

# 3 Litigation Management Agreement (LMA)

## TERMS AND CONDITIONS

### 1. INTERPRETATION

1.1 Where the LMA and/or these Terms and Conditions use words that are defined in the RGL PPI ("Plevin") LMA Definitions, which are incorporated in these Terms and Conditions, those words have the meanings assigned to them therein.

### 1.2 CONSTRUCTION

- (a) Unless a contrary intention appears, a reference in the LMA to:
  - i. a person includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
  - ii. a provision of law is a reference to that provision as amended or re-enacted; and
  - iii. the singular includes the plural and vice versa.
- (b) Section, Clause and/or Schedule headings are included in the LMA for ease of reference only.

### 2. STATUS OF RELATIONSHIP

2.1 The LMA is an arms-length transaction and there has not been, and will not be, and the LMA does not create, any partnership, joint venture and/or employment relationship between RGL and the Registrant.

2.2 RGL is not a legal practitioner and RGL has not provided and will not provide any legal advice or legal services, or services or advice of any other kind to the Registrant save for the RGL Services.

2.3 The Registrant acknowledges and accepts that RGL's decision to enter into the LMA is based solely on the information, documents and/or any other materials made available by the Registrant to RGL prior to the LMA and that if any such information, documents and/or materials are inaccurate, untrue, incomplete or if there are any information, documents and/or materials within the possession or under the control of the Registrant that are not disclosed to RGL that should be so disclosed, this may affect or be material to RGL's decision as to whether or not to include or to continue to include the Claims in the Proceedings.

2.4 RGL has not and will not carry out any Legal Activities, Reserved Legal Activities, or Prohibited Separate Business Activities for or on behalf of the Registrant.

### 3. CONFIDENTIALITY

3.1 The Parties will use their best endeavours to ensure that all documents and information provided in connection with the LMA and the Proceedings are kept confidential and are not disclosed to any person other than:

- (a) as is required or is considered desirable by the Solicitors and Counsel in the course of any Proceedings;
- (b) to their respective officers, employees, agents, lawyers, auditors or other regulated professional advisers who need to know such information in order to perform their functions;
- (c) if RGL has given its prior written approval to the disclosure or use where such approval will be given or withheld by RGL following the relevant legal advice;
- (d) to the extent necessary to enable either Party properly to exercise its rights under the LMA or to carry out its obligations under the LMA;
- (e) to the extent required by applicable law or by the regulations of any regulatory authority or pursuant to any Order of Court;
- (f) to the extent necessary to enable a Party to respond to, address, or correct a disclosure made by the other Party in breach of this Clause 3; and/or
- (g) documents or information that:
  - i. are in the public domain at the time of their disclosure; or
  - ii. subsequently come into the public domain except through breach of the undertakings set out in this Clause 3.

3.2 Save where disclosure is made pursuant to Clause 3.1(a), 3.1(e) and 3.1(g) above, the Parties will use reasonable endeavours to ensure that any person to whom confidential documents or information are disclosed are made aware of and required to comply with the confidentiality obligations set out in this Clause 3.

### 4. MAINTENANCE OF PRIVILEGE

4.1 Where any information or document is provided from one Party (the Disclosing Party) to the other (the Receiving Party) that is the subject of legal professional or legal advice privilege:

- (a) The information and documents are privileged and the benefit of the privilege belongs to the Disclosing Party;
- (b) The provision of the documents does not amount to any waiver of privilege; and
- (c) The Receiving Party will immediately inform the Disclosing Party of any request or order for disclosure of any of the privileged documents or information (save where this would breach law or regulation).

4.2 As a consequence of entering into the LMA, the Parties have a common interest in the Claims, and the exchange of documents and information relating to the Claims is further to that common interest.

4.3 RGL is authorised by the Registrant, and will be entitled, to unilaterally waive privilege on behalf of the Registrant in any information or document, if it is required or is considered desirable by the Solicitors and Counsel in the course of and for the purposes of any Proceedings.

### 5. REPRESENTATIONS AND WARRANTIES

5.1 Each Party warrants and represents to the other Party that they have the full right, power and authority to execute, deliver and perform this LMA.

