



**THIS  
AGREEMENT**

made the

day of

2008

**BETWEEN**

**LITIGATION LENDING SERVICES LIMITED ACN 129 188 825** of Level 14, 9 Castlereagh St,  
Sydney, New South Wales

**(“LLS”)**

**AND**

\_\_\_\_\_

**(“the Plaintiff”)**

**AND**

\_\_\_\_\_

**(“the Representatives”)**

**RECITALS**

- A. The Plaintiff has commenced the Proceedings.
- B. LLS has received a Proposal to fund the Proceedings from the Plaintiff.
- C. LLS has agreed to provide Funding for the Proceedings under the terms and conditions in this Agreement.

**THE PARTIES AGREE**

1. **DEFINITIONS AND INTERPRETATIONS**

1.1 **Definitions**

In this Agreement:

**“Additional Sum”** means the sum payable to LLS on conclusion of the Proceedings in favour of the Plaintiff and as calculated in clause 3 of this Agreement;

**“Business Day”** means a day on which banks (as defined in the *Banking Act 1959 (Cth)*) are open for general banking business in New South Wales, excluding Saturdays and Sundays.

**“Claim for Payment”** means notice in writing in the form of an itemised invoice issued by the Representatives to the Plaintiff for payment of legal professional fees and disbursements incurred by the Representatives in relation to the Proceedings. Such disbursements include payments to counsel and for expert witnesses.

**“Claims”** means actions, suits, causes of action, arbitrations, mediations, debts, dues, costs, claims, cross-claims, demands, verdicts and judgments either at law or in equity or arising under a statute as at the date of this Agreement.

**“Costs Agreement”** means an agreement entered into between the Plaintiff and the Representatives regarding the Legal Costs and Disbursements of the Representatives for acting in connection with the Proceedings and subject to the terms contained in clause 7 of this Agreement;

**“Defendant”** means \_\_\_\_\_;

**“Direction”** means a direction from the Plaintiff in the terms set out in Schedule 1.

**“Disbursements”** means any third party or internal incidental cost or expense beyond the Representative’s timed profit costs incurred by the Representatives in connection with the Proceedings and with the prior agreement of LLS. Such costs to include but not limited to independent experts, private investigators, counsel and court fees;

**“Enforcement Costs”** means the costs, if any, of recovering the Final Amount from the Defendant incurred following final orders or judgment made against the Defendant;

**“Final Amount”** means the gross amount received by the Plaintiff whether by way of settlement, orders, judgment, award or any other finalisation of the Proceedings without set-off or deduction of any amounts including but not limited to GST.

**“Funding”** means the funding to be provided by LLS to the Plaintiff pursuant to clause 2 to conduct or continue to conduct the Proceedings and any indemnity provided by LLS to the Plaintiff pursuant to clause 6;

**“Legal Costs”** means the legal costs and Disbursements of the Representatives for acting in connection with the Proceedings from the date of this Agreement and calculated in accordance with the Costs Agreement;

**“Order for Costs”** means any order made against the Plaintiff for the payment of costs in the Proceedings relating to the period after the date of this Agreement;

**“Parties”** means LLS, the Plaintiff, the Representatives and each of them.

**“Proceedings”** means the \_\_\_\_\_ Court proceedings \_\_\_\_\_ against the Defendant and as fully detailed in the Proposal;

**“Proposal”** the document in the form and containing all the information required by LLS by which the Plaintiff seeks a Funding Agreement;

**“Repayment Date”** means two (2) working days following the date of receipt as cleared funds of the Final Amount;

**“Representatives”** means \_\_\_\_\_ the solicitors who act or will act for the Plaintiff in the Proceedings.

**“Trust Account”** means the Trust Account operated by the Representatives.

## 1.2 **Interpretation**

In this Agreement:

- 1.2.1 the expression "person" includes an individual, a body politic, a corporation and a statutory or other authority or association (incorporated or unincorporated);
- 1.2.2 a reference to any party includes that party's executors, administrators, successors, substitutes and assigns, including any person taking by way of novation;
- 1.2.3 words denoting the singular number include the plural and vice versa;
- 1.2.4 headings are for convenience only and do not affect interpretation;
- 1.2.5 where the day on which or by which any act, matter or thing is to be done under this document is not a Business Day, that act, matter or thing must be done on the immediately preceding Business Day; and
- 1.2.6 month means a calendar month.

