Claim(s) and the Proceedings, the Plaintiff does not intend to waive any privilege that may attach to such documents or information. Subject to the Funder's confidentiality obligations under this Agreement, subject to and pursuant to any applicable protective order, and subject to the Lead Counsel's reasonable judgment with respect to the preservation of all applicable legal privileges of the Plaintiff's, the Plaintiff hereby irrevocably instructs the Lead Counsel to provide written status reports to the Funder, in form and detail reasonably acceptable to the Funder, at least once each calendar quarter during the pendency of the Claim(s); upon the occurrence of any material event in the Claim(s); and from time to time upon the Funder's reasonable request. In addition, but subject to the foregoing, the Plaintiff hereby irrevocably instructs the Lead Counsel to provide to the Funder within three (3) business days following receipt a copy of any material document or filing made or obtained in the Proceedings by way of discovery, subpoena, or any other lawful means, including without limitation, the following:

- 6.6.1 Non-Privileged Information: The Plaintiff hereby irrevocably instructs the Lead Counsel, and if further instructions are needed, undertakes to instruct the Lead Counsel, to provide the Funder with copies or summaries of all material, non-privileged information, regardless of the information's source, confidentiality, or form, unless the Funder already possesses or controls such information.
- 6.6.2 Attorney Work Product: Acknowledging that this Agreement contains provisions requiring the Parties to protect the confidentiality of any Confidential Information disclosed to it and that such information includes attorney work product, the Plaintiff hereby irrevocably instructs the Lead Counsel, and if further instructions are needed, undertakes to instruct the Lead Counsel, to provide the Funder with all material attorney work product relating to the Claim as soon as practicable.
- 6.6.3 Attorney-Client Privileged Information: Relying on the Parties' agreement that they share a common legal interest and that communicating attorney-client privileged information to the Funder in the furtherance of that interest does not waive the privilege, the Plaintiff undertakes to share such information on a topic-by-topic basis, provided that neither the Plaintiff nor the Lead Counsel shall disclose attorney-client protected information to the Funder unless (i) the Plaintiff has discussed with the Lead Counsel the information to be shared, the reason for the sharing, and the probable consequences if the sharing is ultimately held to waive the privilege; and (ii) the Plaintiff has given written consent to such information sharing.

6.7 No Change in Lead Counsel Without Funder Notice. The Plaintiff agrees and undertakes that it will not engage a new attorney or law firm by executing a retainer agreement or other contract to employ such attorney or law firm to advise and/or represent the Plaintiff in connection with the Claim(s), without giving the Funder thirty (30) days' prior notice and without giving good faith consideration to the Funder's response, if any.

6.8 Funder Notifications of Settlement. The Plaintiff agrees that it will immediately notify the Funder upon receiving a settlement offer and provide the Funder with the complete details of the offer in such notice. The Plaintiff agrees that it will not make a settlement offer without first notifying the Funder of the proposed offer, including the complete details of the proposed offer. The Plaintiff agrees that it will not respond to a settlement offer or make a settlement offer until after giving good faith consideration to the Funder's analysis of the offer, provided that the Funder communicates its analysis within two (2) business days of receiving notice of the offer in accordance with this section. The Funder agrees to waive the right to offer analysis if the Lead Counsel and the Plaintiff determine that doing so would adversely affect their ability to come to an agreement with the Defendant. Such waivers can be called on by the Lead Counsel without notification, on a case-by-case basis. For the avoidance of doubt, the Parties acknowledge and agree that any decision regarding settlement of Claim(s), including the ultimate decision whether and for how much to settle any Claim(s), lies solely with the Plaintiff.

6.9 Indemnification. Plaintiff agrees to indemnify the Funder with respect to any and all losses or damages (including reasonable out-of-pocket and documented attorney's fees and any other costs of recovering the same) suffered by the Funder as a result of any negligence or breach of duty owed by the Lead Counsel to the Plaintiff in connection with the Claim(s) or the Proceedings, including without limitation, duties owed in connection with (a) the preparation and/or provision of (or failure to provide) any documents, materials, or information relating to the Claim(s) prior to or subsequent to the Effective Date and (b) the prosecution of the Claim(s) and/or the conduct of the Proceedings prior to or subsequent to the Effective Date. The Plaintiff agrees to cooperate with the Funder in the pursuit of any suit filed against the Lead Counsel by either the Plaintiff or the Funder in connection with such loss or damage. The indemnity in this section is limited to the extent of any successful recovery of such loss or damage or costs in any such proceedings against the Lead Counsel. The Funder shall indemnify the Plaintiff with respect to any and all losses or damages (including reasonable out-of-pocket and documented attorneys' fees and any other costs of recovering the same) suffered by the Plaintiff as a result of (i) the breach of, inaccuracy of, or failure to comply with, any of the warranties, representations or covenants of the Funder in this Agreement, including, without limitation, any damages suffered by the Plaintiffs arising out of the loss of any privilege with respect to any Common Interest Materials disclosed to the Funder pursuant to this Agreement.

6.10 Future Encumbrances. The Plaintiff shall not itself, nor shall it cause, permit, or allow, directly or indirectly, anyone else to, create, assume, incur, suffer, or permit to exist any pledge, encumbrance, security interest, assignment, lien, or charge of any kind or character on the Claim(s) without the Funder's written approval. The Plaintiff shall not itself, nor shall it cause, permit, or allow any sale, transfer, issue, reissue, exchange, or grant any option with respect to the Claim(s) without the Funder's written approval.

7.0 Common Interest and Confidentiality

7.1 Common Interest. The Plaintiff and the Funder agree they share a common legal interest and, to the degree necessary to further their common legal interest, agree to share Common Interest Material in accordance with the terms of this Agreement only to the extent such disclosure would not, in the sole judgment of the Lead Counsel, result in a waiver of any privilege that may attach to such Common Interest Material. The Plaintiff and the Funder agree the material would not be shared if the common legal interest did not exist. The Plaintiff and the Funder do not waive any legal professional privilege, common interest privilege, or other privilege or protection attaching to any documents and information disclosed to the Funder. Any privileged information and documents disclosed at any time to the Funder have been or will be disclosed on the additional basis that the Funder has, or will have, a common interest in the pursuit and success of the Proceedings and will at all times take all reasonable steps to maintain that privilege. It is agreed that the provision of privileged documents does not amount to any waiver of privilege, and the Funder shall not use these for any purpose other than in respect of this Agreement, except a purpose to which the Parties have consented in writing or as required by law or regulation.

7.2 Non-Disclosure Generally. During the term of this Agreement and for five (5) years following its termination, the recipient of Confidential Information of the other Party shall not disclose, use, or make available, directly or indirectly, any such Confidential Information to anyone (including, without limitation, the existence and terms of this Agreement), except as needed to perform its obligations under this Agreement, as the disclosing Party otherwise authorizes in writing, or as required by law. When disclosing, using, or making Confidential Information available in connection with the performance of its obligations under this Agreement or as permitted by the disclosing Party, the recipient shall take reasonable steps to preserve the confidentiality of the Confidential Information on terms no less restrictive than as set forth in this Agreement. The Parties agree that neither the execution of this Agreement nor the provision of Confidential Information enables the other Party to use the Confidential Information for any purpose or in any way other than as specified in this Agreement.

7.3 Potentially Enforceable Disclosure Requests. If a Party receiving Confidential Information receives a potentially enforceable request for the production of such Confidential Information, including without limitation, a subpoena or other official process, that Party will promptly notify the disclosing Party in writing, unless such notice is prohibited by law. If allowed, such notice shall be given before complying with the request and shall include a copy of the request. If the request is of the recipient of Confidential Information, and notice to the disclosing Party is prohibited by law, the recipient must make a good faith effort to contest the disclosure, if permitted under applicable law. The recipient shall also make a good faith effort to obtain an agreement protecting the confidentiality of the Confidential Information prior to disclosing it. If a disclosing Party elects to contest the request, the receiving Party shall not make any disclosure until a final, non-appealable or non-stayed order has been entered compelling such disclosure. The contesting Party shall pay its own expenses and control its contest, provided that, if the recipient contests a request when forbidden by law to give the disclosing Party notice of the disclosure request, the disclosing Party shall reimburse the recipient's reasonable expenses promptly after being notified of them.

8.0 Term

8.1 Term. The term of this Agreement shall commence on the Effective Date and terminate upon the earlier to occur of (a) the satisfaction in full of all payment obligations of the Plaintiff to the Funder pursuant to this Agreement and (b) the early termination of this Agreement pursuant to Section 8.2.

8.2 Termination. The term of this Agreement may be terminated by:

- 8.2.1 the mutual written agreement of the Parties;
- 8.2.2 either Party in the event the other Party commits a material breach of this Agreement, which breach has not been cured within ten (10) days following written notice of the breach from the non-breaching Party to the breaching Party (provided that if such breach is impossible to cure, the term may be terminated immediately upon notice of such breach to the breaching Party); or
- 8.2.3 by the Plaintiff upon written notice to the Funder after a failure by the Funder to fund the Costs and Disbursements as provided in this Agreement; or
- 8.2.4 the Funder, upon thirty (30) days advance written notice to the Plaintiff, in the event that:
 - (a) the Plaintiff or the Lead Counsel has made a material misrepresentation or omitted to disclose a material fact that is materially adverse to the merits of the Claim(s);
 - (b) the Lead Counsel is no longer actively representing the Plaintiff in the Claim(s) or the Plaintiff has provided the Funder with notice in accordance with Section 6.7 that it intends to engage a new attorney or law firm (unless the Plaintiff has obtained the Funder's prior written consent to engage the new attorney or law firm);
 - (c) the Funder reasonably concludes that because of a change of factual circumstances the Claim(s) is not or are not commercially viable; or
 - (d) there exists one or more events or a material change of circumstances that make it unlikely that the Plaintiff can recover Claim Proceeds sufficient to repay the Funder the Funder Costs Amount.

Any mutual agreement or notice of termination pursuant to this Section 8.2 shall be simultaneously provided to the Lead Counsel.

8.3 Effect of Termination. In the event the term of this Agreement is terminated pursuant to Section 8.2, the Funder shall have no further obligation to fund the reasonable Costs and Disbursements of the Plaintiff following the effective date of the termination. Any such termination by the Plaintiff shall not affect any accrued rights or entitlement of the Funder to receive the Funder Costs Amount and the Funder Recovery Amount pursuant to this Agreement. Any such termination by the Funder shall result in the proportionate reduction of the accrued rights or entitlement of the Funder to receive the Funder Costs Amount and the Funder Recovery Amount as noted above. Any termination pursuant to Section 8.2 shall not serve as a waiver of such Party's right to seek damages at law or other remedy in equity.

8.4 Survival. Sections 1, 3 (other than Section 3.1), 4, 5, 7, 8, and 9 shall survive any termination of the term of this Agreement.

9.0 Miscellaneous

9.1 Limitation of Funder's and Plaintiff's Liability. Except where directly and demonstrably caused by gross negligence or willful misconduct on the part of Funder, under no circumstances shall the Funder be liable for any outcome or disposition with respect to the Claim(s). IN NO EVENT SHALL FUNDER, PLAINTIFF, THEIR RESPECTIVE AFFILIATES OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, ATTORNEYS, OR AGENTS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING FROM OR DIRECTLY OR INDIRECTLY RELATED TO THE AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, ANTICIPATED PROFITS, OR LOST BUSINESS, DATA OR SALES, OR COST OF SUBSTITUTE SERVICES, EVEN IF FUNDER OR ITS REPRESENTATIVE OR SUCH INDIVIDUAL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE TOTAL LIABILITY OF FUNDER FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR OTHERWISE) ARISING FROM THE AGREEMENT EXCEED, IN THE AGGREGATE, THE COMMITTED FUNDS.

9.2 Survival of Warranties. Unless otherwise set forth in this Agreement, the representations and warranties of the Parties contained herein shall survive the execution and delivery of this Agreement and shall in no way be affected by any investigation or knowledge of the subject matter thereof by or on behalf of the other Party.

9.3 Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties, provided that the Plaintiff may not assign the rights and obligations under this Agreement without the prior written consent of the Funder.

9.4 Governing Law. This Agreement shall be governed by the internal laws of the State of California without respect to any rules regarding choice of law.

9.5 Dispute Resolution. Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in San Francisco, CA before one (1) arbitrator. The arbitration shall be administered by JAMS Alternative Dispute Resolution ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures then in effect and in accordance with the Expedited Procedures in those Rules. Service of any notice, including for service of process in any subsequent enforcement of the arbitration award in court may occur via electronic mail. The Parties agree to submit to the personal jurisdiction of California for the purposes of such arbitration, and judgment upon any award rendered in such arbitration will be binding and may be entered in any court having jurisdiction thereof.

Each Party will bear its own costs in respect of any disputes arising under this Agreement, except that the prevailing Party shall be entitled to recovery of reasonable attorney's fees in connection with any dispute that results in a total or partial judgment in favor of the prevailing Party.

9.6 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail, or other transmission method.

9.7 Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt, or (a) personal delivery to the Party to be notified, (b) when sent, if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. All communications shall be sent to the respective Parties at their address as set forth on the signature page, or to such e-mail address, facsimile number, or address as subsequently modified by written notice given in accordance with this section.

9.8 Amendments and Waivers. Any term of this Agreement may be amended, terminated, or waived only with the written consent of the Parties.

9.9 Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision. If any provision of this Agreement is determined to be invalid or unenforceable under applicable law and regulations by a court of competent jurisdiction, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and be enforceable.

9.10 Delays or Omissions. No delay or omission to exercise any right, power, or remedy accruing to any Party under this Agreement, upon any breach or default of any other Party under this Agreement, shall impair any such right, power, or remedy of such non-breaching or non-defaulting Party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent, or approval of any kind or character on the part of any Party of any breach or default under this Agreement, or any waiver on the part of any Party of any provisions or conditions of this Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any Party, shall be cumulative and not alternative.

9.11 Force Majeure. In the event that either Party fails or is unable to perform any of its obligations under this Agreement due to any cause beyond its reasonable control, such Party shall give the other Party prompt notice of such cause, and use its reasonable best efforts to promptly correct such failure or delay in performance.

9.12 Investments Not Loans. All references in this Agreement to funding the costs and expenses of pursuing the Claim(s), however described, shall be construed to be references to Funder's investment in the Claim(s) and associated right to share in the Claim Proceeds together with the other rights set out in this Agreement, in return for its associated obligations set out in this Agreement, and it shall not be construed as a loan from the Funder to the Plaintiff or giving rise to a lender-borrower arrangement and/or relationship.

9.13 Additional Savings Clause. The Parties agree that this Agreement is not a loan and is not subject to any usury provision of the applicable state. All agreements between the Plaintiff, the Lead Counsel and the Funder are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid to the Funder for the use, forbearance, or detention of the money to be funded in this Agreement exceed the maximum permissible under applicable law. If, from any circumstance whatsoever, fulfillment of any provision hereof, at the time performance of such provision shall be due, shall be prohibited by law, the obligation to be fulfilled shall be reduced to the maximum not so prohibited, and if from any circumstance the Funder should ever receive as interest (although Funder denies any "interest" is due) hereunder an amount which would exceed the highest lawful rate, such amount as would be excessive interest shall be applied to the reduction of the principal of the Agreement (against installments of principal due hereunder in the inverse order of their maturity) and not to the payment of interest. This provision shall control every other provision of all agreements between and among the Plaintiff, the Lead Counsel, and the Funder.

9.14 Advice on this Agreement. Each Party represents to the other Party that it (a) has read this Agreement; (b) has been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of the Party's own choice or has voluntarily declined to seek such counsel; (c) understands the terms and consequences of this Agreement; and (d) is fully aware of the legal and binding effect of this Agreement.

9.15 Entire Agreement. This Agreement (including any exhibits or schedules thereto) constitutes the full and entire understanding and agreement between the Parties with respect to the subject matter hereof, and any other written or oral agreements relating to the subject matter hereof existing between the Parties are expressly canceled.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties hereto have executed this Litigation Funding Agreement as of the Effective Date.

PLAINTIFF:

DiaMedica Therapeutics Inc.

By: /s/ Rick Pauls
Name: Rick Pauls
Title: President and Chief Executive Officer
Address: 2 Carlson Pkwy, Suite 200
Minneapolis, MN 55447
E-mail: rpauls@diamedica.com

FUNDER:

LEGALIST FUND II, L.P.
By: Legalist GP II, L.L.C., its General Partner

By: /s/ Eva Shang
Name: Eva Shang
Title: Manager
Address: 880 Harrison Street
San Francisco, CA 94107
E-mail: eva@legalist.com

LEAD COUNSEL:

Fisher Broyles, LLP

By: /s/ Alfred J. Monte
Name: Alfred J. Monte
Title: Partner
Address: 1650 Market Street, 36th Fl
Philadelphia, PA 19103
Email: alfred.monte@fisherbroyles.com

List of Exhibits

Each of the following exhibits to this Litigation Funding Agreement has been omitted in accordance with Item 601(a)(5) of Regulation S-K. The registrant will furnish supplementally copies of the omitted exhibits to the SEC upon its request.

Exhibit A – Budget

Exhibit B – Wire Details

EXHIBIT H

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FUNDING AGREEMENT

This Funding Agreement, dated as of March 11, 2014, is entered into by and between Longford Capital Fund I, LP (“LCF”), a Delaware limited partnership, on the one hand, and Quest Patent Research Corporation (“QPRC”), a Delaware corporation, and its subsidiary, Quest Licensing Corporation (“QLC” and, together with QPRC, each a “Claim Owner” and “collectively “Claim Owner”), a New York corporation, on the other hand (LCF and Claim Owner are collectively referred to herein as the “Parties” and individually as a “Party”).

RECITALS

WHEREAS, QPRC, through its subsidiary QLC, the owner of all right, title and interest to United States Patent Number 7,194,468 entitled APPARATUS AND A METHOD FOR SUPPLYING INFORMATION, possesses certain Claims, as defined in Section 2 below, for which it intends to seek redress.

WHEREAS, LCF is prepared to fund certain Attorneys’ Fees, Expenses, Inter Partes Review Expenses and Operating Expenses as each is defined in Section 2 below, associated with the Claims, and Claim Owner is prepared to assign LCF a portion of the Proceeds, as defined in Section 2 below, of the Claims pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration for the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. CONSTRUCTION

- 1.1 For purposes of this Agreement, defined terms shall have the meanings set forth in Section 2 below.
 - 1.2 Headings are for information only and do not form part of the operative provisions of this Agreement.
 - 1.3 References to this Agreement include references to the Recitals.
 - 1.4 In this Agreement, unless a clear contrary intention appears:
 - (a) words denoting the singular include the plural and vice versa;
 - (b) words denoting any gender include all genders;
 - (c) all references to “\$” or dollars shall mean U.S. Dollars;
 - (d) the word “or” shall include both the adjunctive and the disjunctive meaning thereof; and
 - (e) the words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.”
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1.5 The terms of this Agreement have been negotiated between the Parties in an arm's length transaction, and shall not be construed for or against either Party by reason of the drafting or preparation hereof.

2. DEFINITIONS

The following terms shall have the meanings given below:

2.1 "Adverse Claim" means any claim, cause of action, suit, or demand, including any counterclaim or third-party claim that is adverse to Claim Owner, Claim Owner's Affiliates, Claim Owner's Attorneys, LCF, Longford Investment Group, LLC, Longford Advisors, LLC, Longford Capital Management, LP, or LCF's interests pursuant to this Agreement; provided that "Adverse Claim" shall not include any non-monetary counterclaim relating directly to the Claims brought by a Defendant, including allegations regarding the invalidity, non-infringement, or unenforceability of any of the Patents, except to the extent that any such non-monetary counterclaim is in connection with, arises out of, or is otherwise related to any breach (or is based on or relates to facts or circumstances the existence of which would constitute a breach) of any representations or warranties or covenants made by Claim Owner in this Agreement.

2.2 "Agreement" means, collectively, this Agreement, together with all exhibits, schedules and amendments hereto, including all documents expressly incorporated herein by reference.

2.3 "Affiliate" means as to any Person (i) any other Person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person or its respective successors or (ii) if such Person is an individual, a spouse, parent, sibling, or descendant of such Person, or a trust over which such Person has sole investment and dispositive power for the benefit of such Person, spouse, parent, sibling, or descendant. The term "control" including the terms "controlling," "controlled by," and "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting shares, by contract, or otherwise. Affiliates includes such entities whether now existing or later established by investment, merger, or otherwise, including the successors and assigns of such Person. In the case of the United States Government, Affiliates also includes departments or agencies of the United States Government.

2.4 "Assigned Rights" means all of Claim Owner's Rights in and to the Proceeds in an amount equal to the sum of 100% of LCF's Invested Capital plus LCF's Profit that is due in accordance with Section 4.2.