5.2 The Registrant warrants and/or represents to RGL that:

- (a) so far as they are aware (after making reasonable enquiries) any Defendant has no relevant rights of set-off or claims against the Registrant that have not been fully disclosed to RGL and there are no circumstances which would affect the validity or enforceability of the Claims;
- (b) there is no agreement with any third party preventing them entering into this LMA or which would require a third party to consent to this LMA;
- (c) as at the date of this LMA they have not granted (or purported to grant) any charge, lien or other security in favour of a third party over the Claims (or otherwise dealt with the same in any way) and that they will not grant (or purport to grant) any such charge, lien or other security until all obligations, including (but not limited to) payments due to RGL under this LMA and/or due to the Litigation Funder under the Litigation Funding Agreement, have been met or otherwise extinguished;
- (d) as at the date of this LMA and unless previously notified to RGL, they have not brought and will not bring any proceedings in any court or other tribunal against any Defendant relating to the same or similar facts upon which the Claims are based;
- (e) to the best of their knowledge and belief, the information, documents and/or other materials provided by the Registrant (or by any third party on behalf of the Registrant) to RGL and/or to the Solicitors prior to any inclusion of the Claims in the Proceedings are accurate, complete and true in all material respects and that the Registrant has not failed and will not fail to disclose any information, documents and/or other materials that would be relevant to RGL's decision to include the Claims in the Proceedings or its conduct or management of the Claims;
- (f) they will not take any steps or measures which would interfere in any way with, or be detrimental to, or which would have an adverse effect on, the Claims or the Proceedings; and
- (g) should any monetary or non-monetary amount be received by the Registrant in connection with any Claims other than in accordance with Clause 7 of the LMA, such amount will be paid or transferred to RGL as soon as reasonably possible and will be held by the Registrant on trust for RGL until such payment or transfer, and the Registrant will not withdraw any part of such amount or use, dispose of, transfer, share or assign or otherwise deal with or create any security over it. Following such payment or transfer to RGL, all and any such monetary or non-monetary amounts will then be treated by RGL as a Recovery in the Proceedings.

### 6. TERMINATION

6.1 Within 14 days of the date of the LMA, the Registrant may at their absolute discretion terminate the LMA by giving notice to RGL and if such notice is given, the LMA will terminate with immediate effect and will be deemed to have never existed between the Parties.

6.2 The Registrant may terminate the LMA at any time after 14 days after the date of the LMA by giving 14 days' notice to RGL following which and in addition to any liability for Adverse Costs not covered by ATE Insurance or any at least equivalent protection, the Registrant will be liable for the Registrant's Pro-rated Share of the Costs of the Proceedings as incurred as at the date of such termination and the Registrant will pay all such amounts of Adverse Costs and/or Costs of the Proceedings to RGL.

6.3 RGL may terminate the LMA at any time if the Registrant is made subject to any Insolvency Procedure and/or if RGL reasonably believes the Registrant has failed to comply with the terms of the LMA, in which event and in addition to any liability for Adverse Costs not covered by ATE Insurance or any at least equivalent protection, the Registrant will be liable for the Registrant's Pro-rated Share of the Costs of the Proceedings as incurred as at the date of such termination and the Registrant will pay all such amounts of Adverse Costs and/or Costs of the Proceedings to RGL.

6.4 In the event that RGL reasonably concludes that the Claims do not have sufficient merits to be included in the Proceedings or reasonably ceases to be satisfied as to the legal merits of the Claims and/or the Proceedings and/or reasonably believes that the Claims and/or the Proceedings are no longer commercially viable or it is not possible (for whatever reason) to

obtain Litigation Funding and/or ATE Insurance, then RGL shall be entitled to suspend until further notice by RGL or to terminate the LMA by giving 10 Business Days' Notice to the Registrant, and following such termination or during the period of suspension, RGL shall have no further liability to the Registrant and the Registrant shall have no liability to pay any Costs of the Proceedings provided that the suspension or termination shall not affect any accrued rights or entitlements of either of the Parties.