## 2. **FUNDING**

- 2.1 LLS hereby agrees to provide Funding to the Plaintiff to pay the following sums in respect of the Proceedings:

- 2.1.1 The Legal Costs to a capped amount of \$\_\_\_\_\_ (inclusive of Disbursements and GST);
- 2.1.2 The Enforcement Costs;
- 2.1.3 Any other cost incurred with the prior written consent of LLS;
- 2.2 The Plaintiff agree that they will only use the Funding in accordance with clause 2.1 and only in connection with the Proceedings.
- 2.3 All monies payable by LLS pursuant to this agreement will be paid within 30 days of claim being made by the Plaintiff to LLS in writing for payment and in accordance with 2.4.
- 2.4 All claims for payment will, as a minimum requirement, set out the following details in a form acceptable to LLS;
  - (a) Details of the work carried out;
  - (b) The date the work was carried out;
  - (c) The professional who carried out the work;
  - (d) The time spent by that professional in carrying out the work; and
  - (e) The rate per hour charged by that professional for carrying out the work.
- 2.5 Notwithstanding clause 2.4 LLS may, from time to time, require further information and detail regarding the work performed by the Representatives.
- 2.6 The Legal Costs, including Legal Costs incurred but not yet billed, will be paid up to the capped amounts set out in clause 2.1.1 until the first of:
  - 2.6.1 Unsuccessful completion of the Proceedings; or
  - 2.6.2 Receipt of the Final Amount; or
  - 2.6.3 Termination of this agreement.

### **3. REPAYMENT AND ADDITIONAL SUM**

- 3.1 The Parties agree that the Final Amount and any other amount received by the Plaintiff in the Proceedings will be paid directly into the Trust Account and thereafter be held on trust for LLS and the Plaintiff to be paid and applied in accordance with clause 3.2.
- 3.2 On the Repayment Date, the Representatives will apply the Final Amount as follows:
  - 3.2.1 First – Funding to LLS;
  - 3.2.2 Second – Additional Sum to LLS;
  - 3.2.3 Third – in payment of any professional fees and/or disbursements incurred by or on behalf of the Representatives in relation to the provision of legal services to the Plaintiff in relation to the Proceedings in excess of the total of the Funding;
  - 3.2.4 Fourth – the balance to the Plaintiff.
- 3.3 The Additional Sum is calculated as follows:
  - 3.3.1 If the Proceedings are concluded within six (6) months of the date of this Agreement, an amount equal to \_\_\_% of the Final Amount; or
  - 3.3.2 If the Proceedings are concluded within twelve (12) months of the date of this Agreement, an amount equal to \_\_\_% of the Final Amount; otherwise
  - 3.3.3 An amount equal to \_\_\_% of the Final Amount.
- 3.4 Notwithstanding 3.3 if the Proceedings are concluded prior to payment of any Funding pursuant to clause 2 being made by LLS and prior to LLS providing bank guarantees pursuant

to clause 6 the Plaintiff shall only pay to LLS an Additional Sum equal to 10% of the Final Amount, irrespective of the date on which the Proceedings are concluded.

3.5 Notwithstanding clause 3.2 and 3.3 if the Final Amount is less than the sum of the Funding and the Additional Sum the Plaintiff shall pay to LLS the Final Amount.

3.6 Payment of any sums due pursuant to clauses 3.2, 3.3 or 3.4 to LLS by the Plaintiff shall be made in priority to any other Claims by any other parties. The arrangement in clause 3.2 is the agreed priority between the Parties and the Representatives in no way will at any time claim over the Final Amount any sum in priority to LLS by way of lien or otherwise other than as expressly provided by clause 3.2 of this Agreement.

#### 4. **DIRECTION FOR PERFORMANCE**

4.1 The Parties agree that as security for the Plaintiff's performance under this Agreement, they will on the date of this Agreement execute and provide the Direction to LLS;

4.2 The Parties agree that the Direction is unconditional and irrevocable, and shall be held by LLS for as long as it in its absolute and uncontrolled discretion determines.

#### 5. **APPEAL OF THE PROCEEDINGS**

5.1 If an appeal is lodged in respect of the Proceedings, the Repayment Date will be deemed to be the date on which the appeal is disposed of by way of order or judgment made or withdrawal of the appeal.

5.2 If an appeal is lodged in respect of the Proceedings LLS shall be under no obligation to provide any funding in connection with the appeal of the Proceedings.

5.3 Notwithstanding clause 5.1 and 5.2 of this Agreement, all other terms and conditions will continue to have effect as far as they are relevant.