2.5 "Attorneys' Fees" means the fees charged by Claim Owner's Attorneys to prosecute the Claims to completion, including pre-trial, trial, and collections of any settlements, judgments, and awards, and to defend any non-monetary counterclaims brought against the Claim Owner by any of the Defendants relating directly to the Claims, including allegations regarding invalidity, non-infringement, or unenforceability of the Patents. Claim Owner's Attorneys have agreed to represent Claim Owner on a fixed fee and partial contingency arrangement. For the avoidance of any doubt, LCF shall pay Attorneys' Fees of up to ● as follows: (i) a retention fee of ●, to be paid to Claim Owner's Attorneys within 10 business days after the full execution of this Agreement; (ii) a fixed fee of ● per month, to be paid to Claim Owner's Attorneys' within the first 5 business days of each month for the first ● months, commencing with the first full calendar month after the full execution of this Agreement; (iii) a fixed fee of ● per month, to be paid to Claim Owner's Attorneys within the first 5 business days of each month for months ● after the full execution of this Agreement (the amounts paid under clause (ii) and (iii), the "Fixed Fee Payments"); and (iv) a trial fee of ●, to be paid to Claim Owner's Attorneys 5 business days prior to the commencement of trial. If the Claims are resolved, no further Fixed Fee Payments will be made. If the Claims are stayed for any reason, including as a result of inter partes review, no Fixed Fee Payments will be made during the pendency of the stay.

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- 2.6 “Authorization” means an authorization, consent, approval, resolution, license, exemption, filing, notarization, or registration.
- 2.7 “Authorized” means any act or Authorization required to make an action legally binding on a Party.
- 2.8 “Claims” means all threatened or actual legal claims, actions, suits, arbitrations, causes of action, or proceedings before any supranational, national, state, municipal, or local entity or governmental authority, whether located within or without the United States, including any U.S. District Court, and demands asserted by Claim Owner or its Affiliates against one or more of the Defendants or against any other parties threatened with or added to a claim, action, suit, arbitration, cause of action, or proceeding brought against any of the Defendants relating to claims of patent infringement of any of the Patents that are or may be included by or on behalf of Claim Owner against the accused parties or included in any settlement or resolution of that Claim.
- 2.9 “Claim Owner’s Attorneys” means the law firm of MoloLamken LLP.
- 2.10 “Closing” means the closing of the transactions contemplated hereby pursuant to Section 6.
- 2.11 “Closing Date” means the date on which each of the conditions set forth in Section 6 of this Agreement is satisfied or waived by the applicable Party.
- 2.12 “Compensable Costs” means the Expenses plus any Inter Partes Review Expenses. For the avoidance of doubt, Claim Owner and Claim Owner’s Attorneys have agreed to a cap on the amount of Compensable Costs for which LCF’s Committed Amount may be used of ● (the “Compensable Cost Cap”), with any overage being the responsibility of Claim Owner or Claim Owner’s Attorneys.
- 2.13 “Confidential Information” means all documents and information (whether written or oral), including all communications, contracts, and agreements, exchanged by the Parties related to the Parties’ relationship, the Funding Documents, or the Claims. The term Confidential Information does not include information that: (i) becomes generally available to the public other than as a result of a breach by a Party of this Agreement, (ii) is already in the receiving Party’s possession, provided that such information is not known by the receiving Party to be subject to a contractual or legal obligation of confidentiality to the disclosing Party, or (iii) becomes available to the receiving Party on a non-confidential basis from a source other than the disclosing Party, provided that such source is not known by the receiving Party to be bound by a contractual or legal obligation of confidentiality to the disclosing Party.

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2.14 “Defendants” means Bloomberg LP, and at least four additional Persons, which shall be identified by Claim Owner within 90 days of the full execution of this Agreement, and all additional Persons against which Claims are threatened, alleged, or asserted by Claim Owner under this Agreement.

2.15 “Disputes” has the meaning set forth in Section 10.3.

2.16 “Dollar” or “Dollars” means United States Dollars.

2.17 “Due Diligence Fee” means an amount equal to \$105,000 in respect of attorneys’ fees and expenses incurred by LCF in connection with the second stage of its due diligence investigation.

2.18 “Escrow Holder” means the third-party escrow company mutually selected by LCF and Claim Owner.

2.19 “Event of Default” means any event or circumstance specified as such in Section 9.1 of this Agreement. An Event of Default is “continuing” if it has not been remedied or waived in accordance with this Agreement.

2.20 “Expenses” means reasonable out-of-pocket expenses actually incurred by Claim Owner’s Attorneys in connection with the prosecution of the Claims and defending any non-monetary counterclaims brought against the Claim Owner by any of the Defendants relating directly to the Claims, including allegations regarding invalidity, non-infringement, or unenforceability of the Patents. The reasonableness of Expenses incurred by Claim Owner’s Attorneys will be determined in accordance with the commercially reasonable costs typically charged for such Expenses. Expenses include reasonable and documented expert and consulting fees; local counsel fees; e-discovery vendors; litigation support services for audio and visual presentations; jury consultants; focus groups; photocopying; postage and delivery; computer-assisted research; filing fees; court reporters and other transcription services; and reasonable travel expenses. Expenses do not include Attorneys’ Fees, Inter Partes Review Expenses, or any fees or expenses relating to costs or damages awards against Claim Owner resulting from any Adverse Claim. For the avoidance of doubt, Claim Owner and Claim Owner’s Attorneys have agreed to a cap on the amount of Expenses for which LCF’s Committed Amount may be used of \$1.3 million, with any overage being the responsibility of Claim Owner or Claim Owner’s Attorneys.

2.21 “Funding Documents” means, collectively, this Agreement, the Perfection Documents, and any other document contemplated by this Agreement.

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2.22 “Inter Partes Review Expenses” means attorneys’ fees and out-of-pocket expenses actually incurred by Claim Owner or Claim Owner’s Attorneys in connection with the defense of an inter partes review of the Patents. For the avoidance of doubt, Claim Owner and Claim Owner’s Attorneys have agreed to a cap on the amount of Inter Partes Review Expenses for which LCF’s Committed Amount may be used of ●, with any overage being the responsibility of Claim Owner or Claim Owner’s Attorneys. If inter partes review does not occur, such ● set aside for the Inter Partes Review Expenses may be reallocated to pay other reasonable Expenses at the request of Claim Owner’s Attorneys, and with the prior written approval of LCF.

2.23 “Joint-Order Escrow Account” means an escrow account held by Escrow Holder, in which the Proceeds of the Claims will be deposited immediately following receipt thereof pursuant to Section 4.2 of this Agreement. Escrow Holder will distribute all Proceeds deposited in the Joint-Order Escrow Account in accordance with the jointly executed written instructions of the Parties to this Agreement.

2.24 “LCF’s Commitment” has the meaning set forth in Section 3.1.

2.25 “LCF’s Committed Amount” has the meaning set forth in Section 3.1.

2.26 “LCF’s Invested Capital” means the sum of the Due Diligence Fee and all other money actually paid by LCF for Attorneys’ Fees, Expenses, Inter Partes Review Expenses, and Operating Expenses.

2.27 “LCF’s Profit” means LCF’s agreed upon share of the Proceeds of the Claims, after receiving the Realization Multiple, calculated as set forth in Sections 4.2(b), 4.2(c), and 4.2(d).

2.28 “Lien” means any mortgage, deed of trust, pledge, lien (common law, statutory or otherwise), security interest, charge or other encumbrance or security or preferential arrangement of any nature, including any conditional sale or title retention arrangement, any capitalized lease and any assignment, deposit arrangement or financing lease intended as, or having the effect of, security.

2.29 “Material Adverse Event” means any event or occurrence that LCF believes could have a material adverse effect on its investment including: (a) a material adverse change in, or material adverse effect upon, any of the Claims, including the dismissal of one or more of the Claims, a change in the law related to one or more of the Claims, a change in Claim Owner’s Attorneys, a change in the court or jurisdiction in which any of the Claims is pending, a change in the judge, magistrate, or arbitrator before whom any of the Claims is pending, or a change in strategy with respect to the assertion or prosecution of any of the Claims; (b) a material adverse change in, or a material adverse effect upon, the financial condition, operations, assets, business or properties of Claim Owner; (c) Claim Owner’s failure to provide reasonable support and cooperation or inability to perform any of its obligations under any provision of any Funding Document; (d) a material adverse effect upon the legality, validity, binding effect or enforceability of any provision of any Funding Document; or (e) Claim Owner’s failure to identify, within 90 days of the full execution of this Agreement, four Persons in addition to Bloomberg against which Claims will be threatened, alleged, or asserted as required by Section 2.14 herein and are satisfactory to LCF in its sole discretion.

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2.30 “Operating Expenses” means attorneys’ fees and out-of-pocket expenses actually incurred by Claim Owner in conjunction with the assertion of the Claims. For the avoidance of doubt, Claim Owner has agreed to a cap on the amount of Operating Expenses for which LCF’s Committed Amount may be used of ●, to be paid by LCF to Claim Owner for the shorter of the period of ● months, or until the resolution of the Claims, as follows: (1) ● to be paid within 10 business days of the full execution of this Agreement; (2) in months ● following the initial ● payment, ● per month within the first 5 business days of each month, commencing with the first full calendar month after the full execution of this Agreement; and (3) in months ● following the initial ● payment, ● per month within the first 5 business days of each month.

2.31 “Patents” means: (i) US Patent No. 7,194,468 and any continuations, continuations-in-part, divisionals, reissues, reexaminations, renewals, supplemental examinations and all other patents or patent applications based on or claiming priority from any of the foregoing; and (ii) any and all other patents owned or acquired by Claim Owner that are asserted, sold to, licensed, alleged, or claimed against any of the Defendants.

2.32 “Perfection Documents” means any agreement, document, or financing statement (and any amendments or continuation statements related thereto) that LCF deems necessary or desirable to perfect the security interest provided by Section 5 of this Agreement.

2.33 “Person” means any individual, firm, company, corporation, partnership, limited liability company, government, state, or agency, or subdivision of a state (or governmental entity), or any association, trust, joint venture, or consortium (whether or not having separate legal personality).

2.34 “Proceeds” means any and all gross, pre-Tax (i) monetary recovery or the value of any other consideration received, or to be received, directly or indirectly by Claim Owner, its Affiliates, related Persons, or any of their permitted assigns as a direct or indirect result of, part of, in connection with, relating to, or arising from, awards, damages, Royalties (including the Value of Royalties), monies, lump-sum payments, up-front payments, settlement amounts, distribution of property, cash value of equities, judgments, settlements, injunctions, sales, contracts, or other cash and non-cash amounts paid, received, or to be received by (which shall include amounts being set off against or otherwise reducing any obligation of Claim Owner or any of its Affiliates), transferred, owed, or inuring, directly or indirectly, to Claim Owner or any of its Affiliates or related Persons, whether as a direct or indirect result of, as part of, arising from, in connection with, or relating to, (x) awards or payments of attorneys’ fees, costs and expenses, settlement (reached before and after the initiation of litigation, arbitration, mediation, or a complaint, but after the execution of this Agreement), voluntary dismissals, and awards of sanctions (as permitted by applicable law), license, judgment, order, voluntary dismissals, including any award of sanctions, as permitted by applicable law, or any resolution of the Claims (or any part of the Claims); or (y) contracts, licensing agreements, or royalty agreements from Defendants or from any other parties added to the same action against Defendants, plus (ii) interest received in connection therewith agreed in a settlement or awarded in a judgment. For the avoidance of doubt, Proceeds shall be determined prior to deducting (and shall be gross of) any portion thereof that may be payable by Claim Owner to Claim Owner’s Attorneys.

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2.35 “Representative” means the employees, officers, directors, partners, members, shareholders, co-investors, potential co-investors, agents, advisors, consultants, accountants, attorneys, trustees, or authorized representatives a Party.

2.36 “Rights” means all rights, titles, claims, options, powers, privileges, and interests.

2.37 “Royalties” means any monies or cash payable, owed to, or inuring to Claim Owner, its Affiliates, or related Persons, or any of their permissible assigns, as a result of a settlement, license, royalties, or other resolution of the Claims, whether voluntary or ordered or adjudicated by the court or a jury, where such monies or cash are payable over a period greater than one year.

2.38 “Security” means a mortgage, charge, pledge, lien, or other security interest securing any obligation of any Person or any other agreement or arrangement having a similar effect.

2.39 “Taxes” means any non-U.S., U.S. federal, state, local, municipal, or other governmental taxes, duties, levies, fees, excises, or tariffs, arising as a result of or in connection with any amounts of property received or paid under this Agreement, including: (i) any state or local sales or use taxes; (ii) any import, value-added, consumption, or similar tax; (iii) any business transfer tax; (iv) any taxes imposed or based on or with respect to or measured by any net or gross income or receipts of any of the Parties; (v) any withholding or franchise taxes, taxes on doing business, gross receipts taxes or capital stock or property taxes; or (vi) any other tax now or hereafter imposed by any governmental or taxing authority on any aspect of this Agreement, the Proceeds, the Investment or the Assigned Rights, and “pre-Tax” shall mean before deduction of any of the foregoing.

2.40 “Value of Royalties” shall mean the following:

(a) The total cash value of the sum of all monies or cash payable to Claim Owner, its Affiliates or related Persons or their assigns during the entire term of any settlement agreement or license agreement, to the extent LCF determines that it can reasonably calculate the cash value with certainty as of the effective date of such settlement agreement or license agreement; or

(b) To the extent LCF determines that it cannot reasonably calculate such cash value with certainty as of the date of such settlement agreement or license agreement, the total cash value shall be calculated as the greater of five percent (5%) and the royalty rate specified in the settlement agreement, license agreement or as adjudicated by the court or jury (or if multiple royalty rates apply, the blended rate as determined by LCF); multiplied by the average of total net sales of the products, services or methods covered by the settlement agreement or the license agreement (the “Licensed Products”) for the three-year period preceding the effective date of such settlement agreement and/or license agreement; multiplied by the term of the settlement agreement or license agreement, expressed in years or fractional years; multiplied by a projected growth rate determined by LCF and based on sales of the Licensed Products over that three year period. If less than three years of data is available, LCF may calculate the average sales and the projected growth rate based on the available data.

2.41 To the extent the settlement agreement or license agreement grants a term license with a right of renewal entitling Claim Owner, its Affiliates or related Persons or their assigns to additional Royalties, any subsequent renewals, including license re-negotiations if any, shall be subject to this Section 2.41 for determining the Value of Royalties and Proceeds owed to LCF under this Agreement.

3. FUNDING ARRANGEMENT

3.1 Committed Capital. Subject to the terms and conditions of this Agreement (including Section 3.2), LCF commits to pay Attorneys' Fees, Expenses, Inter Partes Review Expenses, and Operating Expenses in an aggregate amount not to exceed ● (such amount, "LCF's Committed Amount" and LCF's obligation to make payments up to such amount in accordance with and subject to this Section 3, "LCF's Commitment"), subject to and in accordance with the caps on Attorneys' Fees, Expenses, Inter Partes Review Expenses and Operating Expenses.

3.2 Billing Records and Oversight. Claim Owner is required to submit monthly billing records to LCF detailing the Compensable Costs for which reimbursement is sought, which shall be provided by Claim Owner's Attorneys after redaction of privileged information. These records must contain detailed descriptions, including the date each submission was incurred, the amount of each submission, the reason for each submission and, if applicable, written request for reimbursement or payment in respect thereof. Within 30 days following the receipt of such billing records and such written request for reimbursement or payment, LCF shall pay to, or on behalf of, Claim Owner the Compensable Costs for which payment is sought by Claim Owner from LCF; provided that, for the avoidance of doubt, (i) the aggregate amount of money to be paid by LCF pursuant to this Agreement that may be used for Compensable Costs shall not exceed the Compensable Cost Cap and (ii) the aggregate amount of money to be paid by LCF pursuant to this Agreement shall not exceed LCF's Committed Amount. LCF reserves the right not to pay any Compensable Costs that it deems commercially unreasonable. in its sole discretion, provided that LCF shall act in good faith in making its determination of the reasonableness of Compensable Costs, and may terminate LCF's Commitment as set forth in Section 3.7 of this Agreement. Claim Owner's Attorneys will review billing records prior to Claim Owner's sending them to LCF to ensure that they do not contain privileged information. It shall be the responsibility of Claim Owner to submit the billing records and requests for reimbursement or payment to LCF in accordance with this Section 3.2.

3.3 Limitation on LCF's Funding Obligations. Except for LCF's obligation to Fund LCF's Committed Amount in accordance with this Agreement, LCF has no obligation to pay any fees, expenses, or other sums relating to the Claims. LCF has no obligation to pay fees or expenses incurred by Claim Owner or Claim Owner's Attorneys in conjunction with any Adverse Claim. Similarly, LCF has no obligation to pay any settlements, judgments, or awards against Claim Owner relating to any Adverse Claim, including any fee awards against Claim Owner.

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3.4 Acknowledgements Regarding the Scope and Nature of LCF's Capital Commitment. The Parties recognize and acknowledge that (i) pursuant to the terms of this Agreement, LCF is purchasing the Assigned Rights from Claim Owner and an ownership interest in Assigned Rights is being sold, transferred, and assigned by Claim Owner to LCF; (ii) the Assigned Rights irrevocably assigned to LCF hereunder are being transferred to LCF in consideration for LCF entering into this Agreement; (iii) unless expressly stated otherwise herein (including pursuant to Section 9.2(a) below), LCF's sole recourse with respect to the Realization Multiple and LCF's Profit shall be contingent upon, and to the extent of, the recovery of Proceeds, and (iv) notwithstanding anything herein to the contrary, in the event LCF has complied with its obligations under this Agreement and Claim Owner receives Proceeds in an amount equal to or greater than the sum of the Realization Multiple and LCF's Profit but does not remit, upon receipt, the total of the Realization Multiple and LCF's Profit to LCF, then Claim Owner shall be liable to LCF for any such deficiency.

3.5 LCF's Commitment Not a Loan. Any amount funded by LCF in respect of LCF's Committed Amount is not a loan. LCF is not acquiring ownership of the Claims, it being acknowledged and agreed, for the avoidance of doubt, that LCF is acquiring ownership of the Assigned Rights. Claim Owner remains the sole owner of the Claims. Neither LCF, Longford Investment Group, LLC, Longford Advisors, LLC, Longford Capital Management, LP, nor their lawyers will provide any legal professional services or legal advice to Claim Owner and Claim Owner agrees to seek such advice exclusively from Claim Owner's Attorneys or other licensed lawyers.

3.6 Exclusivity. During the term of this Agreement, Claim Owner shall not directly or indirectly through any of its Representatives or Affiliates or otherwise (i) encourage, solicit, initiate or participate in any way in discussions or negotiations with; (ii) provide any information to; or (iii) permit access of the type contemplated by Sections 3.8 and 3.9 hereof to any Person (other than LCF) for the purpose of securing from such entity funding for the assertion of any of the Claims.

3.7 Right of Withdrawal. LCF reserves the right to withdraw LCF's Commitment and terminate this Agreement at any time upon a Material Adverse Event within (10) days written notice to Claim Owner and upon such notice LCF shall not be required to make any further payments under this Agreement. In the event LCF exercises this right of withdrawal and this Agreement is terminated, and notwithstanding the prohibition contained in Section 3.6 above, Claim Owner may accept or deploy the capital of another third-party lender or capital source to continue the prosecution of the Claims. If Claim Owner continues to prosecute the Claims following a withdrawal by LCF of LCF's Commitment, and Proceeds are realized from the Claims (or if Proceeds are realized following LCF's withdrawal even though Claim Owner ceases to prosecute the Claims), LCF shall receive from the Proceeds of the Claims, as "first-money-out" an amount equal to LCF's Invested Capital through the date of its withdrawal (less the aggregate amount of any distributions made under Section 4.2(a) below), plus ● of the aggregate Proceeds of the Claims, but under no event will aggregate payments to LCF under this Section 3.7 exceed a sum equal to ● of the aggregate of LCF's Invested Capital. These amounts shall be paid by Claim Owner to LCF within ten (10) days of any Proceeds being paid or transferred to, inuring to or received by Claim Owner (or for its benefit) (and for the purposes of this Section 3.7, Royalties shall be deemed to have been received as of the date of the effectiveness of any license agreement or settlement). Claim Owner shall notify LCF promptly upon the occurrence of a Material Adverse Event.