6.5 Subject to any earlier termination of the LMA pursuant to Clauses 6.1 to 6.4 (inclusive) above, the LMA will continue in full force and effect until all and any Recovery is distributed in accordance with all and any agreements referred to in Clauses 3.2 and 4.3(c) of the LMA.

## 7. COMPLAINTS

7.1 If the Registrant has any complaint about RGL's service, please contact Alan Thomas of RGL (alanthomas@rglmgmt.com) in the first instance. A copy of RGL's complaints handling procedure is available at any time at: No 9, Rural Enterprise Centre, Eco Park Road, Ludlow, Shropshire, SY8 1FF.

7.2 If a solution to the complaint cannot be reached following receipt of RGL's written response, the Registrant may refer the matter to the Financial Ombudsman: (<http://www.financial-ombudsman.org.uk>), but must do so within six months of the date of that final written response.

## 8. MISCELLANEOUS

### 8.1 Entire Agreement

The LMA and all and any incorporated agreements and documents including the RGL Plevin PPI Registrant Pre-LMA Information and these Terms and Conditions set out the entire agreement and understanding between the Parties in respect of the subject matter of the LMA.

### 8.2 Partial Invalidity

(a) If any provision (or part of a provision) of the LMA is or becomes invalid, illegal or unenforceable (or would if given effect render this LMA or any part of it invalid, illegal or unenforceable), it shall be deemed modified to the minimum extent necessary to make it and/or the LMA valid, legal and enforceable.

(b) If such modification is not possible, then that shall not affect the legality, validity or enforceability of the remaining provisions, and the relevant provision shall be deemed to be severed from the LMA and shall be without effect.

### 8.3 Amendments

No variation, amendment or waiver of the LMA shall be valid unless it is notified in writing to both Parties and signed by RGL and:

- (a) howsoever expressly agreed; or
- (b) howsoever deemed acknowledged as agreed; or
- (c) howsoever deemed not objected to, by the Registrant.

### 8.4 Third Parties

Except as provided for in the LMA, no person who is not a Party to the LMA shall have any rights, whether under the Contract (Rights of Third Parties) Act 1999 or otherwise, to enforce any terms of the LMA.

### 8.5 Counterparts

The LMA may be executed in any number of counterparts and by each Party on separate counterparts, where each counterpart is an original, but all counterparts shall together constitute one and the same instrument and delivery of a counterpart of the LMA by e-mail attachment shall be an effective mode of delivery, provided that no counterpart shall be effective until each party has executed at least one counterpart.

### 8.6 Assignment

(a) The Registrant will not assign, or declare any trust over, any of their rights under the LMA to any other person without the prior written consent of RGL, where such consent shall not be unreasonably withheld;

(b) RGL may assign, or declare any trust over, any of its rights under the LMA to any other person without the prior consent of the Registrant provided that RGL gives prior written notice of any such assignment or declaration to the Registrant.

### 8.7 Successors and Assigns

The LMA shall enure to the benefit of, and be binding upon, the successors and assigns of each Party and a reference to a Party shall include its successors and permitted assigns.

## 9. GOVERNING LAW AND JURISDICTION

### 9.1 Governing law

The LMA and any non-contractual obligations arising out of or in relation to the LMA are governed by the laws of England and Wales.

### 9.2 Jurisdiction

The English courts shall have exclusive jurisdiction in relation to all disputes arising out of or in connection with the LMA, including, without limitation, disputes arising out of or in connection with:

- (a) the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by, the LMA; and
- (b) any non-contractual obligations arising out of or in connection with the LMA. For such purposes, the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales and waive any objection to the exercise of such jurisdiction.