#### 6. **PROVIDER'S INDEMNITY**

6.1 LLS hereby indemnifies the Plaintiff from and against any Order for Costs against the Plaintiff made in the Proceedings in respect of the period from the date of this Agreement up to the date of termination or conclusion of this Agreement. Such indemnity is provided up to a maximum of \$\_\_\_\_\_.

6.2 At the request of the Plaintiff, LLS will provide a bank guarantee up to the sum of \$\_\_\_\_\_ in favour of the Plaintiff, or a party nominated by them and agreed by LLS, to support the indemnity set out in 5.1 above.

#### 7. **REPRESENTATIVES AND CONDUCT OF PROCEEDINGS**

7.1 The Representatives agree that, in the event that the capped limits of the Funding are reached or the balance of Funding remaining is only sufficient to cover the anticipated future disbursements of the Proceedings, they will continue to act on behalf of the Plaintiff until conclusion of the Proceedings either by way of settlement, judgment, order or otherwise and in continuing to act their fees and internal costs of doing so will only be payable by the Plaintiff on conclusion of the Proceedings and subject to Final Amount received by the Plaintiff being sufficient to meet repayment of the Funding to LLS, payment of the Additional Sum due to LLS and payment of the Representatives outstanding fees and internal costs.

7.2 The Representatives agree that they will send to LLS detailed reports on the status and progress of the Proceedings every three months and at such other time(s) as may be required by LLS.

7.3 The Plaintiff are at liberty to enter into any arrangement regarding an uplift or similar on the

Representatives fees and internal expenses over and above the capped limits to the Funding provided that such further arrangement adheres to the terms of clause 7.1 of this Agreement.

- 7.4 LLS acknowledges and agrees that the Representatives are and will continue to be instructed by the Plaintiff in all matters relating to the Proceedings and that the Plaintiff have the right to direct, conduct and conclude by way of settlement the Proceedings.
- 7.5 Notwithstanding the provisions of clause 7.4, LLS may from time to time request such information as it reasonably requires for the provision of Funding in relation to the conduct and progress of the Proceedings and the Plaintiff agree to consult with LLS on any issues arising from the conduct and/or progress of the Proceedings, and in particular, in relation to any offer to settle the Proceedings.
- 7.6 The Plaintiff and the Representatives agree that they will not conclude the Proceedings without prior consultation with LLS.
- 7.7 The Plaintiff and the Representatives agree that they will disclose to LLS forthwith upon such information coming to the Plaintiff' knowledge all information received from time to time which may have a material impact on the continuing conduct or resolution of the Proceedings or the continuation of Funding under this Agreement. The Plaintiff and the Representatives acknowledge that any breach of this clause may entitle LLS to terminate this Agreement.

## 8. **TERMS OF THIS AGREEMENT**

- 8.1 This Agreement will continue, subject to clause 8.2, until the Repayment Date.
- 8.2 Notwithstanding anything contained in this Agreement LLS may at any time terminate this Agreement by providing seven (7) days notice in writing to the Plaintiff and the Representatives.
- 8.3 In the event this Agreement is terminated pursuant to clause 8.2 LLS must pay the following amounts or such proportion of the amounts as relates to the period from the date of this Agreement to the date of termination of this Agreement:
  - 8.3.1 The Legal Costs; and
  - 8.3.2 The Enforcement Costs;
  - 8.3.3 Any Order for Costs.
- 8.4 If, after this Agreement is terminated pursuant to clause 8.2, the Plaintiff conclude the Proceedings and a Final Amount is received, the Plaintiff agree to repay to LLS the Funding paid by LLS under this Agreement from the Final Amount on the Repayment Date.
- 8.5 The offer for funding as set out in clause 2.1 shall remain open for acceptance by execution of this Agreement until \_\_\_\_\_.

## 9. **REPRESENTATIONS AND WARRANTIES**

- 9.1 The Plaintiff and the Representatives warrant that all statements made by them and documents created by them in or in connection with the Proposal to LLS for Funding are true and correct. The Plaintiff and the Representatives acknowledge that LLS has relied upon the correctness of those statements, documents and representations in entering into this Agreement and will continue to do so in dealing with the Plaintiff.
- 9.2 The Plaintiff acknowledge and agree that they have entered into this Agreement of their own free will and understanding and have obtained independent legal advice in connection with the effect of, and their obligations under, this Agreement.

