

**THE FELTEX INVESTIGATION,
MANAGEMENT & FUNDING
AGREEMENT
(the JAFL Agreement)**

These amendments form part of the JAFL Agreement

Amendments to the JAFL Agreement

Amendments to the JAFL Agreement which have been approved by the High Court on 19 May 2010:

- in clause 1.1, in the definition of “Joint Action” the reference to “rule 78” of the High Court Rules is now to “rule 4.24”
- In clause 1.1 the definition of “Lawyers” now means Wilson McKay, 1A St Vincent Avenue, Remuera, Auckland 1050; P O Box 28347, Remuera, Auckland 1541; ph (09) 520-4544; fax (09) 524-0397; email: lawyers@wilsonmckay.co.nz or any other solicitors appointed in their place. This amendment also applies to Schedule 1 as the party described as “the Lawyers”
- Clause 11 now has added to it:

“11.3. Any decision under this clause by JAFL shall only be taken after consultation with the Committee and after taking legal advice from the Lawyers or counsel, provided that JAFL may, as well, take legal advice from any other source as it may decide”.

- Clause 13.3 now has added to it:

“13.3A. The Committee or the Lawyers or counsel may require that any legal advice or other communication with the Qualifying Shareholders as to any matter in the court proceeding or any other relevant matter shall be provided as they may stipulate, free of any input or interference by JAFL but after such consultation with JAFL as they consider to be appropriate;

13.3B. JAFL and the Committee shall first refer any proposed communication by either of them with the Qualifying Shareholders as to any matter in the court proceeding or any other relevant matter to the Lawyers or counsel for their advice or comments.

13.3C. The Committee shall be kept informed by JAFL and consulted as to all material or relevant matters relating to the court proceeding. The Lawyers or counsel may require JAFL to inform or consult with the Committee on any particular matter or may do so directly with the Committee themselves.

13.3D. The plaintiff, or his nominee, shall be a member of the Committee. One member shall be nominated by JAFL and one by the Lawyers and counsel”.

- Clause 23.1 (b) is deleted

Amendment to the JAFI Agreement which has been approved by the Court of Appeal on 23 November 2012:

- Clause 19.1(b) is replaced with the following clause, which adopts clause 9(b) of the Code of Conduct for Litigation Funders of the Association of Litigation Funders of England and Wales:

“19.1:

b) *if JAFI:*

(i) *reasonably ceases to be satisfied with the merits of the Claim or the Proceedings; or*

(ii) *reasonably believes the Claim or the Proceedings is no longer commercially viable; or*

(iii) *reasonably believes that there has been a material breach of this JAFI Agreement by the Applicant.”*

RECITALS

- A. Joint Action Funding Limited (“JAFL”) is a company incorporated in Auckland, New Zealand.
- B. The Applicant has one or more Claims and other persons have claims which are the same or similar to the Claims.
- C. If appropriate, the Applicant wishes to bring proceedings by way of Joint Action in respect of some or all of the Claims and the Other Claims.
- D. The Applicant has requested JAFL to provide the investigation management and funding components of the Project. The Applicant consents to JAFL conducting such investigations as JAFL may consider appropriate.
- E. JAFL is prepared to conduct the Project Investigation and Project Management and pay the Project Costs pursuant to the terms of this JAFL Agreement.
- F. JAFL proposes to appoint and/or endorse appointment of the Lawyers to provide the Legal Work to the Applicant and to Other Funded Persons on the terms of the Standard Lawyers Terms.
- G. The Applicant is aware that JAFL will also provide funding to Other Funded Persons and may fund other actions against the Defendants unrelated to the Claims.
- H. The Applicant is aware that where the Applicant has more than one Claim, it is possible that separate Proceedings will be instituted against different Defendants in relation to those Claims.
- I. The Applicant is aware that his, her or its Claims may be pursued in common with some but not all of the Other Claims and may be against one or more Defendant.
- J. The Applicant acknowledges that JAFL has, by virtue of its obligations and entitlements (including to receive a percentage of the Resolution Sum) set out in this JAFL Agreement, an interest in the Claims and the Proceedings, and that Anthony John Gavigan of Auckland has arranged these matters through and has an interest in both JAFL and FTX Investors Trust Limited.

AGREEMENT

1. Definitions

- 1.1 In this JAFL Agreement, unless the contrary intention appears:

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

“**Adverse Costs Order**” means any costs order made against the Applicant, other Funded Persons or the Representative in the Proceedings in respect of costs incurred during the term of this JAFL Agreement.

“**Applicant**” means the company or individual whose details appear on the front page of this JAFL Agreement and the successors, or assigns of that company or individual.

“**Applicant’s Share**” means the share borne by the Applicant calculated by reference to the proportion that the amount of the Claims the subject of the Proceedings or Settlement concerned bears to the total amount of the claims of all Funded Persons the subject of the Proceedings or Settlement concerned, or where there are no Other Claims so subject, then to the total amount of the claims of all Funded Persons. The amount of the Claims and claims of all Funded Persons are as determined by the Lawyers.

“Claim” means the claims the Applicant has or may have against some or all of the Defendants for loss and damage caused to the Applicant by the conduct of one or more of the Defendants.

“Committee” means the group of up to three Funded persons nominated by JAFL and accepted by the Lawyers as those who will make binding decisions and give binding instructions to the Lawyers on behalf of all Funded Persons included in any Joint Action.

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

“Costs Order” means an order made by a Court requiring one or more parties to any of the Proceedings and JAFL to pay the costs incurred by another party or other parties to the Proceedings.

“Court” means the court in which the Proceedings are conducted.

“Date of Commencement” means the date this JAFL Agreement signed by the Applicant is received by JAFL.

“Defendants” means TIMOTHY ERNEST CORBETT SAUNDERS of Waipara, Company Director, SAMUEL JOHN MAGILL of Victoria, Australia, Chief Executive JOHN MICHAEL FEENEY of Victoria, Australia, Corporate Advisor, CRAIG EDGEWORTH HORROCKS of Auckland, Solicitor, PETER DAVID HUNTER of Auckland, Accountant, PETER THOMAS of Victoria, Australia, Merchant Banker and JOAN WITHERS of Auckland, Chief Executive. (First Defendants) CREDIT SUISSE FIRST BOSTON PRIVATE EQUITY INC. (Second Defendant) CREDIT SUISSE FIRST BOSTON ASIAN MERCHANT PARTNERS L.P. (Third Defendant) FIRST NEW ZEALAND CAPITAL of Auckland. (Fourth Defendant) AND FORSYTH BARR LIMITED of Dunedin (Fifth Defendant) and any others against whom Proceedings are commenced and in respect of whom JAFL accepts Adverse Costs Order exposure, including any parties referred to as “respondents” in the Proceedings.

“Funded Party” means a Funded Person who has become a Representative in a Joint Action or a party in a Joint Action.

“Funded Person” means the Applicant and all persons who have entered or enter into Other Funding Agreements.

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

“GST Act” means the Goods and Services Act 1985

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

“Investigation Product” means all information, documentation, analyses, results and conclusions obtained, conducted or reached (as the case may be) by JAFL in or as a result of the Project Investigation.

“JAFL Agreement” means this agreement between the Applicant and JAFL and, if amended, this agreement as amended, and (for the avoidance of doubt) includes Schedules 1 and 2.

“Joint Action” means a proceeding or proceedings under Rule 78 of the High Court Rules or any other equivalent Court rule or statutory provision.