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3.8 Access. During the term of this Agreement, Claim Owner shall provide LCF, Longford Investment Group, LLC, Longford Advisors, LLC, and Longford Capital Management, LP, and their respective auditors, legal counsel, and other authorized representatives complete and unlimited access to inspect, investigate and audit all non-privileged information relating to the Claims, including (i) corporate documents, (ii) documents related to the business, operations, assets, liabilities, and obligations of Claim Owner, (iii) non-privileged communications, and (iv) contracts of Claim Owner. In addition, Claim Owner shall cooperate and promptly respond to all due diligence inquiries. Claim Owner shall consult independent legal counsel in order to protect privileged communications as disclosure of privileged communications could result in waiver of the attorney-client privilege, thus potentially adversely affecting the Claims. If Claim Owner is aware of material privileged communications that could affect LCF's decision to invest or monitoring of its investment, or to withdraw LCF's Commitment, Claim Owner, after consulting independent legal counsel, will disclose the existence, but not the substance, of such communications.

3.9 Matter Monitoring. Claim Owner shall instruct the Claim Owner's Attorneys to keep LCF informed of the progress of the prosecution of the Claims and to provide to LCF all non-privileged information and documentation related to the prosecution of the Claims, including providing (i) reports on settlement negotiations, electronic copies of all pleadings, notices of court hearings, court rulings, and all other non-privileged information as soon as practicable after receipt or creation of such information, and (ii) regular quarterly status reports and timely disclosure of important documents and material events or changes regarding the prosecution of the Claims pursuant to Exhibit A hereto. Claim Owner shall not be obligated to provide access to documents the disclosure of which would violate a court order. In no event shall Claim Owner be obligated to disclose any privileged information related to the prosecution of the Claims at any time or for any purpose. Notwithstanding the preceding sentence, pursuant to Section 7.1(i) below, if Claim Owner is aware of information that it reasonably believes could affect LCF's decision to make LCF's Commitment, or to withdraw LCF's Commitment, and Claim Owner is prohibited from disclosing such information because it is privileged, Claim Owner is required to disclose to LCF the fact that such information exists and Claim Owner's assessment, after consultation with counsel, of such information and its effect, if any, on the claims and defenses, even if it cannot disclose the substance of that information. Claim Owner agrees to make the disclosures regarding the matters set forth on Exhibit A in accordance with the terms set forth on Exhibit A. All information provided by Claim Owner shall be in consultation with its counsel, and all such information shall be true and accurate in all material respects as of the date provided.

4. PROCEEDS FROM THE CLAIMS

4.1 Assignment of an Interest in the Proceeds. In consideration for LCF's Commitment, Claim Owner hereby irrevocably assigns to LCF the Assigned Rights.

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4.2 Payment Priority of Proceeds. Upon any Proceeds being received, transferred, paid or inuring to Claim Owner (or for its benefit) (a "Realization Event"), such Proceeds shall immediately be deposited in a Joint-Order Escrow Account for distribution in accordance with LCF's and Claim Owner's joint-written instructions pursuant to the provisions of this Agreement and shall be promptly paid to LCF and Claim Owner, in the following amounts and priority (and for the purposes of this Section 4.2, Royalties shall be deemed to have been received as of the date of the effectiveness of any license agreement or settlement):

(a) Realization Multiple. First, ● to LCF, until LCF has received in the aggregate under this clause (a) and Section 4.3 an amount equal to 100% of the aggregate of LCF's Invested Capital as of the time of such payment (the "Realization Multiple");

(b) Exposure Reduction Payment. Second, ● to LCF and ● to Claim Owner, until LCF has received under this clause (b) and clause (a) above in the aggregate an amount equal to LCF's Committed Amount;

(c) Commitment Multiple. Third, ● to LCF and ● to Claim Owner until LCF has received under this clause (c) an additional amount equal to ● of LCF's Committed Amount;

(d) Tail. Thereafter, ● to LCF and ● to Claim Owner.

4.3 If, upon the payment of Proceeds with respect to any Realization Event, the aggregate Proceeds paid to LCF under Section 4.2 or this Section 4.3 do not, in the aggregate, at least equal the aggregate of LCF's Invested Capital as of the date of such Realization Event, then Claim Owner shall promptly pay to LCF the amount of cash necessary so that such shortfall does not exist, provided that the amount so payable by Claim Owner in connection with such Realization Event shall not exceed an amount equal to the aggregate payments received by Claim Owner under Section 4.2 with respect to such Realization Event and any prior Realization Events. In addition, if upon the earlier of 6 years from the date of the full execution of this Agreement and the date on which all of the Claims have been settled, dismissed, litigated to completion, or otherwise disposed of, the aggregate amounts paid to LCF under Section 4.2 or this Section 4.3 do not in the aggregate at least equal the aggregate of LCF's Invested Capital as of such date, then Claim Owner shall promptly pay to LCF the amount of cash necessary so that such shortfall does not exist, provided that the aggregate amounts so payable by Claim Owner shall not exceed the aggregate amounts of Proceeds received by Claim Owner pursuant to Section 4.2.

5. SECURITY INTEREST

5.1 Security Interest. As collateral security for the obligations of Claim Owner hereunder, Claim Owner grants and assigns to LCF a security interest in all of the Proceeds (to the extent that the right to those Proceeds have not been assigned to LCF pursuant to Section 4.1), *provided* that LCF shall be entitled to recover and retain out of the Proceeds, only such amounts to which LCF is entitled under Section 4.2 of this Agreement and *further* LCF shall remit to Claim Owner any funds from the Proceeds, that exceed the amounts to which LCF is due in accordance with Section 4.2. Claim Owner shall execute and deliver to LCF at the Closing, and LCF may file with any necessary filing offices, the Perfection Documents for the purpose of perfecting LCF's Rights in and to the Proceeds, and as notice to third parties that Claim Owner has conveyed any interest that it may have in or to the Proceeds. As soon as LCF shall have received the full amount due to it under Section 4.2 of this Agreement with respect to all of the Claims, the security interest granted under this Section will terminate.

6. CLOSING

6.1 Conditions Precedent to the Investment. LCF's Commitment shall not be effective unless and until, on the Closing Date, each of the following conditions are satisfied (or waived in writing by LCF):

(a) The representations and warranties of Claim Owner contained in Section 7.1 of this Agreement are true and accurate in all material respects on and as of the date hereof and the Closing Date;

(b) No Event of Default has occurred or would result from the transactions being consummated at such time;

(c) LCF has received the Officer's Certificates attached hereto as **Exhibit B** and **Exhibit C**, executed by the President of Claim Owner, dated as of the Closing Date, certifying as to the matters set forth in Section 6.1(a) and Section 6.1(b); and

(d) The Claim Owner's Attorneys have executed and delivered to LCF the letter agreement attached hereto as **Exhibit D** (including the engagement letter referenced therein).

6.2 Closing. Subject to the terms and provisions of Section 6.1, the obligations of the Parties hereunder shall become effective when Claim Owner has delivered to LCF the Perfection Documents, fully executed and Authorized by or on behalf of Claim Owner (if necessary).

7. REPRESENTATIONS, WARRANTIES, AND INVESTMENT-RELATED DISCLOSURES

7.1 Claim Owner's Representations, Warranties, and Investment-Related Disclosures. Claim Owner makes the representations, warranties, and Covenants set out in this Section 7.1 to LCF as of the date of this Agreement, Closing Date and thereafter for the duration of this Agreement:

(a) Claim Owner is seeking significant license agreements and monetary damages against Defendants by pursuing the Claims.

(b) The Patents are exclusively owned by Claim Owner.

(c) No third party has the right to grant any licenses in and to any of the Patents.

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(d) There are no inventorship challenges, opposition, reexamination, or nullity proceedings or interferences declared, commenced or provoked, or to the knowledge of Claim Owner, threatened, with respect to any Patents. Claim Owner has complied with its duty of candor and disclosure to the United States Patent and Trademark Office and any relevant foreign patent or trademark office with respect to the Patents and have made no material misrepresentation with respect to such Patents. No Patent has been intentionally abandoned. Claim Owner has no knowledge of any information that would preclude Claim Owner from having clear title to the Patents or affecting their patentability, validity, or enforceability.

(e) Use of LCF's Committed Amount. Claim Owner shall use LCF's Committed Amount for the purposes set forth in accordance with Section 3.2 hereof and for no other purpose, unless LCF shall have agreed in writing to Claim Owner's using such funds for another purpose prior to such repurposing.

(f) Organization and Good Standing. QPRC and QLC are corporations with their chief executive offices located at 19 Fortune Lane, Jericho, New York 11753. QPRC is duly organized and validly existing under the laws of the State of Delaware and is a corporation in good standing with the Delaware Secretary of State, the New York Secretary of State and all other applicable government entities. "Quest Patent Research Corporation" is the correct legal name of QPRC indicated in the public record of its jurisdiction of organization which shows QPRC to be organized, and its employer identification number is 11-2873662. QLC is duly organized and validly existing under the laws of the State of New York and is a corporation in good standing with the New York Secretary of State and all other applicable government entities. "Quest Licensing Corporation" is the correct legal names of QLC indicated in the public record of the jurisdiction of its organization which shows QLC to be organized, and its New York Department of State ID number is 36697766.

(g) Authorization and Enforceability. Claim Owner has the requisite power and authority to execute and deliver this Agreement and the other Funding Documents, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Claim Owner of this Agreement and the other Funding Documents and the consummation of the transactions contemplated hereby and thereby have been duly Authorized by all required action on the part of Claim Owner. Claim Owner has consulted independent legal counsel prior to entering into this Agreement.

(h) Due Execution. This Agreement and the other Funding Documents have been duly executed and delivered by Claim Owner, and, assuming the due authorization, execution and delivery hereof and thereof by LCF, constitute the valid and legally binding obligations of Claim Owner enforceable in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to creditors' rights generally and by general principles of equity.

(i) Litigation. There is no claim, action, suit, proceeding, arbitration, investigation, or inquiry pending before any court or governmental entity threatened against Claim Owner. There is not in existence at present and, except in connection with the Claims, Claim Owner is not aware of the potential for any order, judgment, or decree of any court or other tribunal or any agency enjoining or requiring Claim Owner to take any action of any kind or to which Claim Owner or its assets are subject or bound.

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(j) Title to Property; Absence of Liens and Encumbrances, Etc. As of the date of this Agreement and the Closing Date, Claim Owner is solvent and owns and has good and marketable title to its assets, including but not limited to the Patents and the Proceeds, free and clear of all liens and encumbrances or other Security or any Adverse Claim in favor of any Person other than LCF.

(k) No Conflicts. The execution, delivery and performance by Claim Owner of this Agreement and the other Funding Documents in accordance with their respective terms do not and will not, after the giving of notice, or the lapse of time or both, or otherwise (i) conflict with, result in a breach of, or constitute a default under the constituent documents of Claim Owner, or any law, statute, ordinance, rule or regulation, or any court or administrative order or process or, except as is not expected to result in a Material Adverse Event, any contract, agreement, arrangement, commitment or plan to which Claim Owner is a party or by which Claim Owner or its assets are bound (including any agreement or arrangement between Claim Owner or its Affiliates and MoloLamken LLP), (ii) require the consent, waiver, approval, permit, license, clearance or authorization of, or any declaration or filing with, any court or public agency or other authority, or (iii) except as is not expected to result in a Material Adverse Event, require the consent of any Person under any material agreement, arrangement, or commitment of any nature.

(l) Investment-related Disclosures. Claim Owner acknowledges that it has superior knowledge regarding the Claims, due at least in part to its involvement and familiarity with the facts underlying the Claims. Moreover, Claim Owner acknowledges that it will have access to privileged information regarding the prosecution of the Claims that is not available to LCF. In connection with entering into this Agreement, Claim Owner has provided (or has caused Claim Owner's Attorneys to provide) certain information to LCF, including information pertaining to the Claims and potential defenses thereto, and material factual information underlying the Claims. All such information has been provided by Claim Owner in consultation with its counsel, and Claim Owner hereby warrants that all such information was true and accurate in all material respects as of the date it was provided and as of the Closing Date. Claim Owner acknowledges that LCF has relied on the accuracy and completeness of this information in agreeing to make LCF's Commitment. Claim Owner confirms that it has disclosed, and will continue to disclose, all non-privileged material facts in their possession that Claim Owner reasonably believes could affect LCF's decision to make (or to withdraw) LCF's Commitment.

(m) Liens of LCF. The Liens granted to LCF pursuant to this Agreement are duly perfected, first priority Liens with respect to the Proceeds that may be perfected under the UCC by the filing of financing statements. No Claim Owner has transferred any interest in or created any Lien upon any of the Proceeds or the Patents.

(n) Claim Owner has consulted independent legal counsel regarding the use of third-party financing in connection with the Claims and has determined that this Agreement is in compliance with all applicable laws and regulations.

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(o) Cap on Attorneys' Fees, Expenses, Inter Partes Review Expenses, and Operating Expenses. Claim Owner has agreed to cap Attorneys' Fees, Expenses, Inter Partes Review Expenses, and Operating Expenses for which LCF's Committed Amount may be used as follows: (1) Attorneys' Fees - ●, (2) Expenses - ●, (3) Inter Partes Review Expenses - ●, and (4) Operating Expenses - ●, with any overage being the responsibility of Claim Owner or Claim Owner's Attorneys.

7.2 LCF's Representations and Warranties. LCF makes the representations and warranties set out in this Section 7.2 to Claim Owner as of the date of this Agreement and the Closing Date.

(a) Organization and Good Standing. LCF is duly organized and validly existing under the laws of the State of Delaware and is a limited partnership in good standing with the Illinois Secretary of State.

(b) Authorization and Enforceability. LCF, through its undersigned representative, has the requisite power and authority to execute and deliver this Agreement and the other Funding Documents, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by LCF of this Agreement and the other Funding Documents and the consummation of the transactions contemplated hereby and thereby have been duly Authorized by all required action on the part of LCF.

(c) Due Execution. This Agreement and the other Funding Documents have been duly executed and delivered by LCF as appropriate, and, assuming the due Authorization, execution and delivery hereof and thereof by Claim Owner or any other third party thereto, they constitute the valid and legally binding obligations of LCF enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to creditors' rights generally and by general principles of equity.

(d) No Conflicts. The execution, delivery and performance by LCF of this Agreement and the other Funding Documents in accordance with their respective terms do not and will not, after the giving of notice, or the lapse of time or both, or otherwise (i) conflict with, result in a breach of, or constitute a default under the Certificate of Limited Partnership, or the limited partnership agreement, of LCF or any law, statute, ordinance, rule or regulation, or any court or administrative order or process, or any material contract, agreement, arrangement, commitment or plan to which LCF is a party or by which LCF or its assets are bound, (ii) require the consent, waiver, approval, permit, license, clearance or authorization of, or any declaration or filing with, any court or public agency or other authority, or (iii) require the consent of any Person under any material agreement, arrangement, or commitment of any nature.

(e) No Practice of Law. LCF, Longford Investment Group, LLC, Longford Advisors, LLC, and Longford Capital Management, LP and their respective members and partners are not a law firm and do not provide legal advice. No attorney-client relationship is intended, sought, or created by or through the execution of this Agreement. LCF, Longford Investment Group, LLC, Longford Advisors, LLC, and Longford Capital Management, LP and their respective members and partners have not provided, nor will provide at any time in the future, legal advice to Claim Owner regarding or in conjunction with this Agreement or the Claims.

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(f) Independent Decisions. LCF will not seek to influence the professional judgment of Claim Owner's legal counsel or otherwise exert control over any threatened or actual litigation. Further, LCF will not constrain, coerce, or otherwise pressure Claim Owner to take any action that it believes is adverse to Claim Owner's interests, including negotiating or settling the Claims in a manner other than Claim Owner believes is in its best interests.

8. ADDITIONAL COVENANTS AND TAXES

8.1 Covenants. For so long as Claims exist, any amount is outstanding, or obligation of Claim Owner is remaining under this Agreement, or the other Funding Documents, each Claim Owner shall (unless it has obtained prior written consent from LCF to the contrary), at its sole cost and expense:

- (a) obtain, comply with and use commercially reasonable efforts to do all that is necessary to remain solvent and carry on its business;
- (b) prosecute, and to the best of its ability take all necessary actions to ensure that it prosecutes, the Claims with all due skill and care, including maintaining the appointment of Claim Owner's Attorneys to act on the behalf of Claim Owner with respect to the prosecution of the Claims;
- (c) not, without the prior written consent of LCF, accept or deploy the capital of any third-party lender or capital source other than LCF in connection with the prosecution of the Claims;
- (d) not allow any other Person other than LCF to hold any Security or Adverse Claim over the Patents, the Claims, or the Proceeds, or any rights thereto; notwithstanding the foregoing, in the event that Claim Owner wishes to grant a subordinate security interest in the Proceeds, Claim Owner may do so if (i) the terms of the obligations being secured thereby (including terms of payment by Claim Owner, interest rates, covenants, remedies, defaults and other material terms) are satisfactory to LCF in its sole discretion (notwithstanding the foregoing, LCF will not object to the amount received (or to be received) by Claim Owner from the secured party in exchange for the obligations being secured by such subordinate security interest), and (ii) such obligations being secured thereby have been expressly subordinated in right of payment to all obligations of Claim Owner to LCF hereunder by the execution and delivery of a subordination agreement, in form and substance satisfactory to LCF in its sole discretion;
- (e) not transfer, sell, assign, or otherwise dispose of any of its Rights in or under any of the contracts or agreements relating to the Claims or the Proceeds;
- (f) not transfer, sell, assign, or otherwise dispose of any of the Patents;

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(g) take all actions required or necessary to maintain the Patents in force and not allow any of the Patents to lapse or expire, including but not limited to diligently prosecuting all pending patent applications and paying all maintenance or renewal fees as required by the United States Patent and Trademark Office and other patent offices and administrative agencies around the world;

(h) keep and maintain books and records currently in its possession and essential to the prosecution of the Claims;

(i) not grant any interest in or create any Lien upon any of the Patents, Claims or the Proceeds (except interests in and Liens in favor of LCF); notwithstanding the foregoing, in the event that Claim Owner wishes to grant a subordinate security interest in the Proceeds, Claim Owner may do so if (i) the terms of the obligations being secured thereby (including terms of payment by Claim Owner, interest rates, covenants, remedies, defaults and other material terms) are satisfactory to LCF in its sole discretion (notwithstanding the foregoing, LCF will not object to the amount received (or to be received) by Claim Owner from the secured party in exchange for the obligations being secured by such subordinate security interest), and (ii) such obligations being secured thereby have been expressly subordinated in right of payment to all obligations of Claim Owner to LCF hereunder by the execution and delivery of a subordination agreement, in form and substance satisfactory to LCF in its sole discretion;

(j) not challenge the validity, perfection, or priority of the Liens granted to LCF;

(k) take such action and execute, acknowledge and deliver, at its sole cost and expense, such agreements, instruments or other documents as LCF may require from time to time in order (i) to perfect and protect, or maintain the perfection of, the security interest and Liens purported to be created hereby; (ii) to enable LCF to exercise and enforce its rights and remedies hereunder in respect of the Proceeds; or (iii) otherwise to effect the purposes of this Agreement, including: (A) executing and filing (to the extent, if any, that Claim Owner's signature is required thereon) or authenticating the filing of, such financing or continuation statements, or amendments thereto, and (B) taking all actions required by law in any relevant Uniform Commercial Code jurisdiction, or by other law as applicable in any foreign jurisdiction. Claim Owner shall not take or fail to take any action which would in any manner impair the validity or enforceability of LCF's security interest in and Lien on the Proceeds; and

(l) timely file all tax returns with the appropriate taxing authority and timely pay all Taxes due, whether or not shown on such tax returns; and

(m) Use LCF's Commitment solely for the purposes set forth in Sections 2 and 3 hereof and for no other purpose, unless LCF shall have agreed in writing to Claim Owner's using such funds for another purpose prior to such repurposing.

8.2 Taxes. All Taxes shall be the financial responsibility of the Party obligated to pay such Taxes as determined by applicable law and neither Party is or shall be liable at any time for any of the other Party's Taxes incurred in connection with or related to amounts paid under this Agreement. No Tax shall be withheld on any Proceeds payable to LCF hereunder unless required by law. If any applicable law requires the deduction or withholding of any tax from any such payment to LCF, then the Claim Owner shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant taxing authority in accordance with applicable law and the sum payable to LCF shall be increased as necessary so that, after such deduction or withholding has been made, LCF receives an amount equal to the sum it would have received had no such deduction or withholding been made. Each Party shall indemnify, defend and hold the other Party harmless from and against any Taxes owed by or assessed against the other Party that are the obligations of such Party and from any claims, causes of action, costs, expenses, reasonable attorneys' fees, penalties, assessments and any other liabilities of any nature whatsoever related to such Taxes.