## 10. **CHANGE OF SOLICITOR**

- 10.1 The Representatives agree that:

- 10.1.1 It will immediately notify LLS should it for any reason cease to act for the Plaintiff; and
- 10.1.2 It will not claim any lien, charge, encumbrance or otherwise over the Funding or Final Amount, subject to its entitlement under clause 3.2
- 10.2 The Plaintiff agree that they will not retain solicitors to act for them in the Proceedings other than the Representatives, without the prior written approval of LLS, such approval not to be unreasonably withheld and shall not be withheld if any new solicitor agrees to enter into an agreement with LLS that contains terms and conditions that are no more onerous to that solicitor than applying to the Plaintiff under this agreement.

## 11. **CONFIDENTIALITY**

- 11.1 The parties to this Agreement agree to keep confidential the existence and terms of this Agreement and in the absence of the express written consent of the other party will not disclose the existence and terms of this Agreement to any person other than to their legal and financial advisers or as required by law.
- 11.2 The parties to this Agreement agree to waive the terms of clause 11.1 either generally or in specific circumstances if it is deemed by all parties to this Agreement to be in the best interests of the conclusion of the Proceedings.

## 12 **NOTICES**

- 12.1 Any notice or other communication of any nature which must be given, served or made under or in connection with this Agreement:
  - 12.1.1 must be in writing in order to be valid;
  - 12.1.2 is sufficient if executed by the party giving, serving or making the same or on its behalf by any attorney, director, secretary, other duly authorised officer or solicitor of such party;
  - 12.1.3 will be deemed to have been duly given, served or made in relation to a person if it is delivered or posted by prepaid registered post to the address, or sent by telex or facsimile to the number of that person set out herein (or at such other address or number as is notified in writing by that person to the other parties from time to time);
  - 12.1.4 will be deemed to be given, served or made:
    - 12.1.4.1 In the case of prepaid registered post) on the third day after the date of posting;
    - 12.1.4.2 (in the case of facsimile) on receipt of a transmission report confirming successful transmission; and
    - 12.1.4.3 (in the case of delivery by hand) on delivery.

## 13. **GST**

- 13.1 Expressions used in this clause have the same meaning given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 13.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
- 13.3 Subject to sub-clause 13.4, if GST is imposed on any Taxable Supply made under or in connection with this Agreement (a "GST amount"), the recipient must pay to the supplier the GST amount in addition to and (unless otherwise agreed) at the same time, without deduction or set-off, as payment for the Taxable Supply is required to be made under this Agreement.
- 13.4 Unless otherwise agreed in writing, the recipient of a Taxable Supply shall have no obligation

to make any payment in respect of that Taxable Supply until the supplier has provided the recipient with a valid Tax Invoice for that Taxable Supply.

- 13.5 Unless otherwise agreed in writing between LLS and the Plaintiff the Final Amount is not to be reduced by any GST liability that the Plaintiff may have with respect to any supplies in connection with the conclusion or conduct of the proceedings.

14. **DISPUTE RESOLUTION**

- 14.1 In the event of any dispute between LLS, the Plaintiff and the Representatives in relation to any matter arising from this Agreement, in particular, as to the conduct, progress or settlement of the Proceedings, the Parties agree that the dispute will be referred to a third party agreed between the Parties or failing agreement, by a person nominated by the President for the time being of the Law Society of New South Wales. The Parties agree to use their best endeavours to resolve the dispute.

15. **GOVERNING LAW**

- 15.1 This Agreement will be governed by and construed in accordance with the law for the time being in force in New South Wales and the parties, by agreeing to enter into this Agreement, will be deemed to have submitted to the non-exclusive jurisdiction of that State.

16. **AUTHORITY**

- 16.1 The person signing this Agreement on behalf of LLS is duly authorised to execute this Agreement on behalf of LLS and each partner of LLS.
- 16.2 The person signing this Agreement on behalf of the Representatives is duly authorized to execute this Agreement on behalf of the Representatives and each partner of the Representatives.

17. **GENERAL**

- 17.1 This Agreement may be executed in any number of counterparts.
- 17.2 The provisions of this Agreement will remain in full force and effect and be binding upon the parties upon completion.
- 17.3 Part or all of any provision of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining provisions of this Agreement continue in force.
- 17.4 This Agreement constitutes the entire agreement between the Parties as to its subject matter and in relation to that subject matter, supercedes any prior understanding or agreement between the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.



**EXECUTED** by the parties at Sydney as an Agreement:

**SIGNED** for and on behalf of )  
**Litigation Lending Services Pty Limited** )  
**ACN 129 188 825 as agent for Litigation** )  
**Lending Services No. \_\_ Partnership by its** )  
**directors in accordance with s.127 of the** )  
**Corporations Act 2001** )

Witnessed by;

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