

FUNDING AGREEMENT

Toyota Class Action relating to certain Hilux, Fortuner and Prado diesel vehicles

between

The Claimant (You)

and

Balance Legal Capital I UK Ltd (the Funder/Us/We)

(Please complete the right-hand column of Section A, and one only of Sections B – D)

A. Claimant Details	
Name(s) of Vehicle Owner(s) (Please include the names of all joint owners)	
ACN/ABN (if the owner of the vehicle is a company)	
B. Execution by an <u>individual</u> (including on behalf of another, such as a joint owner, trust or government department/agency)	
Your signature*	
Name of signatory	
Email address	
Date of signature	
C. Execution by a <u>company with one director</u>	
Signed by the company named in Section A above in accordance with section 127 of the <i>Corporations Act 2001</i> (Cth) by: <ul style="list-style-type: none">the “signatory” named below, who states that they are the sole director and secretary of the company.	
Name of signatory	
Email address	
Date of signature	
or	
Signed by the company named in Section A above in accordance with section 126 of the <i>Corporations Act 2001</i> (Cth) by: <ul style="list-style-type: none">the “signatory” named below, who states that they are authorised to sign on behalf of the company.	
Name of authorised signatory	
Email address	

Date of signature	
D. Execution by a <u>company with two or more directors</u>	
Signed by the company named in Section A above in accordance with section 127 of the Corporations Act 2001 (Cth) by: <ul style="list-style-type: none"> “signatory 1” named below, who states that they are a director of the company and “signatory 2” named below, who states that they are a director and/or secretary of the company 	
Name of signatory 1	
Email address	
Date of signature	
Name of signatory 2	
Email address	
Date of signature	
or	
Signed by the company named in Section A above in accordance with section 126 of the Corporations Act 2001 (Cth) by: <ul style="list-style-type: none"> the “signatory” named below, who states that they are authorised to sign on behalf of the company. 	
Name of authorised signatory	
Email address	
Date of signature	

Balance Legal Capital I UK Ltd	
Signed by Simon Burnett Balance Legal Capital	
Date of signature	

* Please sign if you are the Claimant. If this Agreement is signed by a representative of the Claimant, by signing this Agreement the signatory represents that they have the authority to enter into and bind each Claimant to this Agreement. If the Toyota motor vehicle to which your Claim relates is jointly owned by another person, by signing this Agreement you represent that you have the authority to enter into this Agreement on behalf of any joint owner(s) and bind them to this Agreement.

SUMMARY

- (a) We are funding the class action against Toyota relating to certain Hilux, Fortuner and Prado diesel vehicles which has been brought in the Federal Court of Australia.
- (b) You may be a group member in the class action and have a claim for compensation against Toyota.
- (c) By signing this Funding Agreement, we agree to pay the costs of bringing the class action against Toyota in return for repayment of those costs plus a funding commission, should the class action be successful (that is, if money compensation is recovered from Toyota). This Funding Agreement provides that your share of these costs will be taken out of any money compensation to be paid to you by Toyota before that compensation is paid out.
- (d) If the class action is not successful (that is, if no money compensation is recovered), you will have no liability to us and will not have to pay anything.

FUNDING AGREEMENT

1 Definitions

- 1.1 The definitions set out in Schedule 1 apply to this Agreement.

2 Offer and Acceptance

- 2.1 We may offer this Agreement by way of an Electronic Offer. If we do, you may accept the Electronic Offer by Electronic Acceptance.
- 2.2 The parties agree that:
 - (a) making the offer as an Electronic Offer has the same effect, for all purposes, as the Funder signing the Agreement; and
 - (b) effecting Electronic Acceptance has the same effect, for all purposes, as you signing the Agreement.

3 Cooling Off Period

- 3.1 You may withdraw from this agreement without cost by notifying us in writing within 5 business days from the Date of Commencement. Time is of the essence which means that the 5 business days limit will be strictly applied.
- 3.2 If you withdraw in accordance with clause 3.1, you will have no continuing or further obligation under this Agreement except those obligations which survive Termination set out in clause 21.

4 Duration of the Agreement

- 4.1 This Agreement commences on the Date of Commencement and continues in operation until the earlier of:
 - (a) the date of Termination; or
 - (b) the date on which:

- (i) the Proceeding and any appeal have concluded;
- (ii) we have complied with all of our obligations arising pursuant to this Agreement and any Funding Agreements; and
- (iii) the Resolution Sum (if any) has been distributed in accordance with this Agreement and any Funding Agreements.

