

# RCR TOMLINSON CO-FUNDING AGREEMENT

## Information on how to complete the Claimant Details Section

If you would like to sign up as a Funded Client in the RCR Class Action, please complete your registration online [here](#) or alternatively, please contact the Omni Bridgeway Client Liaison Team on telephone 1800 016 464 or email [rcrclassaction@omnibridgeway.com](mailto:rcrclassaction@omnibridgeway.com) to obtain a copy of the full RCR Information pack by email or post.

## Part 1. Contact Information

To ensure you receive all important correspondence, please ensure you keep your contact details up to date with us throughout the duration of the matter. Our preferred method of correspondence is by email.

## Part 2. Claimant Details





*If there is not sufficient space on these pages to include all of your relevant information, please copy and attach additional pages.*

**Please retain a copy of this Agreement for your record.**

**RECITALS**

- A The Claimant has one or more Claims against at least one Defendant and other persons have claims which are the same or similar to the Claims.
- B Class actions have been commenced in the Supreme Court of New South Wales against the Defendant, which are: No 2018/00353304 (the “**Ashita Proceeding**”); No. 2019/178541 (the “**CJMcG Proceeding**”) and No. 2019/94443 (the “**Jones Proceeding**”).
- C Pursuant to the order of His Honour Justice Hammerschlag dated 15 August 2019 (the “**Consolidation Order**”), the Ashita Proceeding, the CJMcG Proceeding and the Jones Proceeding were consolidated (the “**Consolidated Proceedings**”) and the Co-Funders undertook to jointly fund the Claims on the terms set out in the Consolidation Order. The Lawyers were accordingly instructed by the Plaintiffs.
- D Pursuant to the order of His Honour Justice Hammerschlag dated 8 November 2019, the Court granted a Common Fund Order (the “**Original Common Fund Order**”).
- E Following subsequent decisions of the High Court of Australia and pursuant to the order of his Honour Justice Hammerschlag dated 28 February 2020, Orders 2.1 and 2.2 of the Consolidation Order (under which the Co-Funders had undertaken to jointly fund the Claims on the terms set out in the Consolidation Order) were struck out *nunc pro tunc* and the Original Common Fund Order was set aside.
- F The Co-Funders separately and jointly have met significant costs of the Consolidated Proceedings which include Legal Costs and Disbursements of the Lawyers and the Former Lawyers as well as security already provided for any adverse costs in the Consolidated Proceedings. This has benefitted or has the capacity to benefit the Claimant and Other Funded Persons.
- G The Claimant has requested the Co-Funders to provide funding for the Claims. The Co-Funders are prepared to pay the Legal Costs and Disbursements of the Claimant pursuant to the terms of this Agreement (including the Budget), as well as any Adverse Costs Order or other Costs Order which the Court makes in the Proceedings against the Claimant. The Claimant has agreed, in return, to assign to the Co-Funders a share of the Resolution Sum (if any) on the terms of this Agreement, each of the Claimant and the Co-Funders is a Party to this Agreement.
- H The Claimant is aware that: the Co-Funders will also provide funding to other persons which funding may be in different terms of this Agreement and may fund other actions against the Defendant unrelated to the Claims; and that any Class Action proceedings may include persons who have not entered into a funding agreement with the Co-Funders.
- I The Claimant and the Co-Funders acknowledge that each has, by virtue of their respective contributions, obligations and entitlements (including each to receive a share of any Resolution Sum) set out in this Agreement, an interest in the Claims, the Proceedings and any Resolution Sum.