“Judgment” means any judgment of a competent Court against one or more of the Defendants in respect of any Claim or Other Claim or part of any Claim or Other Claim.

“Lawyers” means Wakefield Associates, Level 1, 85 Picton Street or any other solicitors appointed in their place.

“Legal Work” means advice and other legal services which the lawyers consider reasonably necessary to prosecute the Proceedings.

“Other Claims” means claims Other Funded Persons have or may have against some or all of the Defendants for loss and damage caused to those Other Funded Persons by the conduct of one or more of the Defendants which claims are the same or similar to the Claims.

“Other Funded Persons” means all persons who enter into or have entered into Other Funding Agreements.

“Other Funding Agreement” means any agreement for the provision of funding by JAFL to a person with Other Claims, and also includes any written agreement or mandate made between a person with Other Claims who agrees with the Lawyers to pay in cash upon demand from time to time into the Lawyers’ trust account their own pro-rata share of costs as defined in accordance with clause 5(2)(c) and elsewhere and also includes agreements made between a person with Other Claims and the Lawyers & FTX Investors Trust Limited since 2006.

“Privilege” unless the context otherwise requires, means legal professional privilege and includes any joint privilege and common interest privilege.

“Proceedings” means any and all Joint Actions to prosecute all or some of the Claims and some or all of the Other Claims and includes proceedings brought in contemplation of Proceedings, including without limitation proceedings for preliminary discovery. If any of the Defendants (or any of their assets) come under the control of an external administrator, the Proceedings will also include all relevant methods of pursuing some or all of the Claims in that context including the lodgement of proofs of debt.

“Project” means the Project Investigation and the Project Management and the conduct of the Proceedings in order to achieve Resolution of the Claims and the Other Claims, with the aim of maximising Settlement or judgment proceeds, net of Project Costs, in respect of the Claims and the Other Claims as quickly as possible, having due regard to all risks, and, in particular, the Proceedings being unsuccessful.

“Project Budget and Time Line” means the budget (inclusive of any GST payable) and time line for the Project prepared by JAFL or the Lawyers, ratified by the Representative or the Committee and accepted by the Lawyers at the commencement of the Standard Lawyers Terms in the form of Schedule 2 to this JAFL Agreement and any amended or varied budget and time line which may subsequently be prepared by the Lawyers and which is accepted by JAFL and the Representative or the Committee as replacing the previous budget and time line.

“Project Costs” means the costs and expenses, including any GST payable on any Supply made by any entity as a result of the cost or expense being incurred (but excluding the Remaining Costs), comprising:

- (a) the costs and expenses associated with the Project Investigation and Project Management;
- (b) the costs involved in the provision by JAFL of any security for costs;
- (c) the costs paid by JAFL pursuant to a Costs Order;

- (d) the reasonable legal costs and disbursements of the Lawyers incurred, during the term of the JAFL Agreement, for the sole purpose of prosecuting and resolving the Proceedings, in respect of the fees of the Lawyers excluding disbursements to \$[225,000.00] (inclusive of GST) up to the commencement of any trial in the Proceedings and to \$[112,500.00] (inclusive of GST) for any trial unless in JAFL's absolute discretion, JAFL pays an amount in excess of such limits. For the avoidance of doubt, disbursements, including counsel fees, are excluded from these limits; and
- (e) all of JAFL out of pocket costs and expenses paid or incurred in relation to the Project (other than those already referred to in this definition).

"Project Investigation" means the investigation referred to in clause 4.1 of this JAFL Agreement.

"Project Management" means the management described in clause 7 of this JAFL Agreement.

"Project Management Fee" means a fee, payable as Consideration for the Project Management and Project Investigation, calculated as 25% of the total estimate of costs and disbursements contained in the Project Budget and Time Line.

"Remaining Costs" means the amount which is determined as being payable by JAFL pursuant to Term 7 of the Standard Lawyers Fee Terms.

"Representative" means any Funded Person who is the representative party in a Joint Action.

"Resolution" means when all or any part of the Resolution Sum is received and where the Resolution Sum is received in parts, or where there is more than one Proceeding, a "Resolution" occurs each time a part is received and in respect of each Proceeding.

"Resolution Sum" means the amount or amounts of money or the value of goods, services or benefits for which the Claims are Settled, or for which Judgment is given in favour of the Applicant in any Proceeding and includes any interest and costs recovered pursuant to a Costs Order or by agreement. The Resolution Sum will include any ex gratia payments made to the Applicant in relation to the Claims. There will be a separate Resolution Sum for each separate Proceeding.

"Settlement" means any settlement, compromise, discontinuance or waiver and "Settles" shall be construed accordingly.

"Standard Lawyers Terms" means the terms and conditions attached as Schedule 1 to this JAFL Agreement.

"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 clauses 19 or 20; and
- (b) any completion, failure, avoidance, rescission, annulment or other cessation of effect of this JAFL Agreement.

"Trust Account" means the account referred to in clause 9.1.1(b).

2. General

- 2.1 The written terms of this JAFL Agreement constitute the entire agreement between the parties.
- 2.2 Neither the Applicant nor JAFL intend to be partners, joint venturers or fiduciaries with or to each other. Nothing in this JAFL Agreement shall constitute the Applicant and JAFL as partners, joint venturers or fiduciaries.
- 2.3 There will be no variation or amendment to the terms of this JAFL Agreement except in writing signed by each of the Applicant and JAFL.
- 2.4 A facsimile transmission of this JAFL Agreement signed by any party to it will be treated as an original signed by that party.
- 2.5 If any provision of this JAFL 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 Applicant and JAFL 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 JAFL Agreement and any transaction contemplated by it.
- 2.7 The singular includes the plural in this JAFL Agreement and vice versa.

3. Cooling Off Period

- 3.1 The Applicant may, by written notice given to JAFL within 10 days after the Date of Commencement, withdraw from this JAFL Agreement. Such withdrawal will cause this JAFL Agreement to terminate but will not be treated as a Termination. Time is of the essence.
- 3.2 If the Applicant withdraws in accordance with clause 3.1, the Applicant shall have no continuing or further obligation to JAFL save for any obligations of confidence arising in respect of information received by the Applicant prior to the withdrawal. Nothing in clause 3.1 shall derogate from any obligations in relation to Privilege attaching to any information received by the Applicant or JAFL prior to the withdrawal.