## DEFINITIONS

**Adverse Costs** means any amount of costs and disbursements of the Defendant that the Court orders (whether on an interim, summary or final basis) another party to pay or which another party:

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

**Affiliates** means any of a Party's direct or indirect subsidiaries, direct or indirect parent companies and owners, companies directly or indirectly owned by its parent companies, other associated legal entities, legal entities controlled directly or indirectly by them, and family members (including siblings) or persons involved howsoever in their business in relation to individuals who operated as sole traders;

**Appeal** means an appeal of a final judgment or award in the Proceedings, including any cross-appeal of the Claimants and the Claimants' response to any appeal of a Defendant;

**ATE Insurance** means After-the-Event insurance in respect of Adverse Costs on terms and with one or more insurers approved and agreed by RGL;

**Business Day** means any day excluding Saturday and Sunday on which banks in London are open to transact general business;

**Claimants** means all and any of the claimants in the Proceedings including (without limitation) the Registrant;

**Claimant Costs Sharing Agreement** means an agreement as may be required by any Litigation Funder or as may be advised as necessary following a Costs QC's Determination that regulates any matter or issue concerning the Costs of the Proceedings and/or Adverse Costs as between (inter se) all of the Claimants (including the Registrant) which is to be signed by RGL on behalf of each Claimant (including the Registrant) in accordance with the LMA.

**Claims** means all debts, causes of action, claims, rights, demands and/or set-offs that the Registrant may have against any Defendant arising out of or in relation to or in connection with undisclosed commission associated with any PPI policy, including (for the avoidance of doubt but not limited to) the Registrant's potential right to damages or compensation in respect of the recovery of any amount of PPI premium and/or the undisclosed commission and interest thereon arising from such causes of action, claims, rights, demands and/or set-offs, or relief consequent on such causes of action, claims, rights, demands and/or set-offs;

**Committee** means a body of individuals formed in the circumstances and for the purposes described in Clause 6 of the LMA, constituted and operated in accordance with the Committee Rules and made up of the following Committee members:

- (i) an independent Queen's Counsel experienced in banking litigation and consumer credit related matters to be appointed by RGL and approved by the Solicitors and who will act as the Chairperson of the Committee;
- (ii) two directors of RGL as nominated by RGL and notified to the Chairperson from time to time; and
- (iii) either two Claimants or one Claimant and an independent individual with recognised knowledge and experience from the consumer's perspective of PPI claims, both of such individuals to be selected by RGL and approved by both the Solicitors and by the Chairperson.

**Committee Rules** means the rules governing the operation of the Committee and the exercise of the Committee's authority to act on behalf of each and every Claimant, which rules will be agreed as soon as is reasonably and practically possible between RGL and the Solicitors and the Chairperson provided always that the rules of the Committee will (without limitation) explicitly confirm that the Committee will at all times act in the best interests of the Claimants and will follow the advice of the Solicitors and of Counsel and that all decisions of the Committee will be carried by a majority with the Chairperson having the casting vote when necessary. The Committee Rules will also include (without limitation) rules governing the appointment and the termination of the appointment of Committee Members, the preservation of confidentiality by Committee Members, notice of, frequency of, attendance at and quorum of Committee meetings, voting at Committee meetings, the deciding vote of the Chairperson in the event of a tied vote and the Committee's powers to delegate if and when appropriate to do so.

**Costs of the Proceedings** means the legal costs and disbursements and all and any other fees, costs and expenses howsoever incurred in relation to and/or in connection with the Claims and/or the Proceedings including (without limitation) the respective fees of the Solicitors and Counsel, Court fees, ATE Insurance premium, experts' fees, electronic document management fees and RGL management fees, but, for the avoidance of doubt, excluding Adverse Costs;

**Costs QC** means an independent specialist costs Queen's Counsel appointed in accordance with the LMA and as RGL will select and instruct in the best interests of all of the Claimants and following the advice of the Solicitors and Counsel;

**Costs QC's Determination** means, following any reference to the Costs QC in accordance with the LMA, the matters or issues in question, including by way of example and without limitation:

- (i) the apportionment of Adverse Costs or the Costs of the Proceedings between (inter se) any and/or all of the Claimants;
- (ii) identifying the procedures and steps necessary to enforce the

apportionment of Adverse Costs or the Costs of the Proceedings between (inter se) any and/or all of the Claimants including (without limitation) in relation to the non-payment thereof;