## CO-FUNDING AGREEMENT

## 1. DEFINITIONS AND INTERPRETATION

## DEFINITIONS

1.1 The following definitions apply in this Agreement:

<b>Agreement</b>	Means this agreement between the Claimant and the Co-Funders.
<b>Adverse Costs Order</b>	Means any costs order made by a Court in the Proceedings in favour of any Defendant against any of the Claimant, the Plaintiffs, or against one or both of the Co-Funders in respect of costs of that Defendant incurred during the term of this Agreement.
<b>Affiliate</b>	Means an entity (including, without limitation, any partnership whether limited or otherwise) which directly, or indirectly through one or more intermediaries, (i) controls or (ii) subject to the control of or (ii) under common control with or (iv) is managed by a Co-Funder or a Related Body Corporate of a Co-Funder; or an entity (including, without limitation, any partnership whether limited or otherwise) to which a Co-Funder or a Related Body Corporate of a Co-Funder acts as investment manager.
<b>Alternative Dispute Resolution Process</b>	Means any form of negotiation, discussions, mediation, conciliation, expert determination or other form of consensual dispute resolution process which seeks to Settle the Claims and/or the Proceedings.
<b>Appeal</b>	Has the meaning given in sub-clause 5.1.
<b>Applicable Omni Bridgeway Funder Percentage</b>	Means the proportion, expressed as a percentage, of the rights and obligations under this Agreement owned by each Omni Bridgeway Funder, which as at the Contract Date is 75% by Omni Bridgeway Fund 2 and 25% by Omni Bridgeway Fund 3, subject to amendment by notification from Omni Bridgeway to the Claimant and Burford.
<b>Ashita Proceeding</b>	Has the meaning given in Recital B.
<b>Assignments</b>	Means the assignments granted by the Claimant to the Co-Funders pursuant to clause 8.3.
<b>Budget</b>	Means the agreed itemised and phased budget of Legal Costs and Disbursements incurred and to be incurred in connection with the Proceedings, as agreed between the Co-Funders and the Lawyers and which may be revised from time to time pursuant to Term 6 of the Standard Lawyer Terms.
<b>Burford</b>	Means Burford Asia Investments Pte. Ltd., an exempt private company limited by shares incorporated under the laws of Singapore.
<b>CJMcG Proceeding</b>	Has the meaning given in Recital B.
<b>Claims</b>	Means the claims, demands or causes of action asserted by the Claimant against the Defendant in respect of or arising from the acquisition by the Claimant of shares in the Defendant in the Relevant Period.
<b>Claimant</b>	Means the person whose details appear in Part 2 of the Claimant Information Section and, if applicable, each entity identified in the additional pages provided pursuant to this part

<b>Claimant Information Section</b>	Means the section of this Agreement before the Recitals and any additional pages provided in accordance with that section.
<b>Claimant's Share</b>	Means the proportion that the Resolution Sum bears to the total amount of the resolution sums in respect of the claims of all persons the subject of the Proceedings or the Settlement concerned. The amount of the Claims and the claims of all Funded Persons and the Claimant's Share will be determined by the Lawyers.
<b>Class Action</b>	Means a proceeding brought pursuant to Part 10 of the Civil Procedure Act 2005 (NSW).
<b>Co-Funders</b>	Means: <ul style="list-style-type: none"> <li>(a) Burford; and</li> <li>(b) Omni Bridgeway,</li> </ul> severally unless stated otherwise.
<b>Co-Funders' Committee</b>	Means the committee formed in accordance with sub-clause 6.2.
<b>Co-Funders' Investment</b>	Means the Legal Costs, Disbursements, Pre-Consolidation Costs, the Former Lawyers' At Risk Fees and the Pre-Funding Agreement Consolidated Costs paid or payable by each of Burford and/or Omni Bridgeway pursuant to this Agreement or any other enforceable agreement with any Group Member, the Lawyers and/or the Former Lawyers, any amounts paid or payable by Burford and/or Omni Bridgeway pursuant to any Adverse Costs Order or other Costs Order (in each case including any GST paid or payable in relation thereto), and any amounts paid into Court as Security for Costs insofar as such costs have not been reimbursed to the applicable Co-Funder by the Court.
<b>Commencement Date</b>	Means 18 May 2020.
<b>Common Fund Order</b>	Means, where the Class Action is pursued on an "open class" basis and the Court makes orders requiring all Group Members (whether Funded Persons or not) to pay to the Co-Funders a percentage of a common fund comprising any amounts they may receive in any settlement or judgment in the proceedings (including any Resolution Sum) or any other amount, as approved by the Court.
<b>Consolidated Proceedings</b>	Has the meaning given in Recital C.
<b>Consolidation Order</b>	Has the meaning given in Recital C.
<b>Contract Date</b>	Means the date that this Agreement, signed by the Co-Funders and the Claimant, is received by the Co-Funders.
<b>Conflicts of Interest Policy</b>	Means the conflicts of interest policy of each of the Co-Funders (as applicable and made available to the Claimant, including via Co-Funder's website).
<b>Cooling Off Notice</b>	Has the meaning given in sub-clause 16.1.
<b>Costs Order</b>	Means any order made by a Court in the Proceedings requiring one or more parties to the Proceedings to pay the costs incurred by another party or parties to the Proceedings.