4. Project Investigation

- 4.1 The Applicant acknowledges that JAFL has an interest in the outcome of the Proceedings and hereby consents to JAFL:
- 4.1.1 investigating the evidentiary basis for the Claims (documentary and oral);
 - 4.1.2 collating the material documents and obtaining statements;
 - 4.1.3 investigating the capacity of the Defendants to meet any award or order made against them relating to the Claims;
 - 4.1.4 investigating the interest of the Defendants to resolve the Claims by non-litigious means;
 - 4.1.5 investigating any other matter that JAFL determines is relevant to the Claims; and

- 4.1.6 designing and implementing any process for the resolution of the Claims and the Other Claims, other than through legal proceedings.
- 4.2 JAFI will conduct the Project Investigation in accordance with the law and good investigative practice and complete it as soon as possible.
- 4.3 The Applicant will provide, or procure the provision of, such information, documentation and assistance as JAFI may reasonably request in order to conduct the Project Investigation on the basis that the information and documentation is confidential in accordance with clause 14.3 hereof, provided for the purpose of resolving the Claims, remains the exclusive property of the Applicant and will be returned by JAFI at the conclusion of the Project.
- 4.4 Notwithstanding clause 4.3 the Applicant agrees that any information and documentation provided to JAFI may be used by JAFI in the Project Investigation and may be, for the purposes of the Proceedings, disclosed by JAFI to all service providers participating in the Project.
- 4.5 The Applicant hereby authorises JAFI to seek and obtain any information and documentation which JAFI believes may be relevant to the Claims from any person or entity.
- 4.6 The Applicant consents to JAFI providing a copy of this JAFI Agreement to third parties who request evidence of the authority granted to JAFI pursuant to clause 4.5.
- 4.7 At the Applicant's reasonable request, JAFI will communicate with the Applicant from time to time about the progress and results of the Project Investigation. Nothing in this JAFI Agreement requires JAFI to disclose to the Applicant any information which is confidential to Other Funded Persons or to which Privilege attaches.
- 4.8 Without derogating from anything else in this clause 4, JAFI may use the Investigation Product:
- (a) to assist the preparation or prosecution of any proceedings to which this JAFI Agreement or Other Funding Agreements apply;
 - (b) to monitor its actual and potential obligations under this JAFI Agreement and Other Funding Agreements;
 - (c) to review whether it provides or continues to provide funding in respect of the Claims and the Other Claims or some of the Claims or the Other Claims;
 - (d) to obtain legal or financial advice, or financial services, in connection with or in support of its performance of this JAFI Agreement and Other Funding Agreements; and
- in any alternative process set up under clause 4.1.6 hereof.
- 4.9 JAFI may retain and use the Investigation Product as set out in clause 4.8 notwithstanding any Termination or withdrawal by the Applicant pursuant to clause 3.1.
- 4.10 The Investigation Product will be delivered to the Lawyers for use by JAFI and them in determining which, if any, Proceedings should be instituted and in the conduct of those proceedings.
- 5. Proceedings**
- 5.1 The Applicant agrees that the Lawyers will determine or have determined, in consultation with JAFI:

- (a) the Defendant or Defendants against whom the Proceedings should be issued;
 - (b) the form of the Proceedings and in particular whether the Proceedings should take the form of a Joint Action; and
 - (c) what Claims and Other Claims should be pursued in the Proceedings.
- 5.2 If pursuant to clause 5.1 it is or has been determined that Proceedings should take the form of a Joint Action then the Applicant agrees:
- (a) that two representatives will be or have been nominated from amongst the Funded Persons by JAFL and, having been accepted by the Lawyers, those persons will act as the Representatives in that Joint Action unless and until removed and replaced by some other Funded Person on the nomination of JAFL;
 - (b) that the Representatives will give binding instructions to the Lawyers and make binding decisions on behalf of the Applicant in relation to the Claims and the Other Claims up to the delivery of judgment on the common issues raised in the Joint Action; and
 - (c) that the Project Costs up to the delivery of judgment on common issues will be attributed to the Applicant and the Other Funded Persons in that Joint Action on a basis pro rata to the amount of their Claim as determined by the Lawyers.
- 5.3 If pursuant to clause 5.1 it is or has been determined that Proceedings should take the form of a Joint Action (or if after commencing a Joint Action the Proceedings continue as a Joint Action) then the Applicant agrees:
- (a) that a Committee will be formed for each Joint Action (which may be the same Committee for all those Joint Actions to which the 3 members are all party);
 - (b) that the Committee will give binding instructions and make binding decisions on behalf of the Applicant in relation to the Claims and the Other Claims made in the Joint Action, including, subject to clause 13, in relation to Settlement;
 - (c) the decisions of the Committee will be determined by a majority in number of the members of the Committee;
 - (d) if a member of the Committee ceases to be a member, that person may be replaced on the nomination of JAFL accepted by the Lawyers; and
 - (e) that the Project Costs will be attributed to the Applicant and the Other Funded Persons in that Joint Action on a basis pro rata to the amount of Claims and the Other Claims the subject of that Joint Action, as determined by the Lawyers.
- 6. Obligation of Applicant**
- 6.1 The Applicant must:
- (a) do anything reasonably requested by JAFL and/or the Lawyers promptly in such manner as to avoid unnecessary cost and delay to the Project; and
 - (b) inform the Lawyers and JAFL of any change in contact details or any information, circumstance or change in circumstances likely to affect any issue in any of the Proceedings.

- 6.2 If the Applicant is or becomes a Funded Party, in addition to the obligations set out in clause 6.1, the Applicant must:
- (a) provide full and honest instructions to the Lawyers;
 - (b) conduct all Proceedings relevant to his, her or its Claim and the Other Claims in such manner as to avoid unnecessary cost and delay; and
 - (c) subject to this JAFL Agreement, accept and follow the Lawyers' reasonable legal advice, including advice as to any compromise of the Claims.
- 6.3 The Applicant agrees to keep and preserve any documents relating to the Defendants, the Proceedings and/or the Claims and Other Claims that the Applicant has in his, her or its possession, custody or control and the Applicant:
- (a) will provide to the Lawyers all information and documents relevant to the Proceedings and the Claims and Other Claims if and when so requested by the Lawyers;
 - (b) authorises the Lawyers, without waiving privilege, to provide the information and documents referred to above to JAFL; and
 - (c) if ordered to do so by a Court in any Proceedings, relevant to his, her or its Claims authorise the Lawyers to provide the information and documents to the Defendants and any third party the subject of a Court order.
- 6.4 The Applicant will, if requested by the Lawyers, provide a written statement in relation to the Claims and the Other Claims, give evidence and attend upon the Court in order to give evidence and where appropriate procure its officers, servants and agents to do so.
- 6.5 The Applicant:
- (a) will immediately notify JAFL if the Applicant is requested or required to disclose any information relating to the negotiation, existence, terms or performance of this JAFL Agreement and if so requested by JAFL will take such steps as may reasonably be available to prevent disclosure of such parts of the information as JAFL may nominate;
 - (b) will not disclose to any person, save for its legal and financial advisors for the purpose of obtaining confidential legal or financial advice, or JAFL, any information:
 - (i) to which Privilege or obligations of confidence attach; or
 - (ii) which is or may be protected from disclosure by reason that disclosure would or may provide the Defendants with a strategic or tactical advantage in any Proceeding;save in accordance with advice from the Lawyers for the purposes of the prosecution of those Proceedings.
- 6.6 The obligations in clause 6.5 are continuing obligations.
- 6.7 The Applicant will not during the period of this JAFL Agreement have any communications with the Defendants, its officers, servants or agents relating to the Claim and/or the Other Claims or any compromise of the Claims and/or the Other Claims other than through the Lawyers or upon their reasonable advice.

7. Project Management

- 7.1 JAFI will provide the following management services in respect of the Project during the term of this JAFI Agreement:
- (a) advising the Applicant and Other Funded Persons on strategy;
 - (b) retention of service providers (including the Lawyers) for the Project other than barristers and expert witnesses, including, where necessary, personnel to assist in the Project Management;
 - (c) creating and seeking compliance with the Project Budget and Time Line;
 - (d) considering the advice of the Lawyers and providing instructions to the Lawyers subject to clause 13;
 - (e) database and document management;
 - (f) facilitating periodic meetings between Project participants and reporting to the Applicant and Other Funded Persons in respect of progress; and
 - (g) facilitating non litigious means of resolving the Claims.