5 Our Obligations

5.1 We will pay:

- (a) the Legal Costs which are to be paid by us under the terms of the Legal Costs Agreements;
- (b) the costs of any after-the-event insurance and/or any deed of indemnity obtained by us covering any Adverse Costs Order, excluding any deferred contingent premium payable under any such insurance policy;
- (c) any Adverse Costs Order;
- (d) the costs of any insurance and/or any deed of indemnity obtained by us for the purposes of providing Security for Costs in the Proceeding; and
- (e) the legal costs of determining any dispute between the Applicant and us in relation to the Claim or the Proceeding in accordance with the terms of the Applicant's Funding Agreement.

5.2 The Lawyers will be paid directly by us on your behalf during the Proceeding in accordance with the terms of the Legal Costs Agreements.

5.3 We will provide any Security for Costs in the Proceeding, in the form of a deed of indemnity issued by AmTrust, or in such other form as the Court orders or Toyota accepts.

6 Your Obligations

6.1 If this Agreement or any part thereof is invalid or unenforceable, you will promptly do all things necessary, including without limitation executing any further agreement, to ensure that we receive the benefits contemplated by this Agreement.

6.2 You will not do or permit to be done anything likely to deprive us of the benefit for which we entered this Agreement.

6.3 You will not seek any court order that may detrimentally affect our rights under this Agreement without our prior written consent.

6.4 For the duration of this Agreement, you will not have any communication with Toyota or its representatives relating to the Claims or any Settlement other than through the Lawyers or upon their reasonable advice.

7 Receipt and Application of Resolution Sum

7.1 You irrevocably authorise and direct BLCA to receive any Resolution Sum and to immediately pay any Resolution Sum into an Australian bank account.

7.2 If you obtain any Settlement or obtain any judgment in respect of the Claim, you will:

- (a) treat any money received from Toyota in connection with the Settlement or judgment as the Resolution Sum; and
- (b) cause the money to be delivered to BLCA to be dealt with as part of the Resolution Sum.

7.3 Out of the account referred to in clause 7.1, you irrevocably authorise and direct BLCA to:

(a) first:

- (i) reimburse AmTrust for any payments made by AmTrust in satisfaction of an Adverse Costs Order pursuant to the terms of the AmTrust Policy; and
- (ii) reimburse us in respect of the payments referred to in clause 8.1(a) below

and if there are insufficient funds to pay the amounts in clauses 7.3(a)(i) and 7.3(a)(ii) in full, to reimburse such amounts to the extent possible proportionately;

(b) second, pay to:

- (i) themselves any unpaid portion of BLCA's Legal Costs, including any Deferred Fees and Uplift Fees payable to BLCA pursuant to the BLCA Costs Agreement, and any amounts in relation to GST, but not exceeding such amounts as the Court determines to be fair and reasonable in all the circumstances;
- (ii) G+T any unpaid portion of G+T's Legal Costs, including any Deferred Fees and Uplift Fees payable to G+T pursuant to the G+T Costs Agreement, and any amounts in relation to GST, but not exceeding such amounts as the Court determines to be fair and reasonable in all the circumstances;
- (iii) AmTrust any deferred contingent premium payable under the AmTrust Policy, plus any applicable tax; and
- (iv) us the payments referred to in clauses 8.1(b) and 8.1(c) below

and if there are insufficient funds to pay the amounts in clauses 7.3(b)(i) to 7.3(b)(iv) in full, to pay such amounts to the extent possible proportionately;

(c) third, pay the Administration Expenses approved by the Court; and

(d) fourth, distribute the balance to the Group Members on a proportionate basis (calculated by dividing the value of your Claim by the total value of all Claims) in accordance with any distribution scheme approved by the Court.