<b>Court</b>	Means the court in which the Proceedings are conducted.
<b>Corporations Act</b>	Means the Corporations Act 2001 (Commonwealth of Australia).
<b>Defaulting Co-Funder</b>	Has the meaning given in sub-clause 14.2.
<b>Defendant</b>	Means any or all (as applicable) of: <ul style="list-style-type: none"> <li>(a) RCR Tomlinson Limited (in liquidation) ACN 008 898 486;</li> <li>(b) Messrs Paul Joseph Dalgleish and Bruce Maxwell James, being former directors of RCR Tomlinson Limited; and</li> <li>(c) any person who becomes a defendant in the Proceedings through an application by, at the initiative or with the consent of, the Plaintiffs and the Co-Funders.</li> </ul>
<b>Departing Co-Funder</b>	Has the meaning given in sub-clause 14.5.
<b>Disbursements</b>	Means any disbursements and out-of-pocket expenses incurred by the Lawyers (subject to and in accordance with the Budget), the Lawyers and the Former Lawyers and/or the Co-Funders in accordance with previously agreed budgets in enforceable agreements entered into prior to the Commencement Date/Consolidation Order for funding of the Proceedings and/or the Claims.
<b>Dispute Resolution Procedure</b>	Means the procedure set out in clause 11.
<b>External Controller</b>	Means: <ul style="list-style-type: none"> <li>(a) in relation to an individual, the Official Trustee in Bankruptcy, an Official Receiver in Bankruptcy, a trustee in bankruptcy or a controlling trustee; and</li> <li>(b) in relation to a body corporate, an administrator (including a voluntary administrator and an administrator under a deed of company arrangement, scheme of arrangement, compromise or other arrangement), a provisional liquidator or a liquidator.</li> </ul>
<b>Fair Market Value</b>	Means the amount at which an asset, equity or liability could be exchanged in an arms-length transaction between informed and willing parties, other than in a forced or liquidation sale.
<b>Former Lawyers</b>	Means Piper Alderman, formerly instructed by CJMcG Pty Ltd and funded by Omni Bridgeway prior to the Consolidation Order
<b>Former Lawyers' At Risk Fees</b>	Means the amount of \$136,741.25 for Legal Costs and Disbursements on behalf of certain of the Group Members who had entered into funding agreements with Omni Bridgeway prior to the Consolidation Order which the Former Lawyers agreed to defer and take on risk in the period prior to the Consolidation Order.
<b>Former Lawyers' Pre-Consolidation Costs</b>	The amount of \$455,505.63 comprising the portion of the Former Lawyers' fees paid by Omni Bridgeway to the Former Lawyers for Legal Fees and Disbursements on behalf of certain of the Group Members who had entered into funding agreements with Omni Bridgeway prior to the Consolidation Order.
<b>Fund Equalisation Order</b>	Means an order made by the Court which deducts from the entitlement of Group Members who are not Funded Persons an amount they would