7.2 JAFI may cause its investigators to carry out further or other investigations during the course of the Project.

8. Project Costs and Remaining Costs

8.1 JAFI will pay the Project Costs and the Remaining Costs on the terms of this JAFI Agreement.

8.2 JAFI will not seek reimbursement from the Applicant or Other Funded Persons of any internal overheads incurred as part of the Project Costs, other than the Project Management Fee.

8.3 If the Defendants make any payment by way of costs during the course of the Proceedings then such payment will be made into the Trust Account on trust pro rata for JAFI and self funded persons and may be utilized pro rata by JAFI in paying or reimbursing Project Costs and the Remaining Costs. The Lawyers will make payment of its share of such pro rata monies as directed by JAFI from time to time.

8.4 JAFI will pay any Adverse Costs Order made against the Applicant, Other Funded Persons or the Representative. If there is any Resolution Sum or other monies in the Trust Account at the time of the Adverse Costs Order being made then those monies will first be employed to pay the Adverse Costs Order and JAFI will pay any balance outstanding after such payment. The Lawyers will pay out those monies from the Trust Account at the request of JAFI.

8.5 As soon as is reasonably practicable upon a request from the Lawyers, JAFI will provide a written undertaking to the Defendants to pay any Adverse Costs Order.

8.6 JAFI will provide any security for costs in the Proceedings, in the form of a written undertaking to meet the Defendants' costs or in such other form that JAFI determines and the Defendants or the Court accepts, relating to costs incurred during the term of this JAFI Agreement.

8.7 JAFI's obligations in clauses 8.1 to 8.6 do not arise before the expiry of the 10 day period referred to in clause 3.1.

9. Receipt of Resolution Sum

9.1 The Applicant and JAFI agree that the Lawyers will (and will be directed to):

- (a) receive any Resolution Sum;
 - (b) immediately pay any Resolution Sum into a trust account to be kept for that purpose; and
 - (c) maintain separate records for each Resolution Sum arising from the Proceedings.
- 9.2 The Applicant consents to the Resolution Sum being combined in the Trust Account with the resolution sum under Other Funding Agreements.
- 9.3 The Lawyers will hold that part of the Resolution Sum disposed of or otherwise due to JAFL under this JAFL Agreement on trust for JAFL and the balance on trust for the Applicant to be dispensed in accordance with the directions of the Applicant.
- 9.4 The Applicant acknowledges that:
- (a) the conduct of Proceedings will or may encourage some or all of the Defendants to seek to compromise the Claims or the Other Claims; and
 - (b) Proceedings may have the effect set out in 9.4(a) notwithstanding that the Applicant may have terminated this JAFL Agreement and terminated its involvement in those Proceedings.
- 9.5 If, in spite of clause 9.1, the Applicant directly or indirectly receive all or any part of the Resolution Sum, the Applicant will pay it over, together with the reasonable market value of any non monetary component of the Resolution Sum received, to the Lawyers to be paid into the Trust Account and dealt with on the terms of this JAFL Agreement;
- 9.6 The obligation in clause 9.5 is a continuing obligation and survives any Termination of this JAFL Agreement save for a Termination pursuant to clause 20.1.

10. Application of Resolution Sum

- 10.1 The Lawyers will forthwith pay out of the Trust Account all payments referred to in clause 12.1 upon cleared funds becoming available.
- 10.2 Subject to any Court order, if a lump sum amount is received by way of Settlement of the Claims and Other Claims, or by way of an ex gratia payment, the balance, after firstly deducting all amounts as permitted by this JAFL Agreement, and secondly deducting any amounts as permitted by the Standard Lawyers Terms and any retainer agreement entered into between the Lawyers and the Applicant, will be distributed to the Applicant and Other Funded Persons (whose Other Claims are the subject of the Settlement) on a pro rata basis by reference to the amount of the Claims and the Other Claims the subject of the Settlement, such amount to be determined in each case by the Lawyers.
- 10.3 The obligations imposed by clause 10.1 and 10.2 hereof are to be met prior to the payment from the Resolution Sum of any other expenses or obligations of the Applicant including any other fees or costs.
- 10.4 If any part or all of the Resolution Sum is not money, the Applicant will, as soon as the part or all of it is received, pay to the Lawyers for deposit in the Trust Account an amount equal to the reasonable market value of the non monetary component of the Resolution Sum so received.

11. Appeals

- 11.1 If there is a final judgment in the Proceedings which is not in favour of the Applicant and JAFL wishes an appeal to be lodged, then where the Applicant is a Funded Party

in the proceedings concerned, the Lawyers will lodge and prosecute the appeal/appeals in the name of the Applicant. JAFL will pay the legal costs and disbursements in connection with the appeal/appeals and will pay any adverse costs order if the appeal/appeals is or are unsuccessful.

- 11.2 If there is a final judgment in the Proceedings in favour of the Applicant and the Defendant appeals, then JAFL may elect to fund the legal costs and disbursements of the appeal/appeals. If JAFL so elects, where the Applicant is a Funded Party in the proceedings concerned, the Lawyers will defend the appeal/appeals in the name of the Applicant. JAFL will pay any adverse costs order if the appeal/appeals is or are lost by the Applicant.

12. Repayment of Project Costs, the Remaining Costs and Payment of Commission

12.1 Upon Resolution the Applicant will pay to JAFL, from the Resolution Sum:

- (a) an amount equal to the Applicant's Share of all costs and expenses, including the Project Costs, paid by JAFL in relation to the Claims the subject of the Proceedings or Settlement to which the Resolution Sum relates (reduced by an amount equal to the sum of any Input Tax Credits received by JAFL on Acquisitions made in incurring the Project Costs including pursuant to clause 12.4);
- (b) an amount equal to the Applicant's Share of the Project Management Fee;
- (c) an amount equal to the Applicant's Share of the Remaining Costs paid by JAFL in relation to the Claims the subject of the Proceeding or Settlement to which the Resolution Sum relates (reduced by an amount equal to the sum of any Input Tax Credits received by JAFL on Acquisitions made in incurring the Remaining Costs);
- (d) an additional amount, on account of GST, being the amount obtained by multiplying the prevailing rate of GST (currently 12.5%) by an amount equal to the Consideration to be received by JAFL for any Taxable Supply made to the Claimant by JAFL under or in connection with this JAFL Agreement (apart from any Consideration to be provided pursuant to this clause 12.1(d));
- (e) an amount, as Consideration for the financing of the Claims and Proceedings, being equal to a percentage of that Resolution Sum less the amount referred to in clause 12.1(a), where that percentage is determined by reference to the highest number of Feltex shares held by the Applicant at any time prior to or on the 31st day of March 2005, as follows:

Highest number of shares	Resolution before 31/08/08	Resolution on or after 31/08/08 but before 31/3/09	Resolution on or after 31/3/09
Under 1 million	20%	25%	33%
Over 1 million	20%	25%	30%

- (f) if, pursuant to clause 11 above, JAFL funds an appeal, or the defence of an appeal, or any further appeal or the defence of any further appeal, an additional 5% will be added to the percentages referred to in clause 12.1(e) above in respect of each appeal so funded.