8 Costs and Commission

8.1 Upon a Resolution, you irrevocably authorise and direct that we (or our nominees) be paid the following amounts from any Resolution Sum, prior to any distributions to you, the Applicant and other Group Members:

- (a) an amount equal to the total monies paid by us pursuant to clause 5.1 above;
- (b) as consideration for the funding of the Proceeding, subject to approval of the Court, a commission equal to:
 - (i) 25% of the Resolution Sum if there is a Resolution prior to the commencement of any trial of the Common Questions; or
 - (ii) 30% of the Resolution Sum if there is a Resolution following the commencement of a trial of the Common Questions;
- (c) if we fund an appeal or the defence of an appeal, or any further appeal or the defence of any further appeal, a further 5% of the net Resolution Sum, in respect of each appeal so funded.

8.2 The amounts referred to in clause 8.1 above will not become due or owing unless and until a Resolution occurs and then will not exceed the Resolution Sum.

8.3 Upon a Resolution, you agree to pay to the Funder from your share of the Resolution Sum and as your contribution to the commission referred to in clause 8.1(b) above, prior to any distribution to you, a commission equal to:

- (a) 25% of your share of the Resolution Sum if there is a Resolution prior to the commencement of any trial of the Common Questions; or
- (b) 30% of your share of the Resolution Sum if there is a Resolution following the commencement of a trial of the Common Questions.

8.4 The amounts referred to in clause 8.3 above will not become due or owing by you to us unless and until a Resolution occurs and then will not exceed your share of the Resolution Sum.

9 Relationship between you, the Lawyers and us

9.1 The Lawyers' professional duties in respect of the Work are owed to you and not to us.

9.2 You agree that the Applicant will give binding instructions to the Lawyers in respect of the Work and make binding decisions on your behalf in relation to the Claims up to the time of any court approval of settlement of the Claims or the delivery of judgment in respect of the Common Questions in the Proceeding (including, but not limited to, instructions and decisions in relation to Settlement), save where, in the reasonable professional opinion of the Lawyers, separate instructions are required from you.

9.3 The Lawyers will:

- (a) provide us with confidential updates on the progress of the Proceeding;
- (b) consult with us about any significant issue in the Proceeding;
- (c) properly consider our views about the conduct of the Proceeding; and
- (a) provide us with information about the Proceeding if we request it.

9.4 We are not liable to you in relation to any advice, view or comment provided to you by us or the Lawyers in respect of the Claims or the Proceeding.

9.5 If an Insolvency Event occurs in respect of any of the Lawyers or a principal solicitor or director of any of the Lawyers, we may direct you to terminate the Costs Agreement and/or direct you to retain specific legal representatives to act for you. From the date of their appointment, these legal representatives are deemed to be the "Lawyers" for the purposes of this Agreement (if they are not already Lawyers as defined in this Agreement).

9.6 Without limiting clause 9.5 and despite any other provision of this Agreement or the Costs Agreement, we may (but are not obliged to) direct you to retain specific legal representatives to act for you if there are one or more other filed class actions relating to, or substantially similar to, the Proceeding, which in our reasonable opinion poses the prospect of a contested "carriage" application.

9.7 We may direct you to instruct the Lawyers to enter into, or terminate, any other retainer in relation to the Proceeding.

9.8 You must comply with any direction under clauses 9.5, 9.6 or 9.7 within 2 days of receipt.

10 Confidential Information

10.1 The Parties agree to maintain the confidentiality of Confidential Information.

10.2 Notwithstanding clause 10.1, the parties agree that:

- (a) they are entitled to disclose Confidential Information to their affiliates, directors, officers, employees and advisors (including the Lawyers, counsel, experts and other service providers retained in connection with the Proceedings) and, in our case to potential providers of after-the-event Insurance on a need to know basis and provided they will ensure that such persons maintain the confidentiality of the Confidential Information; and
- (b) they will be permitted to disclose Confidential Information to the extent required by law or court order.

11 Appeal

- 11.1 We may, in our absolute discretion, elect to fund any appeal or the defence of any appeal in respect of the Proceeding.
- 11.2 If we make an election under clause 11.1 to provide funding, you agree that the Lawyers may commence and prosecute or defend an appeal, as applicable, for your benefit.
- 11.3 If we make an election under clause 11.1 to provide funding, such funding will be on the terms of this Agreement, and the term "Proceeding" wherever used in this Agreement will be treated as including a reference to the appeal.