	have been obliged to pay the Co-Funders if they had become Funded Persons and redistributes this deducted amount across the Funded Persons.
<b>Funded Person</b>	Means a Group Member who has entered into a funding agreement with the Co-Funders or either one of them which has not been terminated.
<b>Group Member</b>	Means the persons identified as group members in the Proceedings and who do not opt out of the Proceedings by the time specified by the Court for doing so.
<b>GST</b>	Has the same meaning given to the term "GST" in the GST Act.
<b>GST Act</b>	Means A New Tax System (Goods and Services Tax) Act 1999 (Cth).
<b>Input Tax Credit</b>	Has the same meaning given to the term in the GST Act.
<b>Jones Proceeding</b>	Has the meaning given in Recital B.
<b>Judgement</b>	Means any judgement of a Court against any Defendants in respect of any Proceedings.
<b>Lawyers</b>	Means Quinn Emanuel Urquhart & Sullivan or any firm of lawyers appointed with or in substitution for them by the Plaintiffs with the consent of the Co-Funders.
<b>Lawyers' Pre-Consolidation Costs</b>	The amount of \$1,047,342.67 paid by Burford to the Lawyers for Legal Fees and Disbursements on behalf of certain Group Members who had entered into funding agreements with Burford prior to the Consolidation Order.
<b>Legal Costs</b>	Means the professional fees reasonably incurred subject to and in accordance with the Budget and this Agreement by the Lawyers pursuant to the Standard Lawyer Terms and/or the professional fees reasonably incurred by the Lawyers and the Former Lawyers in accordance with enforceable agreements entered into prior to the Commencement Date/Consolidation Order.
<b>Non-Cash Proceeds</b>	Has the meaning given in sub-clause 8.4.
<b>Omni Bridgeway</b>	Means Omni Bridgeway Limited, acting in its capacity as the investment manager and agent for each of the Omni Bridgeway Funders in the Applicable Omni Bridgeway Proportion.
<b>Omni Bridgeway Fund 2</b>	Means Omni Bridgeway (Fund 2) Pty Ltd (ACN 621 682 504).
<b>Omni Bridgeway Fund 3</b>	Means Omni Bridgeway (Fund 3) Pty Ltd (ACN 621 682 460).
<b>Omni Bridgeway Funders</b>	Means: (a) Omni Bridgeway Fund 2; and (b) Omni Bridgeway Fund 3.
<b>Original Common Fund Order</b>	Has the meaning given in Recital D.
<b>Other Claims</b>	Means claims against the Defendant held by Other Funded Persons.
<b>Other Funded Person</b>	Means a Funded Person who is not the Claimant.
<b>Other Funding Agreement</b>	Means any agreement for the provision of funding by the Co-Funders to an Other Funded Person.

<b>Overarching Purpose</b>	Means to facilitate the just resolution of the Claims and the Proceedings according to law and as quickly, inexpensively and efficiently as possible with the aim of maximising Settlement or Judgement proceeds net of Project Costs and minimising all risks, including, in particular, the risk of the Proceedings being unsuccessful.
<b>Parties</b>	Means the Co-Funders and the Claimant.
<b>Plaintiff</b>	<p>Means each person who is a named plaintiff in the Proceedings and, as at the Commencement Date, includes:</p> <p>(a) Ashita Tomi Pty Ltd as trustee for Esskay Super Fund ABN 79 582 038 569;</p> <p>(b) CJMcG Pty Ltd; and</p> <p>(c) Mr Jorge Mayer.</p>
<b>Pre-Consolidation Costs</b>	Has the meaning given in sub-clause 4.5.1
<b>Pre-Funding Agreement Consolidated Costs</b>	Has the meaning given in sub-clause 4.5.2
<b>Privilege</b>	Means, unless the context otherwise requires, legal professional privilege and includes any joint interest privilege and common interest privilege.
<b>Proceedings</b>	Means any and all Class Actions concerning all or some of the Claims and all or some of the Other Claims, brought in contemplation of a Class Action including, without limitation, the Consolidated Proceedings, proceedings for preliminary discovery, and any other proceedings or process (including any Alternative Dispute Resolution Process engaged to resolve the Claims and/or the Other Claims) as part of or consequent on a Class Action to prosecute and/or resolve all or some of the Claims and/or all or some of the Other Claims. If any Defendant (or any property, assets or liabilities of a Defendant) come under the control of an External Controller, the Proceedings will also include all relevant methods of pursuing some or all of the Claims in the external administration of that Defendant, including the lodgement of proofs of debt. This includes any appeals of any such proceedings which the Co-Funders agree to fund pursuant to clause 5.
<b>Protected Information</b>	Has the meaning given in sub-clause 12.2.
<b>Related Body Corporate</b>	Has the same meaning as in the Corporations Act.
<b>Relevant Period</b>	<p>Means:</p> <p>(a) subject to paragraph (b) below, the period commencing on 28 December 2016 and ending on 12 November 2018 (inclusive); or</p> <p>(b) such other period or periods as determined by the Lawyers and approved in writing by the Co-Funders, from time to time.</p>
<b>Remaining Co-Funder</b>	Has the meaning given in sub-clause 14.3.
<b>Resolution</b>	Means when all or any part of the Resolution Sum is received and, where the Resolution Sum is received in parts, a "Resolution" occurs each time a part is received.