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8.3 Successor or Replacement Attorneys. If Claim Owner's Attorneys resign or cease to act as the attorneys for Claim Owner related to the assertion or prosecution of the Claims, then Claim Owner shall appoint successor attorneys to act as its counsel, provided that such appointment shall be subject to the prior written consent of LCF (it being acknowledged and agreed, for the avoidance of doubt, that any change in Claim Owner's Attorneys shall constitute a Material Adverse Event unless such change is agreed to in advance and in writing by LCF), and provided further that, prior to appointing such successor attorneys, Claim Owner shall cause such successor attorneys to execute and deliver to LCF a letter agreement with the same terms and provisions as the letter agreement attached hereto as **Exhibit D**. Should such successor or replacement attorneys be so appointed, all references to obligations of Claim Owner's Attorneys shall, where appropriate and effective of the date of their appointment, be deemed to be a reference to such successor or replacement attorneys.

8.4 Conduct of Business. Claim Owner shall conduct its business in the regular and ordinary course, consistent with past practices. Claim Owner shall keep LCF timely apprised of material commitments and material changes in Claim Owner's business, operations, and financial condition, and material developments with respect to the Claims.

8.5 Disclosure. Claim Owner shall disclose all non-privileged material facts in its possession that could affect LCF's decision to make (or to withdraw) LCF's Commitment.

9. EVENTS OF DEFAULT

9.1 Events of Default. Each of the events or circumstances set out below is an Event of Default:

(a) Non-payment. Claim Owner fails to pay or distribute when due any amount payable or distributable pursuant to this Agreement at the place and in the currency in which it is expressed to be payable.

(b) Other Obligations. Claim Owner fails to comply with any provision of the Funding Documents (other than those referred to in subsection (a) above) and such failure to comply is not cured within thirty (30) days of LCF providing written notice to Claim Owner.

(c) Misrepresentation. Any representation, warranty, or statement made by Claim Owner in this Agreement, in the other Funding Documents, or any other document delivered by or on behalf of Claim Owner under or in connection herewith or therewith is or proves to have been incorrect or misleading in any material respect.

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(d) Insolvency.

(i) Claim Owner fails to pay its debts as they become due or suspends making payments on any of its material financial obligations; or

(ii) The value of Claim Owner's assets is less than its liabilities (taking into account contingent and prospective liabilities and contingent and prospective assets).

(e) Insolvency Proceedings. Any legal proceedings are taken in relation to:

(i) the suspension of payments, winding up, dissolution, liquidation, administration or reorganization (by way of voluntary arrangement, scheme of arrangement, or otherwise) of Claim Owner;

(ii) the filing of a voluntary petition for relief under the United States Bankruptcy Code by Claim Owner or the filing of an involuntary petition for relief against Claim Owner which is not dismissed within 45 days of such filing;

(iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of Claim Owner or substantially all of Claim Owner's assets; or

(iv) enforcement of any Security or Adverse Claim over all or substantially all Claim Owner's assets.

(f) A majority change of control of Claim Owner.

9.2 Rights and Remedies. During the continuance of an Event of Default, LCF may, in its sole and absolute discretion, upon written notice to Claim Owner and opportunity to cure in accordance with this Agreement, do any one or more of the following:

(a) declare Claim Owner's obligation to pay the Realization Multiple pursuant to this Agreement immediately due and payable in full from Proceeds that have been received by Claim Owner;

(b) except as otherwise provided herein, without notice to or demand upon Claim Owner, make such payments and do such acts, on behalf of Claim Owner, as LCF reasonably considers necessary or reasonable to protect its rights under this Agreement; or

(c) except as otherwise provided herein, in addition to the foregoing, LCF shall have all rights and remedies provided by law and any rights and remedies contained in any Funding Document (including enforcing its security interest in the Proceeds); or

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(d) LCF's Commitment shall terminate, such that LCF shall not be required to make the payments contemplated by Section 3.

10. GOVERNING LAW; WAIVER OF SPECIFIC DEFENSES; DISPUTES

10.1 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule, and shall be construed and enforced in accordance with the law.

10.2 Specific Waivers. To the greatest extent permissible by law, Claim Owner irrevocably waives and forever and unconditionally releases, discharges and quitclaims any claims, counterclaims, defenses, causes of action, remedies, or rights it or its successors in interest has or may in the future have arising from any doctrine, rule, or principle of law or equity that this Agreement, or the relationships or transactions contemplated by this Agreement (i) are against the public policy of any jurisdiction with which Claim Owner has a connection, or (ii) are unconscionable, or (iii) constitute champerty, maintenance, barratry, or any impermissible transfers, assignments or splitting of property, fees or causes of action, or (iv) violate the rules of professional ethics applicable to Claim Owner, LCF, or any of their lawyers.

10.3 Arbitrable Claims. All actions, disputes, claims and controversies under common law, statutory law, rules of professional ethics, or in equity of any type or nature whatsoever, whether arising before or after the date of this Agreement, and directly relating to: (a) this Agreement or any amendments and addenda hereto, or the breach, invalidity or termination hereof; (b) any previous or subsequent agreement between LCF and Claim Owner related to the subject matter hereof to the extent set forth in Section 12.2; (c) any act or omission committed by LCF or its Representatives with respect to this Agreement, or by any member, employee, agent, or lawyer of LCF with respect to this Agreement, whether or not arising within the scope and course of employment or other contractual representation of LCF (provided that such act arises under a relationship, transaction or dealing between LCF and Claim Owner); or (d) any act or omission committed by Claim Owner with respect to this Agreement, or by any employee, agent, partner or lawyer of Claim Owner with respect to this Agreement whether or not arising within the scope and course of employment or other contractual representation of Claim Owner (provided that such act arises under a relationship, transaction or dealing between LCF and Claim Owner) (collectively, the "Disputes"), will be subject to and resolved by binding arbitration under this Section 10.3 and Section 10.4 below. The Parties agree that the arbitrators have exclusive jurisdiction, to the exclusion of any court (except as specifically provided with regard to prejudgment, provisional, or enforcement proceedings in Section 10.5), to decide all Disputes.

10.4 Administrative Body; Situs. Any Dispute arising out of or relating to this Agreement, including the breach, termination, enforcement, interpretation or validity thereof, or the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by arbitration in New York, New York, before a panel of three arbitrators. The arbitration shall be administered using the arbitration rules of the American Arbitration Association ("AAA") current at the time the Dispute is brought, which rules are deemed to be incorporated herein by reference. Each Party shall, upon written request, promptly provide the other Party with copies of all information on which the producing party may rely in support of or in opposition to any claim or defense and a report of any expert whom the producing Party may call as a witness in the arbitration hearing. Moreover, in the event of a Dispute, Claim Owner waives any objection to the production of privileged information relating to the underlying litigation and the Claims.

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10.5 Prejudgment and Provisional Remedies. Either Party may commence judicial proceedings only for the purpose(s) of: (i) enforcement of the arbitration provisions; (ii) obtaining appointment of arbitrator(s); (iii) preserving the status quo of the Parties pending arbitration as contemplated herein; (iv) preventing the disbursement by any Person of disputed funds; (v) preserving and protecting the rights of either Party pending the outcome of the arbitration, or (vi) seeking injunctive relief for breach of the confidentiality provisions contained in Section 11. Any such action or remedy will not waive a Party's right to compel arbitration of any Dispute, and any Party may also file court proceedings to have judgment entered on the arbitration award. In any action for prejudgment or provisional relief, any court in which such relief is sought shall determine the availability of such relief without regard to any defenses that may be asserted by the other Party, and any such defenses shall be referred to the exclusive jurisdiction of the arbitrators under Section 10.3. The Parties further agree that a court shall not defer or delay granting prejudgment or provisional relief while any such arbitration takes place. **EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

10.6 Attorneys' Fees. If either Claim Owner or LCF brings any other action for judicial relief with respect to any Dispute (other than those precisely described in Section 10.5), the Party bringing such action will be liable for and immediately pay all of the other Party's costs and expenses (including attorneys' fees) incurred to stay or dismiss such action and remove or refer such Dispute to arbitration. If either Claim Owner or LCF brings or appeals an action to vacate or modify an arbitration award and such Party does not prevail, such Party will pay all costs and expenses, including attorneys' fees, incurred by the other Party in defending such action.

10.7 Enforcement. Any award rendered under this Section shall not be subject to appeal and shall be enforceable in any and all jurisdictions, including in the State of Illinois and the State of New York.

10.8 Confidentiality of Awards. All arbitration proceedings, including testimony or evidence at hearings, will be kept confidential, although any award or order rendered by the arbitrator(s) pursuant to the terms of this Agreement may be confirmed as a judgment or order in any state or federal or other national court of competent jurisdiction where proceedings are necessary or appropriate to enforce any award or order. This Agreement concerns transactions involving commerce among several state and foreign countries.

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10.9 Indemnification. Claim Owner agrees to indemnify, defend, and hold harmless, LCF, Longford Investment Group, LLC, Longford Advisors, LLC, and Longford Capital Management, LP, and their respective Representatives from and against all claims by third parties relating to, or arising out of, this Agreement including, without limitation, all claims threatened, alleged or asserted by Claim Owner's Attorneys. For the avoidance of any doubt, Claim Owner agrees to advance to LCF, Longford Investment Group, LLC, Longford Advisors, LLC, and Longford Capital Management, LP, and their respective Representatives all defense costs, including attorneys' fees and expenses, for any third-party claim relating to, or arising out of, this Agreement.

11. CONFIDENTIALITY

11.1 Confidential Information. The Parties shall limit the distribution and disclosure of Confidential Information to their Representatives who have a "need to know" to such information. The Party disclosing the Confidential Information to its Representatives shall ensure that such Representatives adhere to, and comply with, all terms and obligations of confidentiality, use and protection of the Confidential Information as accepted by the Parties under this Agreement.

11.2 Limitations on Disclosure of Confidential Information. The Parties and their Representatives shall not disclose Confidential Information, or the fact that the Parties entered into this Agreement, unless: (i) the Parties agree in writing that such disclosure is acceptable, (ii) such disclosure is required in connection with the enforcement or protection of a Party's rights with respect to this Agreement, or (iii) such disclosure is required by law or regulation, governmental or regulatory authority, court order or judicial process; provided, that each Party agrees to give the other Party (to the extent not prohibited by applicable law, regulation, governmental or regulatory authority, court order or judicial process) written notice of any required disclosure and cooperate in obtaining a protective order or similar protection to preserve the confidential nature of the Confidential Information.

11.3 Public Disclosure. Neither LCF nor Claim Owner shall issue any press release or make any public statement with respect to the existence of this Agreement or the transaction contemplated hereby, except as may be required by applicable law, regulation, governmental, or regulatory authority, judicial process, or court order (in which case the party seeking to issue such press release or make such public statement will, to the extent not prohibited by applicable law, regulation, governmental or regulatory authority, court order, or judicial process, consult the other and obtain the other's approval, which shall not be unreasonably withheld, before issuing any such press release or otherwise making any such public statement). Claim Owner shall keep this Agreement confidential and not disclose it, or any part of it, or any drafts of it, to third parties, except as may be required by applicable law, regulation, governmental or regulatory authority, judicial process, or court order.

12. MISCELLANEOUS

12.1 Privileged Information. Subject to the provisions of Sections 7.1(j) and 3.8, LCF will not request from Claim Owner, and Claim Owner is not required to provide to LCF, documents and information protected by the attorney-client privilege. Claim Owner understands and acknowledges that in the event its Representatives provide privileged information to LCF, such disclosure may be deemed waiver of the applicable privilege. In the event that Claim Owner inadvertently provides privileged information to LCF, LCF will return such information to Claim Owner without reviewing the information.

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12.2 Entire Agreement and Amendments. Except as set forth in Section 2(f) of that certain Letter Agreement, dated as of February 17, 2014, by and between LCF and Claim Owner, this Agreement and the other Funding Documents constitute the entire agreement between the Parties with respect to the matters covered herein and supersede all prior agreements, promises, representations, warranties, statements, and understandings with respect to the subject matter hereof as between Claim Owner and LCF. This Agreement may not be amended, altered, or modified except by an amendment or supplement to this Agreement executed by all Parties hereto.

12.3 Partial Invalidity; Severability. If, at any time, any provision of this Agreement or of the other Funding Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provisions under the law of any other jurisdiction shall in any way be affected or impaired.

12.4 Remedies and Waivers. No failure to exercise, nor any delay in exercising, on the part of LCF or Claim Owner, of any right or remedy under this Agreement or the other Funding Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law. No provision of this Agreement may be waived except in writing signed by the party granting such waiver.

12.5 Assignment. This Agreement shall inure to the benefit of, and be binding upon the respective successors and assigns of the Parties. Claim Owner shall not assign or delegate its rights or obligations under this Agreement or the other Funding Documents without the prior written consent of LCF, which should not be unreasonably withheld.

12.6 Notices.

(a) All notices, reports and other communications required or permitted under this Agreement shall be in writing. They shall be delivered by hand or sent by regular mail, courier, email or other reliable means of electronic communication to the Parties at their addresses indicated below or at such other address as may be specified hereafter in writing by any of the Parties to the other Party in accordance with this Section 12.6.

Claim Owner:

Jon Scahill
Quest Patent Research Corporation
19 Fortune Lane
Jericho, NY 11753
Email: jscahill@qprc.com

LCF:

William P. Farrell, Jr.
Managing Director
Longford Capital Management LP
150 North Michigan Avenue, Suite 2800
Chicago, Illinois 60601
Email: wfarrell@longfordcapital.com

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(b) Any notice, report or other communication hereunder shall be deemed to have been delivered and received (i) on the date delivered, if delivered personally by hand or sent by courier, (ii) on the date sent, if sent by email or other form of electronic communication provided that confirmation of delivery is received by the sending party, and (iii) five (5) business days after mailing, if placed in the US mail, by registered or certified mail, first class postage prepaid, with a request for a confirmation of delivery.

(c) Any notice, report or other communication sent under this Agreement that is sent by fax, email or other electronic communication must be confirmed by sending a hard paper copy thereof to the recipient in accordance with subsection (a) above, provided, the effective date of such notice, report or other communication shall be as specified in subsection (b) above. If the recipient actually received a fax, email or other electronic form of a notice, report or other communication, then the notice, report or other communication shall be deemed to have been given and delivered even if the sender fails to send a hard copy as called for in this subsection or the sender does not receive a confirmation of delivery under subsection (b)(ii) above.

12.7 Survival After Termination. The provisions of Sections 1, 2 (with respect to applicable defined terms), Section 3.6, 4.2, 4.3, 10, 11, and 12 shall survive the termination of this Agreement.

12.8 Costs and Expenses. Claim Owner shall be solely responsible for and bear the costs and expenses, including attorneys' fees, expenses of accountants, brokers, financial advisors, and other representatives and advisors, it incurs at any time in connection with pursuing, or consummating the transaction contemplated by, this Agreement or other Funding Documents.

12.9 No Presumption Against Drafter. This Agreement has been negotiated by the Parties and their respective counsel and will be fairly interpreted in accordance with its terms and without any strict construction in favor of or against a Party.

12.10 Counterparts. This Agreement may be executed in counterparts which, when read together, shall constitute a single instrument, and this has the same effect as if the signatures on the counterparts were on a single copy hereof. A composite copy of this Agreement may be compiled comprising a single copy of the text of this Agreement and one or more copies of the signature pages containing collectively the signatures of all Parties. A facsimile or an electronic mail signature shall be considered due execution and shall be binding upon the signatories hereto with the same force and effect as if the signature were an original, not a facsimile signature.

12.11 No Third-Party Beneficiaries. Except as otherwise set forth in Section 10.9, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, it being acknowledged and agreed, for the avoidance of doubt, that (i) Longford Investment Group, LLC, Longford Advisors LLC, Longford Capital Management, LP, and their respective Representatives are express third-party beneficiaries of this Agreement for the purposes of Section 10.9 and (ii) Claim Owner's Attorneys are not third-party beneficiaries of this Agreement.

[Signature pages follow]

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IN WITNESS WHEREOF, the Parties execute this Agreement effective as of the date first set forth above.

**QUEST PATENT RESEARCH
CORPORATION**

By: /s/ Jon C. Scahill
Jon Scahill
President and COO

Dated: March 11, 2014

LONGFORD CAPITAL FUND I,

**BY: Longford Investment Group, LLC,
its General Partner**

By: /s/ William P. Farrell, Jr.
William P. Farrell, Jr.
Managing Director

Dated: March 13, 2014

QUEST LICENSING CORPORATION

By: /s/ Jon C. Scahill
Jon Scahill
President

Dated: March 11, 2014

EXHIBIT A

General Principles for Disclosure of Material Events or Changes

Claim Owner or Claim Owner's Attorneys ("you," "your") shall timely inform LCF of any new or unexpected developments regarding the assertion of prosecution of the Claims, including material changes in:

- Strategy;
- The public profile or any public report about the Claims;
- Facts or law, including factual or legal assumptions about the Claims;
- Developments that may affect the outcome of the Claims; and
- Your expectations about the likely outcome and timing of the Claims.

You shall timely inform LCF of any

- Occurrence of any Event of Default, including a majority change of control in Claim Owner; and
- The occurrence of any of the matters set forth in the definition of "Material Adverse Event."

Please be sure to select the appropriate persons to receive email notification. If in doubt, you may also notify LCF by email or telephone in addition to your posted message.

Regular and Timely Disclosure of Important Documents

Please send LCF all documents related to the prosecution of the Claims, including:

- Copies of all documents filed with any court or arbitration panel;
- Deposition transcripts and other discovery materials;
- All rulings and orders by any court or arbitration panel;
- Key documents related to any material event or change in the prosecution of the Claims;
- Any documents related to possible settlement or other resolution of the Claims; and
- Any scheduling order or other documents that relate to timing of potential resolution of the Claims.

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Quarterly Matter Monitoring Report

In addition to the general principles of disclosure outlined herein, you will be required to provide LCF with a quarterly Matter Monitoring Report (the “*Monitoring Report*”) within 21 days after the end of each calendar quarter end (“*Quarterly Reporting Date*”).

LCF understands that material developments may arise in conjunction with the prosecution of the Claims between Quarter Reporting Dates. Accordingly and as more particularly described in the Agreement, please update LCF if there are material developments as and when they occur.

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EXHIBIT B

QUEST PATENT RESEARCH CORPORATION

OFFICER'S CERTIFICATE

Dated as of March 11, 2014

The undersigned President and Chief Operating Officer of Quest Patent Research Corporation, a Delaware corporation (the "Company"), hereby certifies to Longford Capital Fund I, LP, a Delaware limited partnership ("LCF"), pursuant to Section 6.1(c) of the Funding Agreement, dated as of March 11, 2014 (the "Agreement"), by and between LCF, Quest Licensing Corporation and the Company, as follows:

1. The representations and warranties of the Company contained in Section 7.1 of the Agreement are, to the best of my knowledge, true and accurate in all material respects on and as of the date hereof.
2. No Event of Default (as defined in the Agreement) has occurred at or prior to the date hereof or would result from the transactions contemplated under the Agreement being consummated on the date hereof.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the first date written above.

/s/ Jon C. Scahill

Jon Scahill
President

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EXHIBIT C

QUEST LICENSING CORPORATION

OFFICER'S CERTIFICATE

Dated as of March 11, 2014

The undersigned President of Quest Licensing Corporation, a Delaware corporation (the "Company"), hereby certifies to Longford Capital Fund I, LP, a Delaware limited partnership ("LCF"), pursuant to Section 6.1(c) of the Funding Agreement, dated as of March 11, 2014 (the "Agreement"), by and between LCF, Quest Patent Research Corporation and the Company, as follows:

1. The representations and warranties of the Company contained in Section 7.1 of the Agreement are, to the best of my knowledge, true and accurate in all material respects on and as of the date hereof.
2. No Event of Default (as defined in the Agreement) has occurred at or prior to the date hereof or would result from the transactions contemplated under the Agreement being consummated on the date hereof.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the first date written above.

/s/ Jon C. Scahill

Jon Scahill

President

EXHIBIT D

March 11, 2014

Longford Capital Fund I, LP
c/o Longford Capital Management LP
150 North Michigan Avenue, Suite 2800
Chicago, Illinois 60601
Attention: William P. Farrell, Jr.

Re: Quest Patent Research Corporation Funding Agreement

Reference is made to that certain Funding Agreement, dated as of March 11, 2014 (the "Agreement"), by and between Longford Capital Fund I, LP ("LCF"), a Delaware limited partnership, and Quest Patent Research Corporation and Quest Licensing Corporation (collectively, "Claim Owner"). Capitalized terms used but not defined herein have the respective meanings as set forth in the Agreement.