- 12.2 Subject to clause 12.4, no fees, commissions or other payments will become due or owing by the Applicant to JAFL unless and until Resolution and then will not exceed the Resolution Sum.
- 12.3 The Applicant hereby disposes to JAFL, as Consideration for the financing of the Claims and Proceedings, that part of the Resolution Sum which is referred to in clause 12.1(e) hereof.
- 12.4 If the Applicant is a Funded Party, the Applicant will, at JAFL's request, pay to JAFL any Input Tax Credit to which the Applicant is entitled under the GST Act in respect of the incurrence of the Project Costs or the Remaining Costs. Any such amount is payable at the earliest time the Applicant can claim the benefit of the Input Tax Credit from the Commissioner of Taxation. If upon Resolution, there is any Input Tax Credit not paid to JAFL, that is payable, or would be payable if JAFL had made a request under this clause, then JAFL will be entitled to receive payment of the GST (paid by JAFL) to which that Input Tax Credit relates or would relate, under clause 12.1.
- 12.5. For the avoidance of doubt, if upon Resolution the total costs and commission payable by the Applicant to JAFL pursuant to clauses 9, 10 and 12 hereof exceeds the Applicant's entitlement from that Resolution, the excess amount shall be payable by the Applicant only from a subsequent Resolution.

13. The Lawyers' Retainer and Settlement

- 13.1 JAFL will appoint the Lawyers to provide the Legal Work to the Applicant and Other Funded Persons on the terms of the Standard Lawyers Terms.
- 13.2 The Applicant agrees that if there is any inconsistency between the terms of any retainer agreement between the Applicant and the Lawyers and this JAFL Agreement or the Standard Lawyers Terms, the terms of this JAFL Agreement or the Standard Lawyers Terms, as applicable, will prevail.
- 13.3 JAFL will give day to day instructions to the Lawyers on all matters concerning the Claim and the Proceedings, however the Applicant, and where appointed, the Committee, may override any instruction given by JAFL by itself giving instructions to the Lawyers.
- 13.4 Except in relation to Settlement, which is dealt with below, if the Lawyers notify JAFL and the Applicant 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 JAFL and those they owe to the Applicant or any Committee, the Applicant and JAFL agree that, in order to resolve that conflict, the Lawyers may:
- (a) seek instructions from the Applicant or any Committee, which instructions will override those that may be given by JAFL;
 - (b) give advice to the Applicant or any Committee and take instructions from the Applicant or Committee, even though such advice and instructions is or may be contrary to JAFL's interests; and
 - (c) refrain from giving JAFL advice and from acting on JAFL's instructions, where that advice or those instructions is or may be contrary to the Applicant's interests.
- 13.5 Nothing in clause 13.3 or 13.4 entitles the Applicant or any Committee to breach, or authorises the breach, of any terms of this JAFL Agreement.
- 13.6 The Applicant authorises the Committee to give instructions to Settle the Claims made in any Joint Action, provided more than 50% by value (by reference to the amount of each claim as determined by the Lawyers) of Funded Persons who are party to that Joint Action vote in favour of the Settlement and advice is received from

either counsel retained by the Lawyers or the Lawyers themselves, that the proposed Settlement is reasonable in all of the circumstances.

- 13.7 The Applicant acknowledges that it will be bound by an order of the Court made in any Joint Action in which the Applicant is a Representative or is represented, approving the Settlement of that Joint Action.
- 13.8 Where there is a proposed Settlement of any Claims not yet the subject of Proceedings, which also involves the Settlement of Other Claims, the Lawyers are authorised and instructed to Settle the Claims, provided more than 50% by value of Funded Persons whose claims are the subject of the proposed Settlement vote in favour of the Settlement and advice is received from either counsel retained by the Lawyers or by the Lawyers themselves, that the proposed Settlement is reasonable in all of the circumstances.
- 13.9 In recognition of the fact that JAFL has an interest in the Resolution Sum, if the Representative (in respect of a Joint Action) or the Committee (in respect of a Joint Action):
- (a) wants to Settle any Joint Action for less than JAFL considers appropriate; or
 - (b) does not want to Settle any Joint Action when JAFL considers it appropriate to do so;

then the Applicant agrees that JAFL and the Representative or the Committee (as the case may be) must seek to resolve their difference of opinion by referring it to counsel for advice on whether, in counsel's opinion, Settlement of the Joint Action on the terms and in the circumstances identified by either JAFL or the Representative or both, in the case of a Joint Action and JAFL or the Committee or both, in the case of a Joint Action, is reasonable in all of the circumstances.

- 13.10 In the first instance counsel will be the most senior counsel of those retained by the Lawyers in respect of the Joint Action concerned. If no counsel has been retained then the Lawyers in consultation with the Representative or the Committee (as the case may be) and JAFL will appoint senior counsel for that purpose. If JAFL and the Representative or the Committee (as the case may be) are unable to agree on the selection of a senior counsel then the senior counsel will be one appointed by the President of the New Zealand Law Society for that purpose.
- 13.11 Counsel may proceed as he or she sees fit to inform himself or herself before forming and delivering his or her opinion. If Counsel's opinion is that the Settlement is reasonable then the Applicant agrees that the Lawyers will be instructed to do all that is necessary to Settle the Joint Action concerned, provided that:
- (a) in the case of Settlement of a Joint Action more than 50% by value of the Funded Parties in the Joint Action concerned vote in favour of Settlement; and
 - (b) in the case of Settlement of a Joint Action the approval of the Court to the Settlement is sought and obtained.
- 13.12 JAFL will pay the costs of counsel in providing the opinion referred to in clause 13.6, 13.8 and 13.11 as part of the Project Costs.
- 13.13 The procedure set out in clauses 13.9 to 13.12 above, will also apply where the Applicant:
- (a) wants to Settle any Claim not yet the subject of Proceedings for less than JAFL considers appropriate; or
 - (b) does not want to Settle any Claim not yet the subject of Proceedings, when JAFL considers it appropriate to do so.

- 13.14 JAFI may at its discretion require that the Lawyers submit any one or more of their invoices forming part of the Project Costs or the Remaining Costs to taxation. If required to do so by JAFI, the Applicant will take all steps necessary to achieve the commencement, processing and conclusion of that taxation. Any costs of taxation will be paid by JAFI as part of the Project Costs.
- 13.15 JAFI and the Applicant agree that, should any conflict arise as between the interests of JAFI and the interests of the Applicant, then the Lawyers may continue to provide the Legal Work to the Applicant and JAFI will raise no objection to them doing so.

14. Confidentiality and Provision of Documents

- 14.1 In providing to JAFI any documents or information about the Claims and the Proceedings, the Applicant does not intend to waive any Privilege that may attach to such documents or information.
- 14.2 The Lawyers will provide to JAFI a copy of any document obtained in the Proceedings by way of discovery, subpoena or any other coercive power of the Court, subject to JAFI's, its officers and employees, implied undertakings given to the Court.
- 14.3 JAFI agrees that information, communications and documentation provided to it or that is generated by JAFI in the course of the Project Investigation or Project Management or that is provided to it by the Applicant, the Lawyers or any counsel instructed by the Lawyers, is provided, acquired or generated in circumstances where the Applicant is contemplating, participating in or conducting litigation against the Defendants and JAFI and the Applicant acknowledge that all such information, communications and documentation are confidential within the meaning of equity and the communications are "confidential communications" and any documents are "confidential documents" as defined in sections 53 to 57 (and elsewhere) of the Evidence Act 2006 unless already in the public domain. JAFI agrees to preserve that confidentiality unless disclosure is authorised, agreed or contemplated by this JAFI Agreement, or is otherwise required by law.