12 Dispute Resolution

- 12.1 Any dispute between the Parties concerning the Claims or the Proceeding will be resolved as follows:
 - (a) notice of the existence of the dispute is to be given to the other parties to the dispute;
 - (b) within 7 days of notice being given under sub-clause (a), the Parties are to confer for the purpose of attempting to resolve the dispute;
 - (c) if, within 14 days of notice being given under sub-clause (a), the dispute has not been resolved, the dispute will be referred to a Senior Counsel briefed in the Proceeding, unless that Senior Counsel considers that he or she is unable to determine the dispute, in which case the Parties will agree upon a different Senior Counsel;
 - (d) Senior Counsel will determine the dispute as he or she sees fit;
 - (e) the determination of the dispute by Senior Counsel will be binding upon the Parties;
 - (f) the legal costs of determining the dispute will be shared equally by the Parties.

13 Termination

- 13.1 We may terminate our obligations under this Agreement in our absolute discretion by giving 14 days' notice to you.
- 13.2 If a notice is given by us pursuant to clause 13.1, then all of your obligations, and those of the Funder and the Lawyers under this Agreement will cease on the Funder Termination Date, except for the following:
 - (a) we will continue to be entitled to receive payment from any Costs Order or Resolution Sum (whether received before or after the Funder Termination Date) pursuant to clause 8 above in respect of the period up to the Funder Termination Date; and
 - (b) we must pay:
 - (i) any outstanding costs pursuant to clause 5.1 above incurred up to the Funder Termination Date; and

- (ii) to the extent such amounts are not captured by clause 13.2(b)(i) above, any Adverse Costs Order against the Claimant (whether made before or after the Funder Termination Date) to the extent that it relates to costs which have arisen in, or are attributed to, the period ending on the Funder Termination Date.

13.3 You may terminate this Agreement by notifying us and the Lawyers as follows:

- (a) if we breach the laws of Australia which relate to the funding of the Proceedings, or if we commit a material breach of this Agreement and such breach is not remedied to your reasonable satisfaction within 30 business days of us being provided with a notice describing the breach; or
- (b) if you opt out of the Proceedings in the manner ordered by the Court.

13.4 If a notice is given by you pursuant to clause 13.3, then all of your obligations, and those of the Funder and the Lawyers under this Agreement will cease on the Claimant Termination Date, except for the following:

- (a) the Funder, the Lawyers and any other parties so entitled will continue to be entitled to receive payment from any Costs Order or Resolution Sum (whether received before or after the Claimant Termination Date) pursuant to clause 8 above; and
- (b) we must pay:
 - (i) any outstanding costs pursuant to clause 5.1 above incurred up to (and including) the Claimant Termination Date; and
 - (ii) to the extent such amounts are not captured by clause 13.4(b)(i) above, any Adverse Costs Order against the Claimant (whether made before, on, or after the Claimant Termination Date) to the extent that it relates to costs which have arisen in, or are attributed to, the period ending on (and including) the Claimant Termination Date.

13.5 If there is a Resolution or Costs Order following the Funder Termination Date or Claimant Termination Date, you will use these funds to reimburse us for costs incurred pursuant to clause 5.1 prior to such termination date.

14 Representations and Warranties

14.1 You agree and represent to us that:

- (a) you have the power and authority to enter into this Agreement, on your own behalf and on behalf of any joint owners of the Toyota vehicle that is the subject of your Claim;
- (b) you have obtained and relied on, or have had adequate opportunity to obtain, and have elected not to seek advice from your own independent legal and financial advisers before entering into this Agreement. You acknowledge that we have expressly recommended that you obtain your own independent legal and financial advice before entering into this Agreement; and
- (c) you have been provided with a copy of and have read and understood the terms of this Agreement, the Costs Agreement and our conflicts policy.

15 Notices

15.1 All communications between the parties with respect to this Agreement (including a Funder Termination Notice) will be sent by email.

15.2 Our email contact details are: team@balancelegalcapital.com (Attention: Simon Burnett) with a copy to charles@bl.com.au (Attention: Charles Bannister).

15.3 Your email contact details are as set out on the signature page on the front of this Agreement.

16 Execution and Amendments

16.1 This Agreement may be executed in counterparts (and any such counterpart may be delivered by email) and such execution and delivery will have the same force and effect as though each party had signed the same copy of this Agreement.

16.2 We may reasonably amend the terms of this Agreement by providing written notice to you of the amendment, provided that any such amendment does not prejudice your rights under, or detrimentally affect the benefits for which you entered, this Agreement

16.3 An amendment made in accordance with clause 16.2 takes effect 14 days after the notice has been given to you, or such longer period as we determine and indicate in the notice.