The law firm of MoloLamken LLP ("MoloLamken") hereby (i) acknowledges that MoloLamken has reviewed the Agreement and understands the rights granted to LCF (and the obligations of Claim Owner) thereunder, including, without limitation, the terms and provisions of Sections 3.6, 3.7, 4, 5.1, 7.1, 8.1(d), 8.1(h), 8.1(i), 8.1(j), 9 and 11 of the Agreement and any other terms and provisions applicable to Claim Owner's Attorneys (collectively, the "Specific Sections"), (ii) acknowledges and agrees with the provisions of Section 4 of the Agreement and the priority of payment in favor of LCF established thereby, (iii) confirms and agrees that the terms and provisions of the Agreement (including, without limitation, the terms and provisions of the Specific Sections) do not, and will not, conflict with the terms and provisions of any current or future agreement or arrangement between MoloLamken and Claim Owner (or its Affiliates) in connection with, or relating to, any of the Claims; (iv) confirms and agrees that all costs and fees have been disclosed; (v) confirms and agrees that all proceeds of the civil litigation will be deposited in a Joint-Order Escrow Account for distribution in accordance with LCF's and Claim Owner's joint-written instructions pursuant to the provisions of the Agreement; (vi) confirms and agrees that if the Claims are resolved, no further Fixed Fee Payments (as defined in Section 2.5 of the Agreement) will be made to MoloLamken; (vii) confirms and agrees that if the Claims are stayed for any reason, including as a result of inter partes review, no further Fixed Fee payments will be made to MoloLamken during the pendency of the stay; (viii) confirms and agrees that if MoloLamken resigns or ceases to act as the attorneys for Claim Owner related to the assertion or prosecution of the Claims, then no further Fixed Fee Payments will be made to MoloLamken; (ix) confirms and agrees that MoloLamken is following the written instructions of the Claim Owner with regard to the non-recourse civil litigation advance; and (x) agrees that if any terms of the Agreement conflict with any terms of any agreement between Claim Owner and MoloLamkin, then the terms of the Agreement will control. MoloLamken agrees and acknowledges that it is not a third-party beneficiary of the Agreement.

MoloLamken agrees to represent Claim Owner pursuant to the economic and other terms contained in the Agreement, including the cap on Attorneys' Fees, Expenses, and Inter Partes Review Expenses, and the terms of that certain Engagement Letter between MoloLamken and Claim Owner dated March 3, 2014, a copy of which is attached hereto as Schedule I. MoloLamken has disclosed to LCF its fee agreement and Engagement Letter with Claim Owner and the terms of that agreement are the terms by which MoloLamken is representing Claim Owner and proceeding in this matter.

MOLOLAMKEN LLP

By: /s/ Steven F. Molo

Name: Steven F. Molo

Title: Partner

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Schedule I

March 3, 2014

Jon Scahill
President & COO
Quest Patent Research Corp.
19 Fortune Lane
Jericho, NY 11753

RE: MoloLamken LLP / Quest Patent Research Corp. - Engagement Letter

Dear Mr. Scahill:

Thank you for selecting MoloLamken LLP. We are pleased to serve as your counsel. This letter will confirm our discussion with you regarding our engagement and describe the basis on which our Firm will provide legal services to you.

Scope of Engagement

We have been engaged to represent Quest Licensing Corporation (“QLC”), a subsidiary of Quest Patent Research Corporation (“Quest”) (collectively, the “Client” or “you”), in connection with the campaign for the monetization of QLC’s U.S. Patent No. 7,194,468 and related patents (“the matter”). Our engagement is limited to the performance of the following services: (i) conducting a pre-complaint licensing campaign, (ii) litigating one or more actions relating to the matter in federal district court, and/or (iii) representing the Client in *inter partes* review proceedings relating to the matter. Our engagement does not extend to any appeal. Because we are not your general counsel, our acceptance of this engagement does not involve an undertaking to represent you or your interests in any other matter.^[1]

¹ In particular, our present engagement does not include responsibility for review of your insurance policies to determine the possibility of coverage for the claim asserted in this matter, for notification of your insurance carriers about the matter, or for advice to you about your disclosure obligations concerning the matter under the federal securities laws or any other applicable law.

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Absent written modification – e-mail is acceptable – we agree that our Scope of Work on the matter is limited to the following: serving as counsel in the above-referenced licensing campaign and litigations.

Identification of the Client

Our client in this matter will be solely the Client as identified above. Our representation of the Client in this matter does not necessarily give rise to a lawyer-client relationship between the Firm and any of the Client's affiliates, subsidiaries, directors, officers, employees, or agents.

Client Responsibilities

You agree to pay our statements for services and expenses as provided below. In addition, you agree to be candid and cooperative with us and to keep us informed with complete and accurate factual information, documents, and other communications relevant to the subject matter of our representation or otherwise reasonably requested by us. You have been, and may continue to be, represented by other counsel in this matter and you agree that we are not responsible for their conduct in representing you.

Because it is important that we be able to contact you at all times to consult with you regarding your representation, you agree to inform us, in writing, of any changes in your name, address, telephone number, e-mail address, or other relevant changes regarding you or your business.

Advice About Possible Outcomes

Either at the commencement or during the course of our representation, we may express opinions or beliefs concerning the litigations or various courses of action and the results that might be anticipated. Any such statement made by any lawyer of our Firm is intended to be an expression of opinion only, based on information available to us at the time, and should not be construed by you as a promise or guarantee. We cannot and do not guarantee or promise any outcome. To the extent that we are representing you in a contested matter or investigation, there are many factors outside our control that may play a role in a given outcome.

Termination of Engagement

You may at any time terminate our services and representation. We reserve the right to withdraw our representation, as limited by the applicable rules of professional conduct, upon written notice to you. In the event that we terminate the engagement, we will take such steps as are reasonably practicable to protect your interest in the above litigations. You agree that failure to pay past-due fees and expenses may be grounds for withdrawal, and we shall be entitled to payment on a *quantum meruit* basis for any recovery achieved following our withdrawal. For purposes of this provision the *quantum meruit* calculation is subject to the fee schedule set forth in Exhibit A which is incorporated into this letter, and additionally takes into consideration fee arrangements for substitute counsel that Client necessarily retains to complete the engagement.

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Conclusion of Representation: Retention and Disposition of Documents

Your papers and property will be returned to you upon request. Unless you instruct us differently in writing, after seven years following the conclusion of the matter, we will, at the Firm's option, return all of the files to you at your cost or simply destroy them.

Post-Engagement Matters

You are engaging the Firm to provide legal services in connection with a specific matter. After that matter concludes, changes may occur in the applicable laws or regulations that could have an impact upon your future rights and liabilities. Unless you engage us after completion of the matter to provide additional advice on issues arising from the matter, the Firm has no continuing obligation to advise you with respect to future legal developments.

Fees

Our preference is to establish fee arrangements with clients that promote efficiency and reward success. Our fee agreement is set forth in Exhibit A, which is incorporated into this letter.

Costs

We believe that in operating our business, we should be responsible for overhead. Accordingly, we do not charge for ordinary electronic research or incidental copying. However, in the course of our work there are sometimes extraordinary expenses for which the Client must be responsible. We may include on our statements separate charges for services such as non-incidental photocopying, printing costs for printed briefs, outside messenger and delivery service, travel, and filing fees. Such expenses may also include process servers, court reporters, and witness fees. Should we retain outside vendors—for example, local counsel, jury consultants, experts, e-discovery vendors, litigation support services, investigators—who may be necessary, in our judgment, to represent your interests in the litigations, you will be informed first and their fees and expenses generally will be billed directly to you. Client shall have the right to approve the selection of local counsel, expert witnesses, e-discovery vendors, jury consultants and litigation support services for audio and visual presentations. We understand that you have an established budget for costs for the matter and we agree to work with you to have actual expenses meet that budget. In the event that projected costs are anticipated to exceed that established budget, the Firm agrees to obtain the approval of Client prior to incurring such costs.

Payment of Statements

We will render an invoice each month via email and, if you request, via regular mail. Payment is due promptly upon receipt of our statements.

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Work with Co-Counsel

You have been represented by other outside counsel in preparing for the matter. You agree that the Firm is not responsible and not liable for any work, errors, or omissions of other outside counsel prior to the Firm's appearance in the matter. Should additional counsel be necessary for the representation, the Client shall be responsible for the payment of any fees of that additional counsel.

Conflicts and Prospective Waiver

The nature of our practice is such that occasionally the Firm may concurrently represent a client that is adverse to another client in a case or matter that is not substantially related to our current representations of either client. We would do this only if, in our professional judgment, we can undertake the concurrent representation without adversely limiting the responsibilities we have to either client. In such a situation, we consider the needs of both clients before undertaking any such representation. Given the nature of our practice, you agree that attorneys at the Firm may represent a party with interests adverse to yours under those circumstances. If we discover a conflict after work has begun, you agree to use reasonable efforts to help us resolve the conflict to the satisfaction of all parties. We agree, however, that your prospective consent to conflicting representation will not apply where, as a result of our representation of you, we have obtained sensitive, proprietary, or other confidential information that, if known to our other client, could be used by the other client to your material disadvantage, unless any confidential information we have obtained would be screened from the lawyers working for our other client.

Resolution of Disputes

We look forward to a productive relationship as your counsel. In the unlikely event that there is a dispute between us regarding our fees, you may have a right to arbitrate such dispute pursuant to Part 137 of the Rules of the Chief Administrator of the Appellate Division of the Supreme Court of New York for engagements governed by New York Law. For other matters, you may have a right to arbitrate subject to applicable rules. If so, we will provide you with a copy of those rules.

To the extent that anything in this letter conflicts with billing guidelines or policies you may have, you understand and agree that the terms set forth herein that are unrelated to your billing policies and guidelines control and are a condition of our undertaking this representation regardless of whether this letter is countersigned. You agree that your consent to our commencement of work shall serve as acknowledgment and agreement to the terms of this letter.

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Please review this letter, sign it, and return it to me.

Very truly yours,

/s/ Steven F. Molo

Steven F. Molo, Molo Lamken LLP

AGREED TO AND ACCEPTED:
Quest Patent Research Corporation

Signature: /s/ Jon C. Scahill

By: Jon Scahill

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Exhibit A
Fee Agreement

1. Client shall pay the Firm the sum of ● upon engagement.
 2. Client shall pay the firm the sum of ● per month on the first business day of the month, for ● consecutive months, for the Firm's role in the matter. This sum will represent payment for the Firm's work in the matter, and does not include payment for services performed by third parties, including but not limited to Co-Counsel, experts, consultants, and e-discovery vendors.
 3. If the matter is not concluded within ● months of this engagement, Client shall pay the firm ● per month for the following ● months. After the first ● months, there will be no more monthly payments.
 4. The fees identified in Paragraphs 2 and 3 above are based on the assumption that each action relating to the matter is litigated in one federal district. Each additional district in which an action is to be litigated will add ● to the monthly fee.
 5. Client agrees to pay the Firm ● of the amount of any recovery achieved through pre-filing negotiations with any potential defendant in the matter, net of any litigation funder's disbursed costs.
 6. Client agrees to pay the Firm ● of the amount of any recovery achieved through litigation against any defendant in the matter, net of any litigation funder's disbursed costs.
 7. Once the total contingency fees paid in the matter exceed 4 times the total amount of monthly fees paid in the matter, Client will start receiving a credit for the monthly fees paid to date. For each additional dollar the Firm is paid in contingent fees, Client will receive a dollar credit up to the full amount of monthly fees paid.
 8. Alternatively, the Firm will track its time expended on the matter. Once the contingent payments equal 3 times the fees the Firm would have earned had it billed the Client at hourly rates, for each additional dollar the Firm is paid in fees based on contingent fee payments, Client will receive a dollar credit up to the full amount of monthly fees paid.
 9. Client agrees to pay the Firm a fixed trial fee of ● payable one week before the start of each trial.
 10. In the event a defendant or potential defendant initiates an *inter partes* review in connection with the matter, Client will pay the firm a flat fee of ● for the first challenge, and ● for each additional challenge. If the corresponding litigation(s) are stayed during the course of the *inter partes* review(s), this will toll the applicable litigation monthly fee.
 11. In the event Client obtains funding through third party litigation financing providing a lump sum payment upon closing of the financing transaction rather than providing a line of credit, Client agrees that proceeds sufficient to pay the total monthly fees described in Paragraph 4 above, plus 10% to cover the firm's extraordinary expenses that would be due to the Firm and not to any vendor, shall be deposited in the Firm's client escrow account and drawn on to pay the monthly fees in accordance with this agreement. The funds deposited in the Firm's client escrow account are to be used in the first instance to pay the Firm and are not to be used to pay any third-party vendor who may render services related to the representation, including but not limited to experts, consultants, and e-discovery vendors.
 12. This agreement applies only to pre-judgment proceedings in the matter. Any post-judgment proceedings would be subject to a separate agreement between Client and the Firm.
-

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AMENDMENT NO. 1

TO

FUNDING AGREEMENT

This Amendment No. 1, dated as of April 24, 2014 (this "Amendment"), to the Funding Agreement between Longford Capital Fund I, LP a Delaware limited partnership ("LCF"), on the one hand, and Quest Patent Research Corporation, a Delaware corporation ("QPRC"), and its subsidiary Quest Licensing Corporation, a New York corporation ("QLC"), on the other hand, dated as of March 11, 2014 (the "Funding Agreement"), is made between LCF, QPRC, QLC and Quest Licensing Corporation, a Delaware corporation ("QLCDE").

WHEREAS, LCF, QPRC and QLC are parties to the Funding Agreement;

WHEREAS, QLC wishes to assign certain Patents and other assets and rights related thereto to QLCDE (the "Assignment"), a wholly-owned subsidiary of QPRC, pursuant to the assignment attached hereto as Exhibit A (the "Assignment Agreement");

WHEREAS, the parties hereto wish to enter into this Amendment No. 1 in order to make certain amendments to the Funding Agreement in connection with such Assignment.

NOW, THEREFORE, it is hereby agreed as follows:

2. Unless otherwise defined herein, capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Funding Agreement.

3. The definition of Claim Owner set forth in the Funding Agreement is hereby amended so that QLCDE, QPRC and QLC, shall each be a "Claim Owner" and "collectively shall be "Claim Owner."

4. Subject to (i) QLCDE, QPRC and QLC executing and delivering to LCF this Amendment No. 1 and (ii) QLCDE delivering to LCF as of the date hereof a fully executed Officer's Certificate in the form attached hereto as Exhibit B, and notwithstanding anything in the Funding Agreement to the contrary, LCF hereby consents to the Assignment pursuant to the Assignment Agreement attached hereto as Exhibit A hereto.

5. QLCDE acknowledges and agrees to perform and fulfill all terms, covenants, conditions and obligations required to be performed and fulfilled by Claim Owner, on and after the date hereof, under the Funding Agreement as if it was an original party thereto, including, without limitation, the obligation to make all payments due or payable hereafter under the Funding Agreement as they become due and payable. QLCDE further acknowledges and agrees to be subject to each restriction to which Claim Owner is subject under the Funding Agreement as if it was an original party thereto. Without derogating from the generality of the foregoing, and notwithstanding anything set forth in the Assignment Agreement, QLCDE acknowledges and agrees that any sale, transfer, assignment, disposition or conveyance by it of, or grant of an interest by it in, any of the rights, title, assets or properties assigned to it under the Assignment Agreement is subject to the restrictions set forth in the Funding Agreement. In addition, QLCDE makes all of the representations and warranties made by Claim Owner under the Funding Agreement (except that QLCDE makes the representations and warranties set out in Section 7.1 of the Funding Agreement to LCF not as of the date of the Funding Agreement and as of Closing Date, but as of the date of this Amendment No. 1 and thereafter for the duration of the Funding Agreement (as amended hereby)).

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6. QLCDE further represents and warrants to LCF, as of the date of this Amendment No. 1 and thereafter for the duration of the Funding Agreement (as amended hereby), as follows: (a) QLCDE is a corporation with its chief executive offices located at 19 Fortune Lane, Jericho, New York 11753; (b) it is duly organized and validly existing under the laws of the State of Delaware and is a corporation in good standing with the Delaware Secretary of State and all other applicable government entities; and (c) "Quest Licensing Corporation" is the correct legal name of QLCDE indicated in the public record of the jurisdiction of its organization which shows QLCDE to be organized, and its Delaware Department of State File Number is 5505053.

7. From and after the date hereof, any references to the Funding Agreement shall mean the Funding Agreement, as amended by this Amendment No. 1.

8. QLCDE agrees to deliver to LCF on the date of this Amendment No. 1 the Officer's Certificate attached hereto as Exhibit B.

9. This Amendment No. 1 and the rights and obligations of the parties hereunder shall be governed by the laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule, and shall be construed and enforced in accordance with the law.

10. This Amendment No. 1 may be executed in counterparts which, when read together, shall constitute a single instrument, and this has the same effect as if the signatures on the counterparts were on a single copy hereof. A composite copy of this Amendment No. 1 may be compiled comprising a single copy of the text of this Amendment No. 1 and one or more copies of the signature pages containing collectively the signatures of all parties. A facsimile or an electronic mail signature shall be considered due execution and shall be binding upon the signatories hereto with the same force and effect as if the signature were an original, not a facsimile signature.

11. Except as specifically amended hereby, the Funding Agreement shall remain in full force and effect.

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IN WITNESS WHEREOF, the undersigned have executed this Amendment No. 1 to the Funding Agreement as of the date first written above.

QPRC:

QUEST PATENT RESEARCH

CORPORATION

By: /s/ Jon C. Scahill
Jon Scahill
President and COO

Dated: April 24, 2014

LCF:

LONGFORD CAPITAL FUND I, LP

**BY: Longford Investment Group, LLC,
its General Partner**

By /s/ William P. Farrell, Jr.
William P. Farrell, Jr
Managing Director

Dated: April 25, 2014

QLC:

QUEST LICENSING CORPORATION

By: /s/ Jon C. Scahill
Jon Scahill
President

Dated April 24, 2014

QLCDE

QUEST LICENSING CORPORATION

By: /s/ Jon C. Scahill
Jon Scahill
President

Dated April 24, 2014

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EXHIBIT A

ASSIGNMENT

WHEREAS, Quest Licensing Corporation, a New York corporation (the "Assignor"), having a principal business address at 19 Fortune Lane, Jericho, New York, is the owner of all right title and interest to the inventions of certain new and useful improvements disclosed in certain patents and patent applications recited in the Patent List attached hereto, for which applications for a United States Letters Patent were executed and Patents have been granted;

WHEREAS, Quest Licensing Corporation, a Delaware corporation ("Assignee"), whose mailing address is 19 Fortune Lane, Jericho, New York, is desirous of acquiring the entire right, title and interest in the same;

NOW, THEREFORE, for good and valuable consideration the receipt of which is hereby acknowledged, Assignor agrees as follows: Assignor agrees to assign, and hereby does assign, to the Assignee its entire right, title and interest in and to each of the patents listed below, as well as to the "Assigned Applications" in the United States of America and all other countries, where "Assigned Applications" means the patents and patent applications recited in the attached Patent List, as well as any and all pending patent applications, including any and all inventions, discoveries and other subject matter described therein, any divisional, continuation, continuation-in-part, substitute, reissue, re-examination or other application claiming priority to or benefit of the patent applications pursuant to any law or treaty, and any patent issuing from the foregoing. This Assignment expressly and specifically, without limitation, assigns to Assignee all rights to sue for past, present, and future infringement, including the right to collect and receive any monetary damages, royalties, or settlements for such infringements, all rights to sue for injunctive or other equitable relief, and any and all causes of action anywhere in the world. Assignor agrees to assign, and hereby does assign, to Assignee the right to claim such priority or benefit. Assignor has not previously conveyed, nor are they aware of an obligation to convey, their rights in the Assigned Applications to a third party. Assignor hereby authorizes the U.S. Patent and Trademark Office, and any other governmental agency in the world, to issue to Assignee all patents resulting from the Assigned Applications and to record Assignee's ownership thereof. At Assignee's reasonable request Assignor agrees, without further remuneration, to execute and deliver documents prepared at Assignee's expense and to provide other cooperation, such as testimony at Assignee's sole cost and expense, as may be reasonably required to evidence or protect Assignee's rights in the Assigned Applications. Assignee may assign or transfer all or part of its rights set forth herein in its sole discretion. Assignor agrees that Assignee may affix hereto or hereon an indication, with its signature, of its acceptance of the assignment and other provisions hereof. If any provision hereunder is unenforceable, the requirements of the provision shall remain to the full extent permissible by law and the offending portions thereof shall be deemed replaced, to the extent possible, with a provision most closely reflecting the purpose of the offending provision.