15. No Charge or Other Encumbrance

- 15.1 The Applicant warrants that, as at the date of this JAFI Agreement there is no charge, lien or other encumbrance over the Resolution Sum nor is there any creditor holding security over property of the Applicant other than as has been disclosed to JAFI in writing.
- 15.2 The Applicant will not cause, permit or assert any charge, lien or other encumbrance or right over or otherwise attaching to the Resolution Sum after the date of this JAFI Agreement, except with the prior written consent of JAFI which consent may be withheld by JAFI at its discretion.

16. Disclosure of Information

- 16.1 The Applicant warrants that, to the best of the Applicant's knowledge, at the date of this JAFI Agreement there is no information in the custody, possession or control of the Applicant 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 JAFI.
- 16.2 If, after the date of this JAFI Agreement, the Applicant becomes aware of any information which has or may have a material impact on the Claims, the Proceedings or the potential for any judgement sum to be recovered, the Applicant will immediately inform JAFI of that information.

17. Miscellaneous

- 17.1 The Applicant and JAFI will:

- (a) act in good faith toward each other and be just and faithful in their dealings with each other in all matters arising out of or connected with this JAFL Agreement;
 - (b) save as provided in this JAFL Agreement, not do or permit to be done any thing likely to deprive any party of the benefit for which the party entered this JAFL Agreement.
- 17.2 The Applicant will use best endeavours to cause any Resolution Sum to be received or recovered as quickly as possible and particularly after any Settlement or judgment in respect of the Claims.
- 17.3 If this JAFL Agreement or any part thereof is annulled, avoided or held unenforceable the Applicant will forthwith do all things necessary, including without limitation executing any further or other agreement or instrument, to ensure that JAFL receives any remuneration, entitlement or other benefit to which this JAFL Agreement refers or is contemplated by this JAFL Agreement. The Applicant irrevocably agrees that production of a copy of this JAFL Agreement shall be conclusive evidence of the Applicant's undertaking as set out in this clause.
- 17.4 The Applicant will not seek any order from any court which may detrimentally affect JAFL's rights under this JAFL Agreement other than with the consent of JAFL and other than as arises out of any breach by JAFL.
- 17.5 If the Applicant acts in breach of this JAFL Agreement, clauses 9, 10 and 12 will continue to apply to any consideration received by the Applicant in respect of the Claims.
- 17.6 The Applicant and JAFL will keep the contents of this JAFL Agreement confidential in so far as it concerns the terms of the relationship between the Applicant and JAFL, except where disclosure to the New Zealand Stock Exchange or to a Court is required or disclosure is, in JAFL's absolute discretion, made by JAFL to the Defendants or their agents.
- 17.7 The Applicant acknowledges and accepts that JAFL has either entered into or will enter into Other Funding Agreements and may fund other claims and proceedings against the Defendants which are unrelated to the Claims. The Applicant also accepts that it is possible that if the Proceedings are conducted as a Joint Action there may be members of the class who have not entered into a funding agreement with JAFL. Termination of this Agreement will not affect JAFL's right to do any thing authorised or contemplated by any Other Funding Agreement.

18. Duration of Agreement

- 18.1 Subject to clauses 19 and 20 below, this JAFL Agreement commences on the Date of Commencement and continues in operation until:
 - (a) all Proceedings, and any appeals funded by JAFL, have concluded; and
 - (b) JAFL has complied with all of its obligations arising pursuant to this JAFL Agreement or Other Funding Agreements, and the Resolution Sum (if any) has been disbursed in accordance with the said agreements.

19. Termination by JAFL

- 19.1 JAFL is entitled to terminate its obligations under this JAFL Agreement, other than obligations accrued, by giving 7 days written notice to the Applicant that this JAFL Agreement and JAFL's obligations are terminated:
 - (a) if the Lawyers appointment to provide Legal Work to the Applicant is terminated (by the Lawyers or by JAFL); and

- (b) otherwise at its sole discretion.
- 19.2 If JAFL terminates its obligations pursuant to clause 19.1 above then it will not be entitled to any payment pursuant to clause 12.1(e), but will continue to be entitled to receive payment pursuant to clause 12.1(a), 12.1(b), 12.1(c) and 12.1(d) from any Resolution Sum including any payment of any Costs Order or costs as agreed in respect of any Proceedings.
- 19.3 All obligations of JAFL under this JAFL Agreement cease on the date JAFL's termination becomes effective, save for obligations accrued to that date, and JAFL shall account to the Applicant for any money held by JAFL on behalf of the Applicant which is payable to the JAFL pursuant to the terms of this JAFL Agreement.
- 19.4 The accrued obligations of JAFL referred to in clause 19.3 comprise:
 - (a) payment of any outstanding Project Costs incurred up to the date the notice of termination takes effect; and
 - (b) payment of any quantified Costs Order against the Applicant 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 JAFL's termination becomes effective.

20. Termination by Applicant and Termination of the Lawyers

- 20.1 If JAFL commits a serious breach of this JAFL Agreement and does not remedy the breach within 30 days after receiving written notice from the Applicant, the Applicant may terminate this JAFL Agreement forthwith by written notice to JAFL.
- 20.2 If this JAFL Agreement is terminated by the Applicant pursuant to clause 20.1 above then:
 - (a) JAFL remains liable for the obligations referred to in clause 19.4 above; and
 - (b) the Applicant will not be required to make any payment to JAFL under clause 12 above.
- 20.3 If the Proceedings are conducted as a Joint Action and the Applicant exercises a right to opt out of the Proceedings, then upon the exercise of that right, this JAFL Agreement will terminate. If there is a Resolution of the Claims of the Applicant at that time (of the termination) or at any later time, clauses 9, 10 and 12 will continue to apply and the Applicant will be liable to pay to JAFL, from the relevant Resolution Sum, the amounts set out in clause 12 above. The obligations of this clause are continuing obligations and survive any termination of this JAFL Agreement.
- 20.4 If JAFL's appointment of the Lawyers to provide Legal Work to the Applicant is terminated pursuant to term 9 of the Standard Lawyers Terms, JAFL will inform the Applicant whether JAFL wishes to appoint other solicitors in place of the Lawyers.
- 20.5 If clause 20.4 applies and JAFL informs the Applicant that JAFL wishes to appoint other solicitors in place of the Lawyers, provided those solicitors agree with JAFL to terms the same as or substantially the same as the Standard Lawyers Terms, those solicitors will become the Lawyers for the purposes of this JAFL Agreement in place of the existing Lawyers.
- 20.6 Replacement of the Lawyers in the circumstances of clause 20.5:
 - (a) will not result in a termination of this JAFL Agreement; and
 - (b) will not result in the replacement solicitors assuming any obligations of the Lawyers accrued to the date the appointment of the Lawyers is terminated.

- 20.7 If clause 20.4 applies and JAFL informs the Applicant it does not wish to appoint solicitors in place of the Lawyers, this JAFL Agreement will terminate as at the date of such notice. If this occurs then:
- (a) JAFL remains liable for the obligations referred to in clause 19.4 above; and
 - (b) Clauses 9, 10 and 12 will survive and continue to apply except that where termination occurs before the Proceedings have resolved the Applicant will only be liable to pay to JAFL, from any Resolution Sum, the amounts set out in clauses 12.1(a), 12.1(b), 12.1(c) and 12.1(d).

21. Governing Law

- 21.1 This JAFL Agreement is entered into in New Zealand and is to be construed in accordance with and governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the Courts of New Zealand.