16.4 There will be no amendment to the terms of this Agreement except in accordance with this clause 16.

17 Transfers and Assignments

17.1 You are not entitled to assign or transfer any of your rights and/or obligations under this Agreement without our prior written consent.

17.2 We may, at any time, by written notice to you, nominate another entity to assume our rights and obligations under this Agreement provided that we will continue to be jointly and severally liable with that entity for all such obligations for the duration of this Agreement.

18 Entire Agreement

18.1 This Agreement supersedes any previous arrangement between you and us in relation to the matters dealt with in this Agreement and constitutes the entire agreement between the parties with respect to all matters referred to in this Agreement.

19 Severability

19.1 If any term or provision in this Agreement is in whole or in part held to be invalid or unenforceable for any reason, that term or provision or part will to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement will not be affected.

20 Remedies and Waiver

20.1 No failure to exercise, nor any delay in exercising, on the part of the Funder, any right or remedy under this Agreement will operate as a waiver of any such right or remedy or constitute an election to affirm this Agreement. No election to affirm this Agreement on the part of the Funder will be effective unless it is in writing. No single or partial exercise of any right or remedy will prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

21 Survival of Obligations

21.1 Clauses 10, 13.2, 13.4 and 13.5 of this Agreement will survive termination of this Agreement.

22 Governing Law

22.1 This Agreement is to be governed by and construed in accordance with the laws of the State of New South Wales.

SCHEDULE 1

DEFINITIONS

“Acceptance” means acceptance of this Agreement by the Claimant and includes Electronic Acceptance and “Accepted” are to be construed accordingly.

“Agreement” means this funding agreement and if amended, this agreement as amended.

“Administration Expenses” means the cost of the administration of any scheme for the distribution of any Resolution Sum, including fees charged by and expenses paid by the administrator (being the person or entity appointed to administer a scheme for the distribution of any Resolution Sum), including court fees, barristers’ fees, external photocopying fees, IT project management fees, data processing fees, process service fees, expert report fees, external costs consultants fees, interstate agents’ fees, travel and accommodation fees.

“Adverse Costs Order” means any Costs Order made in favour of Toyota against the Applicant or any Group Member in the Proceeding.

“AmTrust” means AmTrust Europe Limited.

“AmTrust Policy” means Adverse Costs Insurance Policy No. 120001201905 underwritten by AmTrust and held by the Funder in respect of the Proceeding, including any endorsements from time to time.

“Applicant” means any named applicant or representative party in the Proceeding.

“BLCA” means Bannister Law Class Actions.

“Claims” means the claim or claims the Claimant and other persons have or may have against Toyota for loss and damage caused to the Claimant and such other persons by the conduct of Toyota which claim is the same as or similar to the claims the subject matter of the Proceeding.

“Claimant” or **“you”** means the person who enters this Agreement with the Funder, and “your” are to be construed accordingly.

“Claimant Termination Date” means the termination date specified in a termination notice given by the Claimant pursuant to clause 13.3 of this Agreement.

“Common Questions” means the questions of law or fact common to the claims of Group Members set out in the Amended Originating Application filed by the Applicant in the Proceeding on 26 June 2020.

“Confidential Information” means the existence and terms of this Agreement and the Costs Agreement, all information made available to the Claimant by the Funder and/or the Lawyers in connection with the Claims and/or the Proceeding, and any other documentation or information provided to the Funder and/or the Lawyers by the Claimant for a purpose connected to the Proceeding.

“Costs Agreement” means the costs agreement between the Claimant and BLCA in respect of the Proceeding.

“Costs Order” means an order made by the Court requiring one or more parties to the Proceeding to pay the costs incurred by another party or parties to the Proceeding, the amount of which has been agreed, taxed or quantified by the Court.

“Date of Commencement” means the date on which a copy of this Agreement, signed by the Claimant, is delivered to BLCA, or the date on which this Agreement is Accepted by the Claimant.

“Deferred Fees” means:

- (i) the proportion of BLCA’s professional fees which are only payable to BLCA under the Costs Agreement upon the occurrence of an Uplift Fee Payment Event; and
- (ii) the proportion of G+T’s professional fees which are only payable to G+T under the G+T Costs Agreement upon the occurrence of an Uplift Fee Payment Event.