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PATENT LIST

7,194,468

ASSIGNED APPLICATIONS

09/926,751

11/673,691

12/617,373

13/832,012

/s/ Jon C. Scahill

Quest Licensing Corporation

A New York Corporation, Assignor

(Dated) April 24, 2014

NOTARIAL CERTIFICATION OF ASSIGNOR

I, Lee LaMonica, A Notary Public of State of New York Westchester County, hereby certify that Jon C. Scahill, who executed the attached document before me on 4/24/2014, has proven to me on the basis of satisfactory evidence, that he/she had and has full authority to execute documents on behalf of Assignor, a corporation doing business at 19 Fortune Lane Jericho, New York.

/s/ Lee LaMonica

Notary Public

My commission expires: 4/30/2015

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EXHIBIT B

**QUEST LICENSING CORPORATION
OFFICER'S CERTIFICATE
Dated as of April 24, 2014**

The undersigned President of Quest Licensing Corporation, a Delaware corporation (the "Company"), hereby certifies to Longford Capital Fund I, LP, a Delaware limited partnership ("LCF"), pursuant to Section 6.1(c) of the Funding Agreement between LCF, Quest Patent Research Corporation, a Delaware corporation ("QPRC"), and Quest Licensing Corporation, a New York Corporation ("QLC"), dated as of March 11, 2014 (as amended by the Amendment No. 1 thereto, by and between LCF, QPRC, QLC and the Company, dated as of April 24, 2014, the "Agreement"), as follows:

1. The representations and warranties of the Company contained in Section 7.1 of the Agreement are, to the best of my knowledge, true and accurate in all material respects on and as of the date hereof.
2. No Event of Default (as defined in the Agreement) has occurred at or prior to the date hereof or would result from the transactions contemplated under the Agreement being consummated on the date hereof.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the first date written above.

/s/ Jon C. Scahill

Jon Scahill
President

EXHIBIT I

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MASTER PREPAID FORWARD PURCHASE AGREEMENT

BY AND BETWEEN

LITCHFIELD VENTURES, LLC

AND

FRESH ACQUISITIONS LIQUIDATING TRUST

DATED AS OF MAY 3, 2023

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TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS	1
1.1 Definitions	1
ARTICLE II TERMS OF FORWARD PURCHASE	6
2.1 Commitment and Payments	6
2.2 Use of Payments	6
2.3 Payment Procedure	6
2.4 Termination and Reduction of Commitment	7
2.5 No Affirmative Liability	7
2.6 Collateral	7
ARTICLE III DISTRIBUTION OF LITIGATION PROCEEDS	7
3.1 Priority of Payment	7
3.2 Obligation to Pay Limited to Litigation Proceeds	8
3.3 Tax Matters	8
3.4 Interest On Overdue Amounts	9
ARTICLE IV SETTLEMENT	9
4.1 Right to Settle	9
4.2 Communication of Settlement Offers	9
4.3 Settlements with Non-Cash Component	9
4.4 Settlement Agreement	9
ARTICLE V LITIGATION MANAGEMENT	9
5.1 Control of the Litigation	9
5.2 New Counsel	9
5.3 Engagement Agreements	10
5.4 Conduct of the Litigation	10
5.5 Disclosure of Interest	10
ARTICLE VI LITIGATION INFORMATION; CONFIDENTIALITY	10
6.1 Communication of Litigation Information	10
6.2 Confidentiality	11
ARTICLE VII REPRESENTATIONS AND WARRANTIES	11
7.1 Mutual Representations and Warranties	11
7.2 Forward Seller’s Additional Representations and Warranties	12
ARTICLE VIII TERMINATION OF AGREEMENT	14
8.1 Termination	14
8.2 Consequences of Termination	14
8.3 Clawback	14
ARTICLE IX INDEMNIFICATION	14
9.1 Forward Seller Indemnity	14
ARTICLE X SECURITY AGREEMENT	15
10.1 Grant of Security Interest	15
10.2 Continuing Security Interest	15
10.3 Financing Statements	15
10.4 Additional Representations and Warranties of Forward Seller Relating to Security Interest	15
10.5 Covenants	16

CONFIDENTIAL

10.6	Remedies and Applications of Proceeds	17
10.7	Certain Waivers.....	17
10.8	Attorney-in-Fact	17
ARTICLE XI GOVERNING LAW; JURISDICTION AND VENUE; DISPUTES		18
11.1	Governing Law.....	18
11.2	Arbitration of Disputes.....	18
ARTICLE XII NOTICES.....		18
12.1	Method	18
12.2	Receipt.....	18
ARTICLE XIII GENERAL.....		19
13.1	Acknowledgment	19
13.2	Interpretation	19
13.3	Survival of Representations, Warranties, Covenants and Indemnities.....	19
13.4	Merger Clause	19
13.5	Confidentiality.....	19
13.6	Assignment.....	19
13.7	Third Party Beneficiaries.....	19
13.8	Independent Parties	20
13.9	Costs, Expenses and Fees.....	20
13.10	Amendment; Waiver	20
13.11	Counterparts	20
13.12	Severability.....	20
13.13	Further Assurances	20

Exhibits:

Exhibit A	Wire and Notice Information
Exhibit B	Form of Transaction Request & Confirmation
Exhibit C	Engagement Agreements
Exhibit D	Broker Payoff Letter

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MASTER PREPAID FORWARD PURCHASE AGREEMENT

This Master Prepaid Forward Purchase Agreement, dated as of May 3, 2023, is by and between Litchfield Ventures, LLC, a Delaware limited liability company ("Forward Purchaser"), and David Gonzales, not individually, but as Trustee of the Fresh Acquisitions Liquidating Trust, a Trust organized under the laws of the State of Arizona pursuant to the Fresh Acquisition Liquidating Trust Agreement dated January 3, 2022 ("Forward Seller," and together with Forward Purchaser, the "Parties").

ARTICLE I DEFINITIONS

1.1 Definitions. The following capitalized terms shall have the meanings specified in this Section 1.1. Other terms are defined in the text of this Agreement and those terms shall have the meanings respectively assigned to them.

"AAA" means the American Arbitration Association or its successor.

"Adverse Effect" means any one or more of the following: an adverse effect on any of (a) the Claims or the Litigations, or the value or viability thereof, (b) the rights of Forward Purchaser under Article X, (c) the financial condition or assets of Forward Seller or the Defendants in the Litigations or (d) the ability of Forward Purchaser to enforce its rights and remedies under the Transaction Documents.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly Controls, is Controlled by, or is under common Control with such Person.

"Agreement" means this Master Prepaid Forward Purchase Agreement, as amended from time to time in accordance with Section 13.10, including all Exhibits.

"Beneficiaries" means each Liquidating Trust Beneficiary as defined by the Liquidating Trust Agreement.

"Business Day" means any day that is not a Saturday, a Sunday or a public holiday on which banks are authorized or required to be closed under the laws of the State of Delaware.

"Business Deal" means any transaction or arrangement relating to the Litigations or the Claims entered into by Forward Seller and any Person, whereby such Person provides a benefit to Forward Seller or any of Forward Seller's Affiliates or the Beneficiaries, including any transaction or arrangement with any Defendant.

"Claims" means the claims that Forward Seller has against each Defendant and any related claims.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations in effect thereunder.

"Collateral" shall have the meaning assigned to such term in Section 10.1.

"Commitment" shall have the meaning assigned to such term in Section 2.1.

"Commitment Amount" shall have the meaning assigned to such term in Section 2.1.

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“Confidential Information” means any information relating to: (a) the Transaction Documents, including any discussions and negotiations related thereto, the existence of them, or the identity of the Parties or their respective Affiliates; the Litigations or the Claims, including the names of the parties and potential other parties to the Claims; the factual, legal, technical, economic and financial background of the Claims; the procedural status of the Claims; the planned legal and procedural strategies and tactics for the pursuing of the Claims or Settlement, or a Business Deal, or collection of the Litigation Proceeds; and the expected recoveries from the Claims; (b) factual information, evidentiary information, legal theories, procedures, decision trees, experts’ or other consultants’ reports, attorney or other professional work product; (c) billing arrangements, billing rates, financial arrangements, contingent fee agreements, contingent fee percentages, costs, finances, investments, investors, price lists, pricing, profit margins, profitability and quotations; (d) any financial statements and information, data, documents, reports and materials relating to the Litigations or the Claims; (e) information concerning accountants, agents, law firms, lawyers and advisors; and (f) other proprietary or nonpublic information, data or material, in all cases regardless of whether such information is (i) written or oral, irrespective of the form or storage medium, and (ii) specifically identified as “confidential” or which, by virtue of its nature, would be understood to be confidential by a reasonable Recipient. “Confidential Information” includes analytics derived from other Confidential Information. “Confidential Information” does not include information that (x) was or becomes generally available to the public other than as a result of a disclosure by the Recipient in violation of this Agreement or the Confidentiality Agreement; (y) was actually known to the Recipient on a non-confidential basis prior to its disclosure; or (z) was developed independently of the information derived from the Confidential Information.

“Confidentiality Agreement” shall have the meaning assigned to such term in Section 13.5.

“Control” (including the terms “Controlled by” and “under common Control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies or affairs of a Person, whether through ownership of voting securities of a Person, by contract or otherwise.

“Counsel” means Current Counsel and/or any New Counsel.

“Counsel Fees” means any and all fees, and reasonable out-of-pocket costs and expenses, payable by Forward Seller to Counsel for legal services related to the Litigations.

“Court” means the courts or other tribunals in which the Litigations are conducted.

“Current Counsel” means Dickinson Wright PLLC.

“Current Counsel Instruction Letter” means the letter, in a form approved by Forward Purchaser, from Forward Seller to Current Counsel, and agreed to by Current Counsel, that relates to the payment of the Litigation Proceeds to Forward Purchaser pursuant to this Agreement.

“Default Rate” means a rate per annum equal to the lesser of (a) 20% per annum compounded monthly and (b) the highest applicable rate permitted by law.

“Defendant” means each of the named defendants to the Litigations, and each of the successors and assigns of the foregoing.

“Disclosing Party” means the Party to this Agreement who provides Confidential Information to the Recipient.

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“Encumbrance” means any mortgage, pledge, lien, security or ownership interest, charge, hypothecation, or other encumbrance, option agreement, transfer, set-off right, security or subordination arrangement, or other similar interest or arrangement of any kind.

“Engagement Agreements” shall have the meaning assigned to such term in Section 7.2(l).

“Final Determination” means any of the following: (i) a decision, judgment, decree or other order of a court of original jurisdiction which has become final (i.e., the time for filing an appeal shall have expired), (ii) a closing agreement made under Section 7121 of the Code, or any other settlement agreement entered into in connection with an administrative or judicial proceeding, provided, however, that any refund claim shall be deemed approved without regard to any required approval of the Joint Committee on Taxation, (iii) the expiration of the time for instituting a claim for refund, or if a claim was filed, the expiration of the time for instituting suit with respect thereto, or (iv) in any case where judicial review shall be unavailable, a decision, judgment, decree or other order of an administrative official or agency which has become final.

“Final Resolution” means the resolution of the Litigations that substantially concludes the Litigations with respect to Forward Seller pursuant to (a) a final, non-appealable, legal and valid judgment of the Court binding all Defendants, or (b) a Settlement agreement or agreements between Forward Seller and all Defendants.

“Financing Statement Collateral” shall have the meaning assigned to such term in Section 10.4(c).

“Forward Purchaser” shall have the meaning assigned to such term in the introduction to this Agreement.

“Forward Purchaser’s Return” means the Litigation Proceeds to be received by Forward Purchaser equal to the following:

- (A) 3.00 multiplied by Forward Purchaser’s Total Payments (the “Multiple Return”); plus
- (B) 8.5% of Net Proceeds.

“Forward Purchaser’s Transaction Costs” shall have the meaning assigned to such term in Section 13.9.

“Forward Purchaser Transaction Return” means, for each Transaction, the product of Forward Purchaser’s Return and a fraction, the numerator of which is the notional amount of that Transaction and the denominator of which is the notional amount of all Transactions.

“Forward Seller” shall have the meaning assigned to such term in the introduction to this Agreement.

“Forward Seller’s Transaction Costs” shall have the meaning assigned to such term in Section 13.9.

“Governmental Authority” means any court, tribunal, arbitrator, authority, agency, commission, official, body or other instrumentality of the United States, any foreign country, or any domestic or foreign state, province, county, city, other political subdivision or any other similar body or organization exercising governmental or quasi-governmental power or authority.

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“Instruction Letter” means the Current Counsel Instruction Letter and/or any New Counsel Instruction Letter.

“Litigations” means the cases captioned (i) *David Gonzales, Trustee of the Fresh Acquisitions Liquidating Trust v. Allen Jackie Jones et al*, Adv. No. 22-03087-sgj (Bankr. N.D. Tex.) and (ii) *David Gonzales, Trustee of the Fresh Acquisitions Liquidating Trust v. River North Furr 's, LLC*, Adv. No. 22-03098-sgj, (Bankr. N.D. Tex.), including, in either or both cases, the same if transferred to any other jurisdictions or forums (arbitral, judicial or otherwise), together with (a) any and all claims, suits, causes of action, proceedings, and other rights relating to, or arising therefrom, (b) any and all appellate proceedings, proceedings on remand, and enforcement, ancillary, parallel or alternate dispute resolution proceedings and processes arising out of or related thereto, and (c) any additional cases, lawsuits, arbitration matters or other proceedings filed or initiated by or on behalf of Forward Seller, any of Forward Seller’s Affiliates or the Beneficiaries based upon the same or substantially similar claims.

“Litigation Expenses” means Counsel Fees and, without duplication, reasonable out-of-pocket costs incurred by or on behalf of Forward Seller related to the Litigations, including expert witness fees and costs.

“Litigation Proceeds” means any and all proceeds, receivables, property, cash, concessions and other consideration payable or transferred directly or indirectly to or for the benefit of Forward Seller, any of Forward Seller’s Affiliates or the Beneficiaries in connection with the Litigations, any Claims or otherwise (whether by judgment, Settlement, Business Deal or otherwise), including any damages (punitive or otherwise), penalties, interest, award of attorneys’ fees and the reimbursement for costs and expenses, and other amounts paid or property transferred or concessions made to or for the benefit of Forward Seller, any of Forward Seller’s Affiliates or the Beneficiaries in respect of the Litigations, any Claims or otherwise. The Litigation Proceeds will be calculated and determined without taking into consideration and prior to deduction of (a) any Taxes payable by Forward Purchaser or Forward Seller or any of Forward Purchaser’s or Forward Seller’s Affiliates or the Beneficiaries in connection with the Litigation Proceeds, (b) setoffs of any kind, including setoffs in respect of any claim or counterclaim asserted against Forward Seller, any of Forward Seller’s Affiliates or the Beneficiaries by any Person, and (c) fees and/or expenses incurred in connection with the Litigations or the collection of any Litigation Proceeds.

“Losses” shall have the meaning assigned to such term in Section 9.1(a).

“Net Proceeds” means Litigation Proceeds less the Multiple Return.

“New Counsel” means any substitute or additional legal counsel engaged by Forward Seller with respect to the Claims or the Litigations.

“New Counsel Instruction Letter” shall have the meaning assigned to such term in Section 5.2.

“Order” means any order, judgment, ruling, injunction, award, decree or writ of any Governmental Authority.

“Parties” shall have the meaning assigned to such term in the introduction to this Agreement.

“Payment” shall have the meaning assigned to such term in Section 2.1.

“Payment Completion Date” means the earlier of (a) the date on which the Total Payments (excluding Forward Purchaser’s Transaction Costs and Forward Seller’s Transaction Costs) have reached the Commitment Amount, or (b) Final Resolution.

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“Person” means any natural person, corporation, partnership, limited liability company, joint stock company, joint venture, association, company, estate, trust or other organization, whether or not a legal entity, custodian, trustee, executor, administrator, nominee or entity in a representative capacity and any Governmental Authority.

“Proceeds” shall have the meaning assigned to such term in the UCC.

“Protective Order” means a stipulated order to protect confidential information prepared by the parties to a Litigation and ordered by the Court.

“Recipient” means the Party to this Agreement receiving Confidential Information from the Disclosing Party.

“Records” shall have the meaning assigned to such term in the UCC.

“Secured Obligations” means, collectively: (a) the prompt payment by Forward Seller, as and when due, of the Forward Purchaser’s Return to Forward Purchaser and the due performance by Forward Seller of all of its obligations in respect of the Transaction Documents; (b) all other debts, liabilities, obligations, covenants and duties of Forward Seller owing to Forward Purchaser now or hereafter existing, whether direct or indirect, absolute or contingent or due or to become due, arising under or in connection with the Transaction Documents or any of the transactions contemplated thereby and including any interest due thereon and all fees, costs and expenses incurred by Forward Purchaser in connection therewith; (c) all debts, liabilities, obligations, covenants and duties of Forward Seller to pay or reimburse Forward Purchaser for all expenses, including attorneys’ fees, incurred by Forward Purchaser in connection with the enforcement, attempted enforcement or preservation of any rights or remedies under the Transaction Documents, including all such costs and expenses incurred during any legal proceeding, including any proceeding under any applicable bankruptcy, insolvency or other similar debtor relief laws; and (d) all interest and fees on any of the foregoing, whether accruing prior to or after the commencement by or against Forward Seller of any proceeding under any applicable bankruptcy, insolvency or other similar debtor relief laws naming Forward Seller as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“Settlement” means any compromise, discontinuance, waiver, payment, release or other form of settlement whatsoever where value passes from or on behalf of one or more Defendants to or for the benefit of Forward Seller, any of Forward Seller’s Affiliates or the Beneficiaries in circumstances in which any of the Litigations do not commence or continue as a result of or in connection with the passing of that value; and “Settle”, “Settles” and “Settled” have corresponding meanings.

“Taxes” means any and all applicable taxes, duties, charges or levies of any nature imposed by any taxing or other Governmental Authority, including income, gains, capital gains, surtax, capital, franchise, capital stock, value-added taxes, taxes required to be deducted from payments made by the payor and accounted for to any tax authority, employees’ income withholding, back-up withholding, withholding on payments to foreign Persons, social security, national insurance, unemployment, worker’s compensation, payroll, disability, real property, personal property, sales, use, goods and services or other commodity taxes, business, occupancy, excise, customs and import duties, transfer, stamp and other taxes (including interest, penalties or additions to tax in respect of the foregoing), and includes all taxes payable pursuant to any provision of state, local or foreign law.

“Total Payments” shall have the meaning assigned to such term in Section 2.1.

CONFIDENTIAL

“Transaction” means an agreement by Forward Purchaser to make a Payment pursuant to the terms of a Transaction Request & Confirmation.

“Transaction Documents” means, collectively, this Agreement, each Transaction Request & Confirmation, the Confidentiality Agreement and any other agreement, document or instrument contemplated hereby or delivered in connection herewith or therewith, including any Instruction Letter (which letter shall be binding on the signatories thereto as specifically set forth therein).

“Transaction Request & Confirmation” shall have the meaning assigned to such term in Section 2.3.

“UCC” means the Uniform Commercial Code as in effect on the date hereof in the State of Delaware or, in relation to the perfection or priority of a security interest, the Uniform Commercial Code that then governs under the choice of law rules applicable to questions of perfection or priority.

ARTICLE II TERMS OF FORWARD PURCHASE

2.1 Commitment and Payments. Subject to the terms and conditions of this Agreement (including Section 13.9), Forward Purchaser commits (the “Commitment”) to enter into Transactions to make payments to Forward Seller or on Forward Seller’s behalf (each payment, a “Payment,” and the total of such payments, together with Forward Purchaser’s Transaction Costs and Forward Seller’s Transaction Costs, the “Total Payments”), at any time and from time to time from the date of this Agreement until the Payment Completion Date (unless (a) the Commitment is terminated earlier in accordance with the terms of this Agreement, or (b) Forward Purchaser agrees in writing to make Payment(s) after the Payment Completion Date), in the maximum aggregate amount (excluding Forward Purchaser’s Transaction Costs and Forward Seller’s Transaction Costs) of \$1,575,000.00 (the “Commitment Amount”). The Commitment is not revolving. In consideration of Forward Purchaser’s agreement to fund the Commitment, Forward Seller, to support its obligations hereunder, hereby pledges to Forward Purchaser, free and clear of any Encumbrance, all rights, title, benefits and interests of Forward Seller in and to Forward Purchaser’s Return.

2.2 Use of Payments. Except for Forward Purchaser’s Transaction Costs and Forward Seller’s Transaction Costs, Payments made under this Agreement are only for payment by Forward Seller, or on Forward Seller’s behalf, of Litigation Expenses. With respect to payments of Litigation Expenses other than the First Payment, such amounts shall reflect 50% of Counsel Fees (excluding costs and expenses included as Counsel Fees) and 100% of the applicable costs and expenses.