22. Notices

- 22.1 All notices given under this JAFL Agreement shall be in writing and may be served personally, by post, facsimile or by e-mail.

- 22.2 The address for service of JAFL will be:

Level 1, 14 Jervois Road, Herne Bay, Auckland

fax (09) 378 4048

email tony@ftxit.com

- 22.3 The address for service of the Applicant will be the address of the Applicant noted on the front of this JAFL Agreement, or otherwise as notified to JAFL in writing if that address changes.

- 22.4 Notice shall be deemed to be received on the day after they are posted and the day they are transmitted by facsimile.

23. Acknowledgement

- 23.1 By executing this JAFL Agreement the Applicant acknowledges that:

- (a) JAFL recommended to the Applicant that the Applicant first obtain legal advice as to its meaning and effect;
- (b) The Applicant has obtained such advice.

SCHEDULE 1
STANDARD LAWYERS TERMS

This agreement is made the _____ day of _____ 2008

BETWEEN: *Wakefield Associates Level 1, 85 Picton Avenue, Riccarton, Christchurch,
("the Lawyers")

AND: Joint Action Funding Limited a duly incorporated company having its
registered office at Auckland, New Zealand

RECITALS

- A. JAFL has entered into or proposes to enter into the JAFL Agreements.
- B. The JAFL Agreements are all in the same or substantially the same terms.
- C. The Lawyers are aware of the terms of the JAFL Agreements and have agreed to act consistently with, and in accordance with, their terms.
- D. Each of the JAFL Agreements provides that JAFL will appoint the Lawyers to provide the Legal Work and JAFL proposes to do so on these Terms.
- E. These Terms set out the basis on which the Lawyers are appointed by JAFL to provide the Legal Work to the Funded Persons.

1. DEFINITIONS

1.1 In these Terms, unless the contrary intention appears:

"Claims" means the claims each Funded Person has or may have against some or all of the Defendants for loss and damage caused by the conduct of one or more of the Defendants.

"Funded Persons" means all persons who have entered into or enter into a Feltex Investigation, Management and Funding Agreement with JAFL with respect to their Claims and "Funded Person" means a person who has entered into or enters into a Feltex Investigation, Management and Funding Agreement with JAFL with respect to their Claims.

"JAFL Agreements" means all Feltex Investigation, Management and Funding Agreements with JAFL.

"Terms" means this agreement.

1.2 Unless the contrary intention appears and unless defined above, the definitions of words in the JAFL Agreements will apply to define the meaning of words used in these Terms.

2. APPOINTMENT OF THE LAWYERS

2.1 JAFL hereby appoints the Lawyers to provide the Legal Work to the Funded Persons pursuant to these Terms.

- 2.2 The Lawyers will:
- (a) act consistently with the terms of all JAFL Agreements; and
 - (b) do all things which the JAFL Agreements contemplate the Lawyers will do.
- 2.3 The Lawyers agree that if there is any inconsistency between these Terms and the terms of any retainer between the Lawyers and any Funded Persons, these Terms prevail.

3. COMMENCEMENT OF THE PROJECT

- 3.1 The Lawyers will inform JAFL in writing of:
- (a) the names of the Lawyers who it is proposed will provide the Legal Work, for the purposes of term 5.2;
 - (b) the hourly rates of those Lawyers (inclusive of GST), for the purposes of term 5.1;
 - (c) the hourly and daily rates of barristers retained or proposed to be retained (inclusive of GST);
 - (d) the Lawyers' estimate of costs and disbursements to prosecute the Claims (separately identifying the estimated fees of the Lawyers, the barristers and the experts if any, by reference to each event in the Project Budget and Time Line):
 - (i) up to the commencement of any trial in the Proceedings; and
 - (ii) in respect of the trial;both figures being inclusive of GST, for the purpose of term 6.3(a) in accordance with **Schedule 2**.

4. REPORTING

- 4.1 The Lawyers will keep JAFL fully informed of all matters concerning the Claims and the Proceedings, including any mediation and settlement discussions. The Lawyers will ensure that JAFL is given all necessary information and advice in order to facilitate informed instructions and to enable JAFL to provide the Project Management.
- 4.2 Without limiting term 4.1, if, after the date of these Terms, the Lawyers become aware of any information which has or may have a material impact on the Claims, the Proceedings, or the potential for any judgement sum to be recovered, the Lawyers will immediately inform JAFL of that information.
- 4.3 Unless otherwise agreed in writing, the Lawyers will provide a quarterly report, at the end of March, June, September and December, to any Representative, any Committee and to JAFL which:
- (a) identifies any change to the previous quarterly report and any significant developments;
 - (b) reviews the issues relevant to liability and quantum; and
 - (c) provides advice in respect of any proposed changes to the Claims' percentage chance of success, and any changes to the Project Budget and Time Line dates and costs.

5. COSTS, DISBURSEMENTS AND INTEREST

- 5.1 The Lawyers will charge for the Legal Work provided by reference to the time reasonably and properly spent at the hourly rates as notified to JAFL pursuant to term 3.1, subject to the Lawyers right to increase the hourly rates by no more than five percent of the initial hourly rates on each anniversary of the date on which these Terms are made. Detailed time records must be kept to facilitate time details being provided in accordance with term 6 of these Terms.
- 5.2 No fee will be charged by the Lawyers for any fee earners, other than those notified to JAFL pursuant to term 3.1, without the prior written consent of JAFL. JAFL will not be liable to pay the fees of any barristers or experts other than those notified to JAFL pursuant to term 3.1 or those briefed with JAFL's written consent. JAFL will not unreasonably refuse to provide its written consent.
- 5.3 The Lawyers will only seek reimbursement from JAFL for expenditure reasonably incurred by the Lawyers in progressing the Proceedings being:
- (a) photocopying and scanning at the rates detailed in the current JAFL/LitSupport Price List.

If the Lawyers choose not to utilise LitSupport for these services, they will ensure that:
 - (i) all photocopying and scanning services are provided at prices commensurate with LitSupport; and
 - (ii) the basis for their pricing policy is identified on their accounts.
 - (b) local, STD and ISD facsimiles at cost; and
 - (c) other reasonable expenditure supported by invoices.

6. INVOICES

- 6.1 Subject to term 6.5, the Lawyers will render monthly invoices to JAFL with a copy to any Representative and any Committee by the 20th day of each month, accompanied by:
- (a) the details contemplated by term 6.7 of these Terms;
 - (b) a summary of the time details by their total cost (in a single dollar figure) allocation to each relevant event in the Project Budget and Time Line; and
 - (c) invoices from barristers, experts (both also being allocated to each event as in term 6.1(b)) and for any other significant disbursements.
- 6.2 The monetary details in the monthly invoices will include a charge for the time detailed at 75% of the hourly rates notified to JAFL pursuant to term 3 including any GST with the remaining 25% identified as a total sum.
- 6.3 Subject to term 7.2, JAFL will pay:
- (a) 75% of the reasonable legal costs of the Lawyers incurred during the term of the JAFL Agreement for the sole purpose of prosecuting the Proceedings up to each of the estimates referred to in term 3.1(d); and
 - (b) 100% of the reasonable disbursements incurred during the term of the JAFL Agreement for the sole purpose of prosecuting the Proceedings;

in so far as those costs and disbursements form part of the Project Costs.