“Disbursements” means:

- (i) the professional fees payable to G+T in respect of the Work pursuant to the G+T Costs Agreement; and
- (ii) any expense the Lawyers incur on the Applicant’s and/or Group Members’ behalf in relation to the Work, including (without limitation) barristers’ fees, experts’ fees, search fees, lodging fees, travel expenses, courier fees and photocopying fees.

“Electronic Acceptance” means an electronic indication of the Claimant’s identity and the Claimant’s intention to accept this Agreement on, and in accordance with instructions provided on, a website administered by BLCA.

“Electronic Offer” means the publication of this Agreement on a website administered by BLCA for the purpose of offering this Agreement to prospective Funded Persons.

“Funded Person” means any person who has entered into a Funding Agreement. Except where the context otherwise indicates, Funded Persons include the Claimant.

“Funder” or **“we”** means Balance Legal Capital I UK Ltd., a company incorporated in England and Wales (Registration Number 12453594), and **“our”** and **“us”** are to be construed accordingly.

“Funder Termination Date” means the termination date specified in a termination notice given by the Funder pursuant to clause 9.1 of this Agreement.

“Funding Agreement” means any agreement for the provision of funding by the Funder to a person with the same, similar or related claims as the Claims.

“G+T” means Gilbert + Tobin.

“G+T Costs Agreement” means the costs agreement between G+T and the Funder in respect of the Proceeding.

“Group Members” means all persons who are identified as group members in the Proceeding, and who do not opt out of the Proceeding by the time specified by the Court for doing so.

“GST” means goods and services tax.

“Insolvency Event” means, in respect of a person, any of the following:

- (i) it is (or states that it is) under administration or insolvent (each as defined in the *Corporations Act 2001* (Cth) (**Corporations Act**));
- (ii) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property;
- (iii) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved;
- (iv) an application or order has been made, resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;

- (v) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (vi) it is otherwise unable to pay its debts when they fall due;
- (vii) any step is taken by that person to cease or it threatens to cease or ceases to carry on all or a substantial part of its business; or
- (viii) if the person is a natural person, that person dies or becomes, or is declared to be, mentally or physically incapable of managing his or her affairs or is imprisoned.

“Lawyers” means BLCA and G+T, or any other solicitors appointed in their place.

“Legal Costs” means Professional Fees and Disbursements.

“Legal Costs Agreements” means the Costs Agreement and the G+T Costs Agreement.

“Proceeding” means the Federal Court of Australia proceeding numbered NSD 1210 of 2019.

“Professional Fees” means BLCA’s fees for the Work, excluding Disbursements.

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

“Resolution Sum” means the amount or amounts of money (or the value of any goods, services, receivables or benefits) for which (a) the Claims are Settled, or (b) judgment is given in the Proceeding, or in any subsequent proceeding brought by the Claimant against Toyota in reliance on the findings made in any judgment in the Proceeding, including (but not limited to) any interest and costs recovered pursuant to a Costs Order or by agreement. For the avoidance of doubt, the Resolution Sum includes your share of the aggregate amounts that are deducted from any Group Member’s share of the Resolution Sum pursuant to a “funding equalisation order” (if made by the Court) and redistributed to Funded Persons.

“Security for Costs” means the payment of money or the provision of a bond against which Toyota may enforce a future Costs Order (including in the form of a deed of indemnity issued by an insurer in favour of Toyota).

“Settlement” means any settlement, compromise, discontinuance or waiver of the Claim, and “Settle,” “Settles” or “Settled” are to be construed accordingly.

“Termination” means:

- (i) a termination in accordance with clause 13; or
- (ii) any exercise of a right of withdrawal under the cooling-off period provided in clause 3.

“Toyota” means Toyota Motor Corporation Australia Limited.

“Uplift Fees” means the uplift fee of 25% of the Deferred Fees, payable to each of BLCA and G+T in accordance with the Funding Agreement and the Legal Costs Agreements.

“Uplift Fee Payment Event” means a Resolution where the Resolution Sum is sufficient to enable payment and/or distribution under the second tier of the “distribution waterfall” set out in clause 7.3(b) of this Agreement.

“Work” means the legal work described in clause 3.1 of the Costs Agreement.