2.3 Payment Procedure. Forward Purchaser shall enter into a Transaction to fund an initial Payment equal to \$945,000.00 (the “First Payment”) within fifteen (15) Business Days after the date of this Agreement, \$870,000.00 of which Forward Seller hereby directs Forward Purchaser to pay to Current Counsel on behalf of Forward Seller in payment of prior Counsel Fees related to the Litigations; and \$75,000 of which Forward Seller hereby directs Forward Purchaser to pay to Fincorp Associates, LLC on behalf of Forward Seller pursuant to the payoff letter attached hereto as Exhibit D, which confirms that, upon Forward Purchaser’s wiring of such amount pursuant to the wire instructions set forth therein, all of Forward Seller’s obligations with respect to Fincorp Associates, LLC will be satisfied. Beginning with the calendar month after the calendar month in which the First Payment is made, and no more than once per calendar month until the Payment Completion Date, Forward Seller may submit a written request (a “Transaction Request & Confirmation”) to Forward Purchaser for each desired Payment in the form of Exhibit B. Forward Purchaser and Forward Seller shall enter into a Transaction with respect to such Transaction Request & Confirmation, and Forward Purchaser shall then disburse such Payment to Forward Seller or the ultimate payee on Forward Seller’s behalf; provided that:

CONFIDENTIAL

(a) Forward Seller provides an invoice detailing the out-of-pocket costs and fees incurred by Forward Seller in accordance with the uses permitted under Section 2.2, which invoice will be in form and substance reasonably acceptable to Forward Purchaser and which costs and fees were not paid by a previous Payment, along with invoices or other documentation acceptable to Forward Purchaser to substantiate said costs and fees;

(b) No breach or default by Forward Seller exists, and remains uncured, under any of the Transaction Documents as of the date of such request or the funding of the related Payment;

(c) The Transaction Request & Confirmation is in the form of Exhibit B or otherwise contains a certification by Forward Seller that, as of the date of such request, (i) no breach or default by Forward Seller exists under any of the Transaction Documents, and (ii) Forward Seller's representations and warranties in or in connection with the Transaction Documents remain true and correct in all material respects; and

(d) The Transaction Request & Confirmation is for a minimum of \$25,000.

Subject to the terms of this Agreement, within fifteen (15) Business Days of Forward Purchaser's receipt of the Transaction Request & Confirmation, Forward Purchaser shall disburse the Payment in immediately available funds to or on behalf of Forward Seller in accordance with "Forward Seller's Wire Instructions" set forth on Exhibit A or as otherwise directed by Forward Seller in the Transaction Request & Confirmation.

2.4 Termination and Reduction of Commitment. If an Adverse Effect occurs, as determined by Forward Purchaser in its sole discretion, then, at any time thereafter and upon written notice to Forward Seller, Forward Purchaser may terminate Forward Purchaser's obligations with respect to any unfunded portion of the Commitment.

2.5 No Affirmative Liability. Under no circumstances shall Forward Purchaser have any obligation to pay any sums awarded against Forward Seller, including fees, costs or awards, nor shall Forward Purchaser be otherwise liable in tort or contract for any obligations of Forward Seller to any Defendant in respect of any of the Claims.

2.6 Collateral. Forward Seller and Forward Purchaser intend and agree that the transactions contemplated by the Transaction Documents shall constitute derivative transactions and Forward Seller is agreeing to Article X to grant to Forward Purchaser a first-priority security interest in the Collateral.

ARTICLE III DISTRIBUTION OF LITIGATION PROCEEDS

3.1 Priority of Payment. Forward Seller will immediately notify Forward Purchaser of its receipt of any Litigation Proceeds (whether by Counsel for Forward Seller's account or otherwise). Within three Business Days of Forward Seller (or Counsel) receiving any Litigation Proceeds, Forward Seller will pay (or cause to be paid) an amount equal to the Litigation Proceeds to Forward Purchaser until an aggregate amount equal to Forward Purchaser's Return has been paid to Forward Purchaser (together with all other unpaid fees and amounts, if any, payable to Forward Purchaser pursuant to the Transaction Documents) in immediately available funds in accordance with "Forward Purchaser's Wire Instructions" set forth on Exhibit A. Forward Seller agrees to satisfy its obligations to Forward Purchaser hereunder prior to making any other payments from the Litigation Proceeds to any other Person, including Forward Seller, the Beneficiaries or Counsel. In order to secure payment of the Litigation Proceeds and as a condition to

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Forward Purchaser entering into this Agreement, on or prior to the date of this Agreement, (I) Forward Seller has delivered the Current Counsel Instruction Letter, which provides instructions for payment of the Litigation Proceeds that are consistent with the terms of this Section 3.1, to Current Counsel and Current Counsel has agreed to the Current Counsel Instruction Letter, and (II) Forward Seller has delivered the Current Counsel Instruction Letter to Forward Purchaser as executed by Forward Seller and Current Counsel.

3.2 Obligation to Pay Limited to Litigation Proceeds. Subject to the terms and conditions stated herein, including Article IX, the obligation of Forward Seller to make payment under all Transactions shall be limited in an amount equal to the Litigation Proceeds, and Forward Seller shall have no obligation to make any payment in an amount in excess of such Litigation Proceeds. For the avoidance of doubt, if there are no Litigation Proceeds, then no amount shall be payable to Forward Purchaser under Section 3.1, and if there are Litigation Proceeds but they are less than the amount necessary to pay Forward Purchaser the entirety of Forward Purchaser's Return, Forward Seller shall not be obligated to pay the difference to Forward Purchaser; provided, however, that nothing in this Section 3.2 shall limit Forward Seller's liability under Article IX, which shall be full recourse to Forward Seller and which obligations shall be secured pursuant to Article X.

3.3 Tax Matters.

(a) Forward Seller is liable for and shall pay any and all Taxes (other than Taxes imposed upon Forward Purchaser as a consequence of Forward Purchaser's income) imposed in connection with, or as a result of, the Litigation Proceeds, as a consequence of any Settlement or Business Deal, or under this Agreement.

(b) Forward Purchaser shall have furnished Forward Seller prior to becoming a Party to this Agreement, a properly executed Internal Revenue Service Form W-9.

(c) No Tax payment, liability or obligation of Forward Seller shall operate to reduce any amount payable to Forward Purchaser under this Agreement. If any such reduction or withholding is required by law, Forward Seller shall (i) promptly notify Forward Purchaser upon becoming aware of the required deduction or withholding; (ii) pay to the relevant authorities (within the time allowed) the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by Forward Seller to Forward Purchaser under this clause); (iii) promptly provide Forward Purchaser an official receipt (or a certified copy or such other evidence reasonably acceptable to Forward Purchaser) evidencing the relevant withholding and payment to such authorities; and (iv) pay to Forward Purchaser such additional amounts as are necessary to ensure that (after making any such withholdings or deductions) the net amount actually received by Forward Purchaser in respect of the payment due from Forward Seller equals the amount Forward Purchaser would have received if no such withholdings or deductions had been required.

(d) For income tax purposes, each Transaction shall be considered and treated as a prepaid forward contract, and in any event does not represent indebtedness. The Parties agree to file all Tax returns consistent with the preceding sentence, unless otherwise required by a Final Determination. Unless required by a Final Determination binding on one or more of the Parties, the payment of the Forward Purchaser's Return to Forward Purchaser shall constitute the elimination of any previously existing right or obligation created by the terms of this Agreement within the meaning of Section 1234A of the Code, resulting in a disposition of any assets created as a result of this Agreement.

(e) This Agreement shall not, in whole or in part, be deemed to create or imply a partnership for federal or state or local income tax purposes, and neither Forward Purchaser nor Forward

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Seller will take any action or make any election to treat their relationship as a partnership for income tax purposes.

3.4 Interest On Overdue Amounts. If Forward Seller fails to pay (or cause to be paid) any amounts due or owed to Forward Purchaser on the date when due, including any failure to instruct Counsel to disburse any amount to Forward Purchaser in accordance with the terms of this Agreement, Forward Seller shall thereafter pay to Forward Purchaser interest on such amount for the period from and including the date due, to but excluding the date on which such amount is paid in full, at a rate per annum (computed on the basis of the actual days elapsed) equal to the Default Rate. The amount payable with respect to each Transaction shall be determined in accordance with the Forward Purchaser Transaction Return for that Transaction.

ARTICLE IV SETTLEMENT

4.1 Right to Settle. Subject to the provisions of this Article IV, Forward Seller shall have the sole and exclusive right to Settle any Claim, the Claims or all or any portion of the Litigations.

4.2 Communication of Settlement Offers. Subject to and pursuant to any applicable Protective Order and subject to the provisions of this Article IV, Forward Seller shall promptly upon and after Forward Seller's receipt or knowledge of any Settlement offer, demand or proposal (but in no event later than two Business Days after Forward Seller's receipt or knowledge thereof), communicate to Forward Purchaser all such Settlement offers, demands and proposals, and the substance of all Settlement discussions and any related documents. If a Settlement offer, demand or proposal is not made or received in writing, Forward Seller shall promptly upon and after Forward Seller's receipt or knowledge thereof (but in no event later than two Business Days after Forward Seller's receipt or knowledge of the offer, demand or proposal) provide Forward Purchaser with a verbal summary of all material provisions of the Settlement offer, demand or proposal, including a preliminary valuation of any non-cash portion of the Litigation Proceeds contemplated by the Settlement offer, demand or proposal.

4.3 Settlements with Non-Cash Component. If Forward Seller supports or accepts (to the extent such acceptance is within Forward Seller's power) any offer to Settle the Litigations that includes non-cash Litigation Proceeds, Forward Seller shall take all actions necessary to move the Court to cause the monetization of all such non-cash Litigation Proceeds, to obtain the cash value of such non-cash Litigation Proceeds as soon as practicable, and to cause the payment of the cash Litigation Proceeds received in accordance with this Agreement.

4.4 Settlement Agreement. Subject to and pursuant to any applicable Protective Order and subject to the provisions of this Article IV, Forward Seller shall provide to Forward Purchaser true, correct and complete copies of all fully executed Settlement documents, any amendments or modifications thereto, and subsequent documents relating to the collection or payment of the Litigation Proceeds.

ARTICLE V LITIGATION MANAGEMENT

5.1 Control of the Litigations. Forward Seller has the sole and exclusive right to control, act or refrain from acting in respect of any act, request or decision in connection with the Litigations.

5.2 New Counsel. Forward Purchaser's decision to invest hereunder is based in part on the identity and abilities, skills and reputation of Current Counsel. To the extent that Forward Seller retains New Counsel, Forward Seller agrees to notify Forward Purchaser in writing of such proposed New Counsel

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and to consult with Forward Purchaser prior to adding such New Counsel, including with respect to the economic terms of engagement and any engagement agreement or letter to be entered into. Upon entering into any such engagement, Forward Seller shall provide a copy of the engagement agreement or letter entered into with such New Counsel. No engagement of New Counsel shall have the effect of increasing the total amount of Counsel Fees without consultation with, and prior written consent of, Forward Purchaser. If New Counsel is replacing Current Counsel, Forward Seller shall not engage such New Counsel unless and until such New Counsel and Forward Seller execute and deliver to Forward Purchaser an instruction letter in substantially the same form as the Current Counsel Instruction Letter or such other form approved by Forward Purchaser in writing in its sole discretion (a "New Counsel Instruction Letter"). For avoidance of doubt, none of the provisions of this Section 5.2 shall be construed to deny Forward Seller the right to retain counsel of its choice or replace counsel at its sole discretion.

5.3 Engagement Agreements. Forward Seller shall not amend, modify or waive any provision in the Engagement Agreements (or any engagement agreement or letter entered into with New Counsel) without Forward Purchaser's prior written consent.

5.4 Conduct of the Litigations. Forward Seller shall use best efforts to (a) prevail in the Litigations; (b) diligently pursue the Claims and the Litigations; (c) collect all Litigation Proceeds awarded or agreed upon as soon as practicable, including pursuing the enforcement of any final, non-appealable judgment or award as soon as possible; (d) take steps to commence all necessary actions in connection with the Litigations and promptly enter any judgment obtained in all appropriate jurisdictions; and (e) take all actions necessary in connection with the foregoing; provided that none of the foregoing shall require Forward Seller to continue a Litigation to the extent Forward Seller reasonably determines that a Litigation no longer has merit.

5.5 Disclosure of Interest. Forward Seller shall use best efforts to (and shall instruct Counsel to) provide written notice to Forward Purchaser (a) prior to making any filing or taking any other action that will or may reasonably be expected to require the disclosure of Forward Purchaser's identity, this Agreement or the transactions contemplated hereby and (b) of any discovery request or order in the Litigations that may require the disclosure of Forward Purchaser's identity, this Agreement or the transactions contemplated hereby (such notice, a "Disclosure Notice"). Each such Disclosure Notice shall describe the filing or action proposed to be taken or the discovery request/order, as applicable, and shall be delivered to Forward Purchaser as promptly as practicable under the circumstances.

ARTICLE VI LITIGATION INFORMATION; CONFIDENTIALITY

6.1 Communication of Litigation Information.

(a) Attorney Status Reports. Forward Seller shall (and shall instruct Counsel to) provide Forward Purchaser with (i) written or email notice upon the occurrence of any material events in the Litigations, (ii) a quarterly update conference call, and (iii) a status update by conference call at other times upon Forward Purchaser's request.

(b) Information. Subject to Section 6.1(c), during the Litigations, Forward Seller shall (and shall instruct Counsel to) forward to Forward Purchaser copies of all briefs, motions and final orders that are material to the Litigations within two Business Days of Forward Seller's receipt or submission thereof. Copies of all briefs, motions and final orders forwarded to Forward Purchaser shall be subject to the restrictions placed on such materials by any and all applicable Protective Orders that may be in place in the Litigations at the time of the forwarding thereof.

CONFIDENTIAL

(c) Privileged Information. Forward Seller and Forward Purchaser acknowledge and agree that, as a result of their discussions leading up to, and the execution and performance of, the Transaction Documents, they have shared and continue to share a common interest privilege in information subject to the attorney work-product doctrine and documents relevant to the Litigations, which information and documents shall be deemed to be Confidential Information. Notwithstanding anything to the contrary contained herein, (i) Forward Seller has not and will not deliver any attorney-client privileged information to Forward Purchaser, (ii) Forward Seller has not and will not waive attorney-client privilege, and (iii) Forward Seller's delivery obligations under this Article VI and the other applicable provisions of this Agreement shall specifically exclude any information or document the delivery of which to Forward Purchaser, in the opinion of Counsel, would waive the attorney-client privilege or result in a violation of a Protective Order.

6.2 Confidentiality.

(a) Exclusive Ownership of Information by Disclosing Party. The Recipient agrees and acknowledges that all Confidential Information provided to it is and shall remain at all times the exclusive property of and owned by the Disclosing Party, and that the Recipient's use or awareness of such Confidential Information shall create no rights, at law or in equity, in the Recipient in or to such Confidential Information, or any aspect or embodiment thereof. The furnishing of any Confidential Information hereunder shall not constitute (i) a grant, whether express or by implication, estoppel or otherwise, of any ownership interest in or license of any patent, trademark, service mark, business and trade secret or other proprietary right to such Confidential Information, or of any right to use such Confidential Information for any purpose other than as specified in this Agreement or (ii) a waiver of any attorney-client privilege or work product protection or any other applicable or available similar privilege or protection.

(b) Non-Disclosure of Information. The Recipient shall not for any reason disclose, use, reveal, report, publish, transfer or make available, directly or indirectly, to any Person other than its representatives and Affiliates, any Confidential Information provided to it except (i) when necessary to further Forward Seller's or Forward Purchaser's legal interests, in connection with the performance of its obligations or rights under this Agreement, the enforcement of its rights under this Agreement, as permitted by the Disclosing Party, or as required by law and (ii) if Forward Purchaser is the Recipient, Forward Purchaser may disclose the Confidential Information to an actual or proposed assignee or co-investment participant so long as the assignee or co-investment participant agrees to be bound by confidentiality provisions at least as restrictive as this Section 6.2(b). Notwithstanding anything in this Section 6.2(b) to the contrary, Recipient shall not disclose any information that Recipient knows to be subject to a Protective Order.

ARTICLE VII REPRESENTATIONS AND WARRANTIES

7.1 Mutual Representations and Warranties. Each Party represents and warrants to the other that:

(a) Authority. Such Party has full power and authority, and has taken all action necessary to execute and deliver the Transaction Documents, and to fulfill its obligations thereunder.

(b) No Violation of Law or Agreement. The making and performance by such Party of the Transaction Documents does not and will not (i) violate any law or regulation applicable to it, (ii) violate any other agreement to which it is bound or (iii) result in the creation or imposition of any Encumbrance other than the Encumbrances created by or pursuant to this Agreement.

CONFIDENTIAL

(c) Enforceability of Agreement. The Transaction Documents have been duly executed and delivered by such Party and constitute such Party's legal, valid and binding obligations, enforceable against it in accordance with its terms.

(d) No Notices Required. No notice to, registration with, consent or approval of, or any other action by, any relevant Governmental Authority or other Person is or will be required for it to execute, deliver and perform its obligations under the Transaction Documents.

7.2 Forward Seller's Additional Representations and Warranties. Forward Seller further represents and warrants to Forward Purchaser that:

(a) Organization. Forward Seller is a liquidating trust under the laws of Arizona, and is duly organized, validly existing, and in good standing; and has all powers and all governmental licenses, authorizations, consents and approvals required to carry on its affairs as now conducted. Forward Seller is governed by that certain "Fresh Trust Liquidating Trust Agreement" dated as of January 3, 2022 (the "Liquidating Trust Agreement") and is in compliance in all material respects with (i) the Liquidating Trust Agreement, (ii) Forward Seller's other organizational documents, if any, and (iii) all laws, rules and regulations applicable to or binding upon Forward Seller or any of Forward Seller's property or to which Forward Seller or any of Forward Seller's property is subject.

(b) Intentionally Omitted.

(c) Right the Litigation Proceeds. Except to the extent the Litigation Proceeds are subject to Counsel's right to Counsel Fees, Forward Seller is the sole legal owner of the Claims, the Litigation Proceeds, and any and all of the interests in the Litigations. No notices have been sent to any Person involved in the Litigations directing such Person to pay Litigation Proceeds to any Person other than Forward Seller or Counsel.

(d) No Encumbrance. Except to the extent the Litigation Proceeds are subject to Counsel's right to Counsel Fees, no Encumbrance exists in connection with Forward Seller's right, title and interest in and to the Claims, the Litigation Proceeds or the Litigations.

(e) No Payments. Forward Seller has not received any payments or other distributions with respect to the Litigations or the Claims.

(f) No Set-off. Except to the extent the Litigation Proceeds are subject to Counsel's right to Counsel Fees, no set-off against the Litigation Proceeds has occurred and the Litigation Proceeds are not, and will not be, subject to any set-off right or contractual or equitable subordination.

(g) No Collateral Actions. No litigation, arbitration or proceeding is pending against Forward Seller, or is threatened against Forward Seller, that may have an Adverse Effect.

(h) No Alternative Transactions. Except to the extent the Litigation Proceeds are subject to Counsel's right to Counsel Fees, Forward Seller has not pledged, encumbered, assigned, transferred, participated, conveyed, disposed of, granted any security interest in, or entered into any derivative payment, investment rights or hedging arrangement or other alternative transaction or arrangement, in whole or in part, relating to any of its right, title and interest in and to the Claims, the Litigation Proceeds or the Litigations, and Forward Seller is not a party to any agreement that would result in the foregoing.

CONFIDENTIAL

(i) Filings and Information. Forward Seller has provided to Forward Purchaser true, correct and complete copies of all material disclosures, motions, briefs, filings and other material documents submitted, filed, received or served in connection with the Litigations that have been requested by Forward Purchaser. To the knowledge of Forward Seller, Forward Seller has disclosed all other material documents and information necessary for Forward Purchaser to evaluate the merits and the likelihood of success of the Litigations. Forward Seller acknowledges that Forward Purchaser is relying upon such documents and information in (i) evaluating the merits and the likelihood of success of the Litigations and (ii) entering into this Agreement. The documents and information delivered to Forward Purchaser, to the knowledge of Forward Seller, do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made therein not misleading.