- (iii) assessing the Costs of the Proceedings at the date any calculation thereof is required; and/or
- (iv) the drafting of a suitable Claimants Costs Sharing Agreement, being determined and/or resolved by the Costs QC as he or she thinks fit and on a just and equitable basis bearing in mind the best interests of all of the Claimants on a collective basis in regard to the most effective pursuit of the Proceedings, where the Costs QC will act in his or her sole, absolute and independent discretion and where the Registrant and RGL will each use their reasonable endeavours to provide the Costs QC with such assistance and documents as the Costs QC may reasonably require for the purpose of reaching such a determination and/or resolution and where the Costs QC may utilise the assistance of other professionals and/or advisers as he or she considers appropriate. In making any such determination and/or resolution, the QC will act as an independent expert and not as an arbitrator or in any other quasi-judicial capacity and shall prepare a written determination and/or resolution that will be final and binding on the Parties in the absence of manifest error or fraud and give notice (including a copy) of it to RGL who will then notify the Claimants (including the Registrant) of it and use all reasonable endeavours to implement and/or effect the determination and/or resolution as made by the Costs QC;

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

**Defendant** means any defendant to any Proceedings;

**Insolvency Procedure** means the entry into any arrangement with creditors or the making of any bankruptcy order;

**Legal Activity** has the meaning given by the Legal Services Act 2007;

**Litigation Funder** means the funder or funders of the Proceedings under any Litigation Funding Agreement(s);

**Litigation Funding** means the funding provided by any Litigation Funder in accordance with any Litigation Funding Agreement;

**Litigation Funding Agreement** means any agreement under which the Costs of the Proceedings are paid by a funder in return for the funder being entitled to a share (however expressed and in whatever amount and/or proportion) of any Recovery;

**Net Recovery** means any Recovery less no more than 48%;

**PPI** means Payment Protection Insurance;

**Proceedings** means:

- (i) with the assistance of the Solicitors and Counsel; and
- (ii) through the representation of the Registrant by the Solicitors and Counsel, all and each and every threatened, pending, completed or actual dispute, litigation, arbitral proceedings, claim for compensation (whether through or by a compensation scheme or otherwise), action, suit, or alternative dispute resolution mechanism managed at the direction of and/or on the instruction of RGL against a Defendant or Defendants through or by which the Claims are howsoever brought and/or pursued on an individual, consolidated or group or collective (in whatever form) basis including (but not limited to) any pre-action investigation of the Claims, pre-action correspondence, pre-action protocol, pre-action application, settlement negotiations or mediation and any enforcement proceedings to enforce payment of any judgment, order, award or settlement agreement, or any hearing, inquiry or investigation arising out of or instituted in connection with or howsoever relating to the causes of action forming the basis of any such dispute, litigation, arbitral proceedings, claim for compensation, action, suit, or alternative dispute resolution mechanism, and whether civil, criminal, administrative, regulatory or otherwise, and in any jurisdiction. For the avoidance of doubt, any such bringing and/or pursuit of the Claims in the Proceedings shall include (without limitation) where the Claims are howsoever stayed including (without limitation) stayed by agreement with any Defendant or by an Order of the Court or at the direction of any other quasi-judicial person, tribunal or arbitral body having proper jurisdiction (on whatever basis) over the Claims whilst claims of other Claimants against any Defendant are first pursued in the Proceedings for whatever reason including (without limitation) the selection of a lead or test claimant or claimants and/or preliminary issues, and for the further avoidance of doubt, Proceedings does not include an Appeal unless specifically agreed by RGL.

**Prohibited Separate Business Activities** has the meaning given by the Solicitors Regulatory Authority Code of Conduct;

**QC's Recovery Determination** means, where the sums claimed by any Claimant or Claimants (including the Registrant) have not been quantifiably determined in the Proceedings or where any Recovery in the Proceedings is not obtained in respect of, or is not referable to, any particular claim or claims or where there has otherwise been no determination in the Proceedings of the amount of any Recovery which is in respect of, or referable to, any particular claim or claims, or where there is a non-monetary element of any Recovery and/or in any other case in which RGL reasonably considers that an independent determination as to the amount or value or the Registrant's Pro-rated Net Recovery Share is required, then the amount or value or the Registrant's Pro-rated Net Recovery