<b>Resolution Sum</b>	Means the amount or amounts, or the value of any goods or services, to which the Claimant becomes entitled in connection with or in satisfaction or part satisfaction of the Claims, as a result of (without limitation) a Settlement, Judgement or arbitration and whether the said amount or value is provided by the Defendants or any other person, and for the avoidance of doubt includes any amount or value to be provided by or in respect of a person against whom any Defendant claims any indemnify, apportionment or contribution.
<b>Retainer</b>	Means the costs agreements between the Plaintiffs and the Lawyers (jointly or, where indicated, individually) pursuant to the <i>Legal Profession Uniform Law</i> (NSW) from time to time for the provision of legal services in respect of the Claims.
<b>Senior Counsel</b>	Means a senior member of the Bar of one of the Australian States, whether titled Senior Counsel or Queen's Counsel.
<b>Settlement</b>	Means any settlement, compromise, discontinuance or waiver of the Claims or part of the Claims, and "Settle(s)" shall be construed accordingly.
<b>Standard Lawyer Terms</b>	Means the standard terms and conditions of the retention of the Lawyers by the Plaintiffs in the agreed form, as attached as Schedule 1 ( <i>Standard Lawyer Terms (Agreed Form)</i> ) and as between the Co-Funders and the Lawyers.
<b>Taxable Supply</b>	Has the meaning given to the term "taxable supply" in the GST Act.
<b>Terminating Co-Funder</b>	Has the meaning given in sub-clause 14.1.
<b>Termination</b>	Means: <ul style="list-style-type: none"><li>(a) a termination in accordance with clause 13, sub-clause 14.2 or 16.2; and</li><li>(b) any completion, failure, avoidance, rescission, annulment or other cessation of effect of this Agreement.</li></ul>
<b>Trust Account</b>	Means the account referred to in sub-clause 9.1.2.

## INTERPRETATION

- 1.2 Unless the context otherwise requires, the following rules of interpretation apply to this Agreement:
- 1.2.1 Headings and subheadings are inserted for guidance only and do not govern the meaning or construction of any provision of this Agreement.
  - 1.2.2 The singular includes the plural in this Agreement and vice versa.
  - 1.2.3 A reference to a party of this Agreement includes that party's successors and permitted assigns, and in the case of a natural person, also includes the person's personal representatives and administrators.
  - 1.2.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement.
  - 1.2.5 A reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other agreement or document as validly varied or restated from time to time (in each case, other than in breach of the provisions of this Agreement).
  - 1.2.6 A person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality) and that person's personal representatives, successors and permitted assigns.
  - 1.2.7 A reference to writing or written includes fax and email.

## **2. GENERAL**

### **ENTIRE AGREEMENT**

- 2.1 The written terms of this Agreement constitute the entire agreement between the Parties and terminates and replaces any prior agreement between the Parties in respect of the matters described in this Agreement.

### **RELATIONSHIP OF THE PARTIES**

- 2.2 This Agreement does not create a partnership, agency, joint venture, fiduciary or any other relationship, except the relationship of contracting parties, between the Parties. This Agreement does not create a joint interest in any Claim for any purpose, including for tax purposes.
- 2.3 Notwithstanding sub-clause 2.2, subject to the operation of clauses 13, 14 and 16.2, the Co-Funders will fund the Claims and/or the Proceedings according to the terms of this Agreement as a joint venture. The Co-Funders will exercise joint control of, and contribute to, the funding of the Claims according to the terms of this Agreement, with the common object of obtaining a successful resolution for Group Members and mutual commercial gain for the Parties. The contributions, rights and obligations of each of the parties to the joint venture shall be governed by the terms of this Agreement.

### **CLAIMANT WARRANTIES**

- 2.4 The Claimant warrants that:
- 2.4.1 it has the power to enter into this Agreement and, in particular, to make the Assignments, including where the Claimant is a trustee of a trust; and
- 2.4.2 to the best of the Claimant's knowledge, there is no information, in the custody, possession or control of the Claimant materially relevant to the Claims or the outcome of the Proceedings or the potential for any Resolution Sum to be recovered in respect of the Claims, which has not been provided or disclosed to the Co-Funders.

### **VARIATION**

- 2.5 There will be no variation or amendment to the terms of this Agreement except in writing signed by each of the Claimant and the Co-Funders.

### **COUNTERPARTS**

- 2.6 This Agreement may be executed in any number of counterparts, each of which, when executed, constitutes an original, and together all counterparts constitute the one agreement. Transmission of an executed counterpart of this Agreement by fax or by email shall take effect as delivery of an executed counterpart of this Agreement. No counterpart will be effective until each Party to this Agreement has executed at least one counterpart.