(j) Litigation, Settlement and Business Deals. Forward Seller is responsible for all Litigations, Settlement and Business Deal actions and decisions, which are acknowledged to be undertaken at Forward Seller's risk, notwithstanding anything to the contrary in any statements, acts, refusal to act or involvement of Forward Purchaser in connection therewith. Forward Seller acknowledges that Forward Purchaser has not given Forward Seller any investment advice or rendered any opinion to Forward Seller as to whether the entering into this Agreement is prudent, and Forward Seller is not relying on any representation, warranty or advice of Forward Purchaser with respect to the Litigations' outcome or Forward Seller's prospects of prevailing in the Litigations. Forward Seller brought and continues to pursue the Litigations in the exercise of its independent judgment in consultation with Counsel. Forward Purchaser has not prompted or encouraged initiation of the Litigations and, regardless of the existence of this Agreement, Forward Seller would have brought and would continue to pursue the Litigations.

(k) Good Faith. Forward Seller has acted in good faith in its conduct of the Litigations, including the timely filing and service of all documents required in connection therewith, and is aware of no fact that has not been disclosed to Forward Purchaser that may have an Adverse Effect.

(l) Engagement Agreements. Attached as Exhibit C are true, correct and complete copies of all engagement and any other agreements with legal counsel entered into by Forward Seller in connection with the Claims and the Litigations, including any amendments or modifications thereto (the "Engagement Agreements"). There have been no modifications or amendments to the Engagement Agreements, and the Engagement Agreements are in full force and effect. Forward Seller has not engaged or otherwise retained any legal counsel in respect of the Litigations or Claims other than those included in the definition of Current Counsel.

(m) Independent Advice and Tax Treatment. Forward Seller has taken independent and appropriate legal advice in connection with the Transaction Documents and, on the basis of that advice, is entering into the Transaction Documents. Forward Seller has had the opportunity to obtain tax advice in connection with the Transaction Documents.

(n) No Brokers or Finders. Except for Fincorp Associates, LLC, whose broker fee will be paid in full upon the payment contemplated in Section 2.3, Forward Seller has not retained any broker or finder, agreed to pay or made any statement or representation to any Person that would entitle such Person to, any broker's, finder's or similar fees or commissions in connection with the transactions contemplated by this Agreement.

(o) Litigation. There are no suits, actions, proceedings, arbitrations, mediations, claims, investigations or audits by any Person or Governmental Authority pending or threatened against Forward Seller (whether relating to the Litigations, the Claims or any other matter). Forward Seller is not subject to any Order.

CONFIDENTIAL

(p) Solvency and Fraudulent Conveyance. No insolvency proceeding is threatened or outstanding with respect to Forward Seller, Forward Seller is not insolvent or in the zone of insolvency, Forward Seller is able to pay its debts when due, and Forward Seller will not use the proceeds from the transactions contemplated by this Agreement to give preference to any class of creditors.

(q) Taxes. Forward Seller does not owe any amount with respect to Taxes to any Governmental Authority, except for Taxes that are not yet due.

ARTICLE VIII TERMINATION OF AGREEMENT

8.1 Termination. This Agreement commences on the date hereof and, except as provided in Section 8.2, shall terminate at the time at which a Final Resolution has occurred, Forward Seller has complied with all of its obligations pursuant to this Agreement, and all Litigation Proceeds (if any) have been disbursed in accordance with this Agreement.

8.2 Consequences of Termination. The provisions of Sections 2.5, 2.6, 3.3, 6.2, and Articles I, VII, VIII, IX, X, XI, XII and XIII shall survive termination of this Agreement. Without limiting the foregoing, (a) Forward Purchaser shall be entitled, in order to protect its own interest in relation to this Agreement, to keep copies of the Confidential Information provided to it pursuant to this Agreement, subject to Forward Purchaser's ongoing obligations pursuant to Section 6.2; and (b) any rights or obligations accrued prior to the date of termination of this Agreement (including with respect to breaches of this Agreement) shall survive termination.

8.3 Clawback. In the event any payment to Forward Purchaser made under a Transaction must be returned or disgorged by Forward Purchaser as a result of a legal proceeding or otherwise, including an insolvency proceeding or fraudulent conveyance proceeding, the right of Forward Purchaser to such payment shall be reinstated to the maximum extent permitted by law and Forward Purchaser shall have the right to recover such reinstated amount from Litigation Proceeds or, subject to the terms and conditions of this Agreement, from Forward Seller and/or the Beneficiaries.

ARTICLE IX INDEMNIFICATION

9.1 Forward Seller Indemnity.

(a) Forward Seller shall indemnify, defend and hold Forward Purchaser (and Forward Purchaser's officers, managers, directors, partners, equityholders, employees, permitted assigns, participants, attorneys and agents) harmless from any liability, claim, loss, judgment, damage, cost or expense, including all fees, costs and expenses of enforcement of the Transaction Documents (including legal fees, costs and expenses) (collectively, "Losses") that are incurred as a result of Forward Seller's breach of any of the representations, warranties, covenants or agreements made by Forward Seller in the Transaction Documents; provided that Forward Seller shall not be liable to indemnify Forward Purchaser under this Section 9.1(a) if (i) Forward Seller cures such breach within ten (10) Business Days after Forward Purchaser has provided written notice of such breach to Forward Seller and (ii) Forward Purchaser has not otherwise suffered any uncured Losses.

(b) Further, Forward Seller shall indemnify, defend and hold Forward Purchaser (and Forward Purchaser's officers, managers, directors, partners, equityholders, employees, permitted assigns, participants, attorneys and agents) harmless from any Losses that are incurred in connection with (i) any claim of Defendants or any other party against Forward Purchaser (or Forward Purchaser's officers,

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managers, directors, partners, equityholders, employees, permitted assigns, participants, attorneys and agents) in connection with the Claims or the Litigations, or (ii) any subpoena, discovery or other proceeding arising in connection with the Claims, the Litigations or the investment or other transactions contemplated hereby.

ARTICLE X SECURITY AGREEMENT

10.1 Grant of Security Interest. As security for the payment, performance and observance in full of all of the Secured Obligations, Forward Seller hereby grants, assigns and pledges to Forward Purchaser, its successors, agents, designees and assigns, a continuing security interest, in any and all right, title or interest of Forward Seller in or to any and all of the following assets, rights and properties now owned or at any time hereafter acquired by Forward Seller or in which Forward Seller now has or at any time in the future may acquire any right, title or interest (collectively, the “Collateral”):

- (a) the Litigation Proceeds;
- (b) the Claims;
- (c) a true and correct copy of Forward Seller’s books, Records, files, correspondence, evidentiary materials and records pertaining to the Claims, all of which are stipulated as accurate by Forward Seller;
- (d) rights under any appeal bond or similar instrument posted by any of the Defendants in the Litigations; and
- (e) to the extent not otherwise included, all Proceeds of any and all of the foregoing.

10.2 Continuing Security Interest. Forward Seller acknowledges and agrees that the security interest of Forward Purchaser in the Collateral constitutes continuing collateral security for all of the Secured Obligations and shall remain in full force and effect until Forward Seller has performed all of its obligations under the Transaction Documents in full, including payment of the Secured Obligations.

10.3 Financing Statements. Forward Seller hereby irrevocably authorizes Forward Purchaser at any time and from time to time to file in any filing office in any jurisdiction that Forward Purchaser deems advisable (a) any UCC financing statement providing the name of Forward Seller as debtor, Forward Purchaser or its designee as secured party and indicating the Collateral (or, in Forward Purchaser’s sole discretion, all assets of Forward Seller) as collateral covered by the financing statement and (b) any other notice, filing or other document that Forward Purchaser deems necessary or advisable to perfect or protect the security interest or to maintain its first priority.

10.4 Additional Representations and Warranties of Forward Seller Relating to Security Interest. Forward Seller represents and warrants to Forward Purchaser that:

- (a) Forward Seller has not acquired any of the Claims from any Person except inasmuch it is the successor-in-interest to the Debtors in *In re Fresh Acquisitions, LLC, et al.*, Case No. 21-30721 (SGJ);
- (b) Forward Seller has the right, power and authority to grant to Forward Purchaser a security interest in the Collateral;

CONFIDENTIAL

(c) The security interest granted by Forward Seller pursuant to this Agreement constitutes a legal and valid security interest that is enforceable against the Collateral in which Forward Seller now has rights and will create a security interest that is enforceable against the Collateral in which Forward Seller hereafter acquires rights at the time Forward Seller acquires any such rights. In respect of Collateral for which a security interest may be perfected by the filing of a financing statement at the applicable recording office ("Financing Statement Collateral"), upon such filing Forward Purchaser will have a perfected security interest in Financing Statement Collateral in which Forward Seller now has rights, and will have a perfected security interest in Financing Statement Collateral in which Forward Seller hereafter acquires rights at the time Forward Seller acquires any such rights. The security interest of Forward Purchaser in Financing Statement Collateral is and shall be prior to any other Encumbrance on or security interest in any such Financing Statement Collateral; and

(d) Forward Seller has not filed or consented to the filing of any financing statement or analogous document under the UCC or any other applicable laws covering any Collateral.

10.5 Covenants. So long as any of the Secured Obligations shall remain unpaid or unsatisfied, Forward Seller shall:

(a) preserve and maintain its existence, rights, franchises and privileges in the jurisdiction of its organization, and will qualify and remain qualified in good standing in each jurisdiction where failure to preserve and maintain such existence, rights, franchises, privileges and qualification could reasonably be expected to have an adverse effect on the Litigations, Forward Seller's financial condition or the collection of any Litigation Proceeds;

(b) at its own cost and expense, take such action and execute, acknowledge and deliver such agreements, instruments or other documents as Forward Purchaser may from time to time require in order (i) to perfect and protect or maintain the perfection of the security interest in the Collateral and (ii) to enable Forward Purchaser to enforce its rights in respect of the Collateral;

(c) do all things reasonably necessary at the written request of Forward Purchaser so that Forward Purchaser will have a perfected first-priority security interest in any judgment obtained in the Litigations and to establish Forward Purchaser's priority in any judgment obtained in the Litigations under applicable procedural law or court rules;

(d) at its own cost and expense, take any and all actions necessary to defend its title to the Collateral against all parties and to defend the security interest of Forward Purchaser in the Collateral and the priority thereof against any Encumbrance or security interest;

(e) not cease operations, liquidate, dissolve, merge, or consolidate with any other Person;

(f) not change its name unless Forward Seller shall have given Forward Purchaser at least thirty (30) days' prior written notice of the change;

(g) ensure that Forward Purchaser has a first priority right in and to the Litigation Proceeds;

(h) not (i) assign or transfer any interest in the Collateral, (ii) make any sale lease or other disposition of any of the Collateral, (iii) license any of the Collateral or (iv) grant or permit to exist any claims, Encumbrances or security interests (voluntary or involuntary) in or on the Collateral;

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(i) comply in all material respects with applicable laws and regulations and all Orders applicable to it; and

(j) pay and discharge as the same shall become due and payable, all of its obligations and liabilities, including (i) all Tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings reasonably diligently conducted, (ii) all lawful claims that, if unpaid, would by law become an Encumbrance not permitted hereunder; and (iii) all debt, as and when due and payable.

10.6 Remedies and Applications of Proceeds.

(a) If Forward Seller fails to pay or perform any of the Secured Obligations when due to be paid or performed, the failure shall constitute a default under this Agreement for the purposes of Part 6 of Article 9 of the UCC and Forward Purchaser shall have, in addition to all other rights and remedies granted to it in this Agreement and the other Transaction Documents, all rights and remedies of a secured party under the UCC and other applicable law.

(b) The cash proceeds actually received from the sale or other disposition or collection of Collateral may be applied to the expenses of the sale or other disposition or collection, including to the reimbursement of legal fees and expenses of Forward Purchaser. After such application, any cash proceeds resulting from the sale or other disposition or collection shall be paid to Forward Purchaser until Forward Purchaser has received an amount equal to the Secured Obligations.

10.7 Certain Waivers. Forward Seller waives, to the fullest extent permitted by applicable law:

(a) except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, any duty of Forward Purchaser as to the preservation of any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral;

(b) any right to require Forward Purchaser to marshal any of the Collateral or other collateral or security for any of the Secured Obligations; and

(c) any right to require Forward Purchaser (i) to proceed against any party, (ii) to exhaust any other collateral or security for any of the Secured Obligations, (iii) to pursue any remedy to the exclusion of any other remedy, or (iv) to make or give any presentments, demands for performance, notices of nonperformance, protests, notices of protests or notices of dishonor in connection with any of the Collateral.

10.8 Attorney-in-Fact. Forward Seller hereby appoints Forward Purchaser as Forward Seller's attorney-in-fact to do all things in Forward Seller's name and on Forward Seller's behalf in connection with Forward Purchaser's exercise of its rights and remedies under the Transaction Documents, including making any court filings required pursuant to Section 10.5(c). If this Section 10.8, or the application thereof, is or becomes invalid or unenforceable with respect to any circumstance, the application of this Section 10.8 to any other circumstance shall not be affected and shall remain valid and be enforceable to the full extent permitted by applicable law.

CONFIDENTIAL

ARTICLE XI GOVERNING LAW; JURISDICTION AND VENUE; DISPUTES

11.1 Governing Law. This Agreement and the transactions contemplated hereby shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts entered into and fully to be performed in such state. Conflict of laws rules that would require the application of the law of any other jurisdiction shall not apply.

11.2 Arbitration of Disputes.

(a) All disputes, claims or causes of action between the Parties arising out of or relating to the Transaction Documents and the transactions contemplated thereby shall be resolved in accordance with this Section 11.2.

(b) All disputes between the Parties shall be resolved solely and exclusively, to the fullest extent permitted by law, by final, binding and confidential arbitration in Chicago, Illinois. The arbitration shall be administered by the AAA, in accordance with its Commercial Arbitration Rules. Any awards or orders in such arbitrations may be entered and enforced as judgments in federal courts of competent jurisdiction.

(c) The appointed arbitrator shall apply the laws of the State of Delaware applicable to contracts entered into and fully to be performed in such state for purposes of determining any dispute.

(d) By agreeing to these arbitration procedures, the Parties waive the right to resolve any such dispute through a trial by jury or judge or by administrative proceeding. The arbitrator shall (i) have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be permitted by law; and (ii) issue a written arbitration decision, including the arbitrator's essential findings and conclusions and a statement of the award. The arbitrator shall be authorized to determine if an issue is subject to this arbitration obligation and to award any and all remedies that either Party would be entitled to seek in a court of law.

(e) The prevailing Party in such arbitration shall be entitled to receive reimbursement from the other Party of the prevailing party's reasonable legal fees, costs and disbursements in connection with such arbitration.

ARTICLE XII NOTICES

12.1 Method. All notices, reports, records or other communications that are required or permitted to be given to the Parties under this Agreement shall be sufficient in all respects if given in writing and delivered in person, by electronic mail (if receipt is confirmed, electronically or otherwise), by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to the receiving Party at the address(es) for such Party set forth on Exhibit A or such other address(es) as such Party may have given to the other Party pursuant to this Section 12.1.

12.2 Receipt. Notice shall be deemed given on (a) the date such notice is personally delivered, (b) three days after the mailing if sent by registered or certified mail, (c) one Business Day after the date of delivery to the overnight courier if sent by overnight courier, or (d) the date such notice is transmitted by electronic mail, if such transmission is prior to 5:00 p.m. Central time on a Business Day, or the next succeeding Business Day if such transmission is later.

CONFIDENTIAL

ARTICLE XIII GENERAL

13.1 Acknowledgment. By executing this Agreement, Forward Seller acknowledges that: (a) Forward Purchaser recommended to Forward Seller that Forward Seller obtain legal advice as to the meaning and effect of this Agreement; and (b) Forward Purchaser is not a law firm; neither Forward Purchaser nor its representatives or Affiliates are engaged in the practice of law or any other professional activity; Forward Purchaser is not providing any legal advice to Forward Seller; and Forward Seller has not and shall not rely on Forward Purchaser or its Affiliates for legal, tax, accounting or other professional advice.

13.2 Interpretation. Section headings in this Agreement are for convenience of reference only and shall not affect the interpretation or construction of this Agreement. The Transaction Documents will be deemed to have been jointly drafted by the Parties and no provision shall be interpreted or construed for or against either Party because such Party actually or purportedly prepared or requested such provision, any other provision or the Transaction Documents as a whole. The singular includes the plural in this Agreement and vice versa. All pronouns shall include the masculine, feminine or neuter thereof, wherever the context and facts require such construction. Examples and words like “including” are deemed to mean “without limitation.” All references in this Agreement to Articles, Sections and Exhibits are references to the relevant provisions of this Agreement.

13.3 Survival of Representations, Warranties, Covenants and Indemnities. All representations, warranties, covenants and indemnities made herein shall survive the execution and delivery of this Agreement.

13.4 Merger Clause. This Agreement, the Confidentiality Agreement and the other agreements, documents or instruments contemplated hereby shall constitute the entire agreement between the Parties, and shall supersede all prior agreements, understandings and negotiations between the Parties with respect to the subject matter hereof. Any Instruction Letter shall be binding on the signatories thereto as specifically set forth therein.

13.5 Confidentiality. The Parties acknowledge that Forward Seller and GLS Capital, LLC entered into that certain Consulting and Nondisclosure Agreement, dated April 3, 2023 (the “Confidentiality Agreement”). Forward Purchaser agrees that by executing this Agreement, Forward Purchaser becomes bound by and agrees to be subject to the confidentiality obligations of the Confidentiality Agreement. The Confidentiality Agreement is not superseded by this Agreement and continues in full force and effect; provided that to the extent there is a conflict between this Agreement and the Confidentiality Agreement, this Agreement shall control.

13.6 Assignment. This Agreement shall inure to the benefit of, and shall be binding upon, the Parties and their respective successors, permitted assigns, and legal representatives. Neither this Agreement, nor any rights, interests, obligations and duties arising hereunder or under any Transaction, may be assigned or otherwise conveyed by Forward Seller without the express consent in writing of Forward Purchaser. Forward Purchaser shall be entitled to freely sell, assign, participate or otherwise transfer its rights or its obligations hereunder or under any Transaction, or any part thereof or interest therein, to any Person without the consent of Forward Seller.

13.7 Third Party Beneficiaries. Except as provided in Article IX, this Agreement is made solely and specifically among and for the benefit of the Parties, and their respective successors and permitted assigns, and no other Person shall have any rights, interests or claims hereunder or be entitled to any benefits under or on account of this Agreement or any Transaction as a third party beneficiary or otherwise.

CONFIDENTIAL

13.8 Independent Parties. The Parties are independent contractors to one another with respect to the Transaction Documents and neither Party shall be deemed to be an agent, employee or joint venturer of the other by virtue of the Transaction Documents. Nothing in the Transaction Documents shall constitute Forward Seller and Forward Purchaser as partners or fiduciaries of one another. Neither Party shall have any power, right or authority to bind the other to any obligation or liability, to assume or create any obligation or liability or transact any business in the name or on behalf of the other, or make any promises or representations on behalf of the other, except as expressly set forth herein.

13.9 Costs, Expenses and Fees. Forward Seller shall bear its own, and an amount of up to \$50,000 in respect of Forward Purchaser's and its Affiliates', costs and expenses in connection with the transactions described herein (such costs and expenses of Forward Purchaser and its Affiliates, "Forward Purchaser's Transaction Costs"); provided that upon Forward Seller's provision of applicable paperwork and all relevant invoices to Forward Purchaser, Forward Purchaser shall make a Payment in the amount of up to \$15,000 in respect of Forward Seller's costs and expenses in connection with the transactions described herein (such costs and expenses of Forward Seller, "Forward Seller's Transaction Costs"). Forward Purchaser's Transaction Costs and Forward Seller's Transaction Costs will be borne by Forward Seller by treating the amount thereof as a Payment paid as of the date of this Agreement.

13.10 Amendment; Waiver. This Agreement shall not be amended, and no term or provision of this Agreement may be waived, except in writing signed by a duly authorized representative of each Party. No delay on the part of a Party in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, and no single or partial exercise of any right, power or remedy by a Party shall preclude any further exercise thereof.

13.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. Signatures to this Agreement may be delivered by facsimile or other electronic means and any copy so delivered shall be deemed to be an original.

13.12 Severability. If any provision of this Agreement or any Transaction, or the application thereof to any Person or circumstances, is or becomes invalid or unenforceable, the remaining provisions shall not be affected and each remaining provision shall remain valid and be enforceable to the full extent permitted by applicable law.

13.13 Further Assurances. Each party shall promptly execute all documents and do all things that the other Party from time to time reasonably requires to effect, perfect or complete the provisions of this Agreement and any transaction contemplated hereby.

[Signature page follows]

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IN WITNESS WHEREOF, this Master Prepaid Forward Purchase Agreement has been executed by the undersigned as of the date first set forth above.

Litchfield Ventures, LLC

By: GLS Capital Partners GP II, LLC, its manager

By: 
Name: David J. Spiegel
Title: Authorized Signatory

Fresh Acquisitions Liquidating Trust

By: 
Name: David Gonzales
Title: Trustee