Share will be determined by, as RGL will select and instruct as necessary, a Queen's Counsel (Recovery Determination QC) acting in his or her sole, absolute and independent discretion, and the Registrant and RGL will each use their reasonable endeavours to provide the Recovery Determination QC with such assistance and documents as the Recovery Determination QC may reasonably require for the purpose of reaching such a determination. The Recovery Determination QC may, in his or her sole, absolute and independent discretion, determine such other procedures to assist with the conduct of the determination as he or she considers just or appropriate, including (to the extent the Recovery Determination QC considers necessary) instructing other advisers to assist him or her in reaching his or her determination. In making any determination, the Recovery Determination QC will act as an independent expert and not as an arbitrator or in any other quasi-judicial capacity and shall prepare a written determination that will be final and binding on the Parties in the absence of manifest error or fraud and give notice (including a copy) of it to the Parties;

**Recovery** means any and all value paid and/or transferred by any Defendant or any Affiliate of any Defendant as a result of any judgment, award, order, settlement, arrangement or compromise in the Proceedings including (without limitation) payment of any damages, restitution, recovery, judgment sum, arbitral award, settlement sum, compensation payment, costs and interest on costs, whether in monetary or non-monetary (where the value will be assessed by the QC's Recovery Determination) form, and including any release from liability or declaratory relief, whether actual or contingent, and before deduction of any relevant taxes;

**Registrant's Pro-rated Share of the Costs of the Proceedings** means the Costs of the Proceedings as incurred as at the relevant date of calculation and regardless of when either the Registrant signed the LMA or when any agreement with the Solicitors is or was signed by the Registrant or signed on the Registrant's behalf, multiplied by the quotient of:

- (i) one; divided by
- (ii) the number of Claimants;

**Registrant's Pro-rated Share of the Adverse Costs of the Proceedings** means the total amount of Adverse Costs in question multiplied by the quotient of:

- (i) one; divided by
- (ii) the number of Claimants;

**Registrant's Payment Date** means the later of:

- (i) 10 Business Days from the date of any Recovery being paid into a client account of RGL's solicitors or accountants in the name of RGL; or
- (ii) 10 Business Days from the date of any QC's Recovery Determination of the amount of the Registrant's Prorated Net Recovery Share;

**Registrant's Pro-rated Net Recovery Share** means, where any Recovery is in respect of, or referable to, the claims of more than one Claimant (including the Claims):

- (i) the amount of the Claims (including interest) as determined in the Proceedings or, if not so determined, as assessed by the QC's Recovery Determination; divided by
- (ii) the sum of all of the claim amounts of all of the claims pursued by the Claimants in respect of whom a Recovery has been made, as determined in the Proceedings or, if not so determined, as assessed by the QC's Recovery Determination. For the avoidance of doubt, where any Recovery is in respect of, or referable to, the Claims only, the Registrant's Pro-rated Net Recovery Share is 100%;

**Relevant Documents** means any document or information in the possession or under the control of the Registrant that might alter RGL's views of the prospects of success of the Claims;

**Reserved Legal Activity** has the meaning given by the Legal Services Act 2007;

**RGL Services** means:

- (i) the regulated claims management services provided by RGL to the Registrant;
- (ii) the identification of the Claims and of the commercial viability of the Claims by RGL;
- (iii) with the assistance of and through the representation of the Registrant by the Solicitors and Counsel, RGL managing and conducting the preparation and pursuit of the Claims and/or the Proceedings in accordance with the LMA; and/or
- (iv) all the other services to be performed by RGL under the LMA including (without limitation) obtaining Litigation Funding and/or ATE insurance;

**Settlement** means a settlement of the Proceedings and/or any part thereof and includes (without limitation) an offer of settlement being made by the Claimants or by the Defendant or countered by the Claimants or by the Defendant and/or settlement discussions between the Claimants and the Defendant and/or any Affiliate of the Defendant (in whatever form or forum any such discussions might take or take place);

**Solicitors and Counsel** means the firm of solicitors and the individual barristers respectively appointed and instructed by RGL pursuant to the LMA to represent the Claimants (including the Registrant) in relation to and/or in connection with the Claims and/or the Proceedings; 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).