- 6.4 Provided invoices from the Lawyers comply with these Terms, JAFL will pay them within 30 days from the end of the month in which the Lawyers' invoice is received by JAFL.
- 6.5 Where the estimates of fees of the Lawyers referred to in 3.1(d) above are reached (by virtue of the fact that 75% of those fees have been charged pursuant to term 6.2):
- (a) the Lawyers will cease to render further invoices for fees in relation to the Proceedings unless and until a Resolution of the Proceedings is reached and then only pursuant to these Terms;
 - (b) the Lawyers will be entitled to continue to render invoices for disbursements reasonably incurred in relation to the Proceedings and JAFL will pay such disbursements in accordance with term 6.3(b);
 - (c) JAFL will not be liable to pay any fees of the Lawyers which exceed the estimates other than the Remaining Costs;
 - (d) the Lawyers will continue with the Project until Resolution unless they otherwise have a right to terminate these Terms; and
 - (e) for the avoidance of doubt, the Lawyers will not seek to recover any of their fees, disbursements or interest from the Applicant other than by recourse to the Resolution Sum.
- 6.6 If the Lawyers cease to render monthly invoices pursuant to term 6.5, they will thereafter provide monthly statements to JAFL until the conclusion of the Proceedings, whether by settlement or judgment, setting out the information which would have been provided to JAFL pursuant to term 6.1 as if term 6.1 had continued to be operative.
- 6.7 The time details for fees of the Lawyers must be on a separate document to each invoice and must include, for each time entry:
- (a) the date upon which the time was spent;
 - (b) which solicitor or paralegal spent the time; and
 - (c) the time spent in six minute units.

7. PAYMENT OF THE REMAINING COSTS

- 7.1 The following, including any GST on the following, (referred to as the "**Balance**") do not form part of the Project Costs:
- (a) all reasonable costs and disbursements incurred and not yet billed or recovered by the Lawyers in relation to their investigation of the legal and factual circumstances giving rise to the Claims including the provision of preliminary advice in relation to the Claims, incurred prior to the date of these Terms;
 - (b) 25% of Lawyers' fees referred to in term 6.2 above;
 - (c) any reasonable amount of Lawyers' fees incurred over and above the estimates referred to in term 3.1(d)(i) and (ii); and
 - (d) interest from the date of the issue of a monthly statement or invoice with respect to any of the fees referred to in term 7.1(a), (b) and (c), at the rate prescribed by the relevant Legal Profession regulation or rules and pursuant to those regulations or rules.

- 7.2 On (and only on) Resolution and subject to receipt of an invoice from the Lawyers, JAFL will pay the Lawyers that portion (being all or part) of the Balance, with that portion payable (being all or part) to be treated as the “**Remaining Costs**”, as follows:
- (a) if the total of the Resolution Sums received under all JAFL Agreements (the “**Total Resolution Sum**”) is greater than or equal to the sum of the amounts of the Balance and the total amount payable to JAFL under clause 12.1(a), 12.1(b), 12.1(d) and 12.1(e) of each of the JAFL Agreements with Funded Persons, then JAFL will pay the whole of the Balance; or
 - (b) if (a) above does not apply, then JAFL will pay that part of the Balance determined as follows:
 - (i) 75% of the fees referred to in term 7.1(a) and term 7.1(c), limited to, and not to exceed, the difference between the Total Resolution Sum and the sum of the total amounts payable to JAFL under clauses 12.1(a), 12.1(d) and 75% of the total amounts payable to JAFL under clause 12.1(b), of each of the JAFL Agreements with Funded Persons; and
 - (ii) if there is an amount left after deducting from the Total Resolution Sum, the total amounts payable to JAFL under clauses 12.1(a), 12.1(b) and 12.1(d) of each of the JAFL Agreements with Funded Persons and the amount paid under term 7.2(b)(i), the remaining unpaid part of the Balance (“**Remaining Balance**”), in accordance with the following formula:

*Total Resolution Sum – the total amounts payable to JAFL under clauses 12.1(a), 12.1(b) and 12.1(d) of each of the JAFL Agreements with Funded Persons – amount paid under term 7.2(b)(i) = **Remaining Amount***

(Remaining Balance / (Remaining Balance + the total amount payable to JAFL under clause 12.1(e) of each of the JAFL Agreements with Funded Persons)) x Remaining Amount = Amount payable under term 7.2(b)(ii).

8. PRIORITIES, LIEN AND INSURANCE

- 8.1 The Lawyers agree not to seek payment of any amounts outstanding to them in excess of that for which JAFL is liable under these Terms.
- 8.2 The Lawyers are not entitled to claim a lien in respect of documents in their possession relevant to the Proceedings if there are no fees payable pursuant to term 6.3.
- 8.3 The Lawyers will maintain professional indemnity insurance in an amount of at least \$10 million for the duration of these Terms plus three years.
- 8.4 The Lawyers will provide evidence of the insurance to JAFL on JAFL’s request from time to time.

9. TERMINATION OF APPOINTMENT

- 9.1 The Lawyers may terminate their appointment by JAFL to provide the Legal Work to a Funded Person on 7 days written notice to JAFL and to the Funded Person concerned, in the following circumstances:
- (a) if JAFL fails to pay any costs in accordance with the terms of the JAFL Agreement concerned or these Terms after JAFL has been given 30 days written notice to do so;
 - (b) if the JAFL Agreement concerned is terminated; or

- (c) if the Lawyers terminate the retainer entered into between the Lawyers and that Funded Person relating to the Proceedings in accordance with their right to do so.
- 9.2 JAFL may terminate the appointment of the Lawyers to provide the Legal Work to a Funded Person:
- (a) by agreement with the Lawyers;
 - (b) upon 7 days written notice to the Lawyers in the event of professional misconduct or negligence by the Lawyers that has or is reasonably likely to cause material loss to a Funded Person or JAFL; or
 - (c) upon 7 days written notice to the Lawyers if the JAFL Agreement concerned is terminated.
- 9.3 If the Lawyers' appointment to provide Legal Work to a Funded Person is terminated pursuant to either term 9.1 or 9.2, the Lawyers remain liable for the obligations under these Terms accrued to the date of termination of their appointment, but thereafter all obligations and entitlements of the Lawyers cease in so far as they concern the relevant Funded Person, except:
- (a) the obligations to do those things set out in clauses 9 and 10 of the JAFL Agreements, where the Lawyers are not replaced by other solicitors to provide the Legal Work to the Funded Person or Persons concerned; and
 - (b) those entitlements under term 6 (in respect of Legal Work up to the date of termination) and term 7 of these Terms unless the termination of the Lawyers is under term 9.2(b).
- 9.4 If the Lawyers' appointment to provide Legal Work to a Funded Person is terminated pursuant to term 9.2(b) the Lawyers shall be entitled only to payment under term 6 (in respect of Legal Work up to the date of termination) and term 7 of these Terms subject to a deduction of the amount of the loss caused by Lawyer's professional misconduct or negligence.

10. ADDRESS FOR SERVICE

- 10.1 JAFL's address for service will be as set out in the JAFL Agreements.
- 10.2 The Lawyers address for service will be that address identified above (in identifying the parties to these Terms), or otherwise notified to JAFL in writing if that address changes.

11. VARIATION

- 11.1 These Terms may only be varied in writing signed by the Lawyers and JAFL.

SIGNED by Garry John Wakefield

.....
 Signature
 Date / /2008

SIGNED by **JOINT ACTION FUNDING LIMITED**

.....

Director
Date / /2008

