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Litigation funding agreement

Description: This is a precedent agreement to sell a cause of action to a litigation insurer.

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Litigati

[Receiver's name] (**Receiver** or **you**)

[Receiver's address]

[Date]

I am pleased to confirm that [insurer] (**Ins**
defendant identified in your proposal [in
security interest dated [insert date] and n
secured party]).

The terms of the proposed purchase agre

1. Definitions

Cause of Action: the cause of act
dated [date] to the Insurer being ar
of [an asset sale agreement / a cor

Counterclaim: any counterclaim r
Cause of Action.

Estimated Fees: the estimated Le

Insurer's Manager: [name of Insu
their reporting obligations; assist th
makes appropriate payments purs
and issue instructions to the Insure

Insurer's Manager's Fees: the fee

(a) the Insurer's Manager's mar
and

(b) assessing the proposal and

Lawyers: [name of law firm and co

Lawyers Fee Agreements: the fe
the Insurer, and the Lawyers conc
defending any Counterclaim.

Legal Costs and Disbursements

(a) identified in the Lawyers Fe
prosecuting the Cause of Ac

(b) reasonably incurred in obtain

Negotiator's Fees: 5% of the Es
greater.

Receiver's Fees: the fees of the I
the sole purpose of prosecuting th
date of this agreement.

Resolution: when the Insurer rec
respect of the Cause of Action afte

Resolution Sum: the amount or a
(excluding costs orders relating to
of the Cause of Action after taking

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2. Condition precedent

It is a condition precedent to this agreement that the Receiver has the power to validly assign this agreement.

3. Assignment

- (a) The Receiver hereby assigns the Cause of Action.
- (b) As consideration for the assignment, the Resolution, 70% of the Resolution Sum and an amount equal to the:
 - (i) the Insurer's Manager's Fees;
 - (ii) the Legal Costs and Disbursements;
 - (iii) the Negotiator's Fees and Disbursements; Cause of Action; and
 - (iv) the Receiver's Fees.
- (c) The Insurer will not charge, or pay, any amount in the Resolution Sum except as set out in (b).

4. Covenants

The Receiver covenants with the Insurer that:

- (a) the Cause of Action is properly assigned to the Receiver in the name of [name];
- (b) other than the Insurer's obligations, the Receiver has no other obligations in respect of the assignment of the Cause of Action, including encumbrances, liens, claims or charges;
- (c) the Receiver will do all things which the Insurer requires to give effect to this agreement.

5. Conduct and resolution of disputes

The Receiver will make all documents in its possession or control available to the Insurer and will place any such documents into its own possession and control.

- (a) On behalf of the Insurer, the Receiver will report to the Insurer all reports it receives from the Insurer in respect of the prosecution of the Cause of Action. The Receiver of any settlement offer will not intend to waive legal professional privilege.
- (b) The Insurer will pay the Receiver's legal costs and must submit to the Insurer its own legal costs.
- (c) The Insurer will pay the Receiver's legal costs.
- (d) If the Insurer and the Receiver disagree in respect of whether to discontinue the Cause of Action, they will seek to resolve the disagreement by mutual agreement, or, if mutually chosen, for advice to be sought from a mutually chosen mediator or arbitrator.
- (e) If a disagreement referred to in (d) arises, the Insurer will settle or discontinue the Cause of Action.
- (f) If it so wishes, the Insurer may bring the Cause of Action in the name of the Receiver.

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- expenses and liabilities w
Counterclaim unless otherw
- (g) The company acknowledges
 - (i) it does not gain any ri
the Cause of Action b
 - (ii) the Insurer is entitled
defendant, and the co
ensure this occurs.
 - (h) If the Insurer is to take any
within 6 months after the d
appoint the Receiver as its a
a case the Insurer will have
the Receiver in respect of a
this agreement.

6. Counterclaim

Except to the extent that the amou
or settlement in respect of the Ca
any Counterclaim.

- (a) Subject to clause 6(b) the
made in respect of any Cour
- (b) If the Cause of Action is dis
(by either party), then the Ins
 - (i) its obligation to pay th
defending any Counte
date of termination; ar
 - (ii) its obligation under cla

7. Appeal

If the Cause of Action is subject to

- (a) the Insurer is under no o
Resolution Sum until the app
- (b) the Insurer may determine ir

8. Stamp duty

The Insurer will pay the stamp duty

9. Law

This agreement is to be const
[state/territory] and the parties sub

10. Acceptance

Please acknowledge your accepta
letter to the Insurer.

[Insert execution clauses for the Insurer,

Notes

1. This precedent is adapted from the docum
(*in liq*) (1999) 30 ACSR 640; 17 ACLC 733
in the precedent) who will manage the suit
standing in the shoes of the plaintiff). If th
and insurer's manager's fees should be om

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pursuant to another agreement). The rece precedent does not contemplate a wider ran

2. The Receiver should sign as Receiver and the Receiver in the Receiver's own capacity behalf of the company. The Receiver needs

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