### **SEVERABILITY**

- 2.7 If:
- 2.7.1 a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way; and
- 2.7.2 any clause or part of a clause is held to be illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

### **FURTHER ASSURANCES**

- 2.8 The Claimant and the Co-Funders will promptly sign 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 Agreement and any transaction contemplated by it.

### **COSTS**

- 2.9 Each Party must bear its own costs relating to the negotiation and execution of this Agreement.

### **3. RELATIONSHIP BETWEEN THE PLAINTIFFS, THE LAWYERS AND THE CO-FUNDERS**

- 3.1 The Claimant acknowledges and agrees that, subject to sub-clause 3.2:
- 3.1.1 the Plaintiffs shall give day-to-day instructions to the Lawyers concerning the Claims and/or the Proceedings;
  - 3.1.2 the Lawyers are instructed to ensure that the Plaintiffs are provided with all information necessary to give informed instructions (including, for the avoidance of doubt, any information which has or may have a material impact upon the Claims, the Proceedings, or the potential for any recoveries to be obtained therein, and/or any advice of counsel or Senior Counsel with respect to any such matters);
  - 3.1.3 the Plaintiffs shall consult with the Co-Funders' Committee in relation to the giving of instructions concerning significant matters including those matters listed in clause 7.1 and 7.2.
  - 3.1.4 the Lawyers are instructed to ensure that the Co-Funders are provided with all information necessary to facilitate informed consultation with the Plaintiffs (including, for the avoidance of doubt, any information which has or may have a material impact upon the Claims, the Proceedings, or the potential for any recoveries to be obtained therein, and/or any advice of counsel or Senior Counsel with respect to any such matters); and
  - 3.1.5 if any dispute or disagreement arises between the Plaintiff and the Co-Funders' Committee regarding the Claims and/or the Proceedings, or regarding the instructions given by the Plaintiff to the Lawyers concerning the Claims and/or the Proceedings, or regarding a failure or refusal by the Plaintiffs to consult pursuant to subclause 3.1.3 above, then, unless clause 10 applies, that dispute or disagreement will be resolved pursuant to the Dispute Resolution Procedure.
- 3.2 The Co-Funders acknowledge and agree that if the Lawyers notify the Plaintiffs and the Co-Funders' Committee that the Lawyers believe that circumstances exist that may give rise to a conflict of interest between the Plaintiffs and the Co-Funders (or any one of them), then:
- 3.2.1 the Dispute Resolution Procedure shall apply; and
  - 3.2.2 for the purposes of the Dispute Resolution Procedure, and thereafter where consistent with the outcome of the Dispute Resolution Procedure, the Lawyers:
    - 3.2.2.1 shall seek instructions from the Plaintiffs;
    - 3.2.2.2 shall advise and take instructions from the Plaintiffs, even though such advice and instructions are or may be contrary to the Co-Funders' interests; and
    - 3.2.2.3 shall refrain from giving the Co-Funder advice and from acting on the Co-Funders' instructions, to the extent of the conflict of interest.
- 3.3 Nothing in sub-clause 3.2 entitles the Claimant to:
- 3.3.1 breach or authorises the breach of any terms of this Agreement;
  - 3.3.2 require the Lawyers to cease to act for the Funded Persons or any of the Funded Persons individually, in respect of the Claims; or
  - 3.3.3 require the Co-Funders (or any one of them) to cease to fund Funded Persons, or any of the Funded Persons individually, in respect of the Claims.
- 3.4 The Plaintiffs acknowledge and agree that they will instruct the Lawyers in accordance with this Agreement, including the Standard Lawyers Terms, and to the extent there is any inconsistency between this Agreements or the terms of the Retainer between the Lawyers and the Plaintiff, then the terms of this Agreements shall prevail.
- 3.5 The Plaintiff acknowledges and agrees that they will not agree to amend the Retainer between the Lawyers and the Plaintiff without the prior written consent of the Co-Funders, with such consent not to be unreasonably withheld.

#### **4. CO-FUNDERS' OBLIGATION TO FUND THE PROCEEDINGS AND PAST FUNDING BY THE CO-FUNDERS**

##### **CO-FUNDERS' FUNDING OBLIGATION**

- 4.1 From the Commencement Date, the Co-Funders will pay the Lawyers in equal shares and on a several basis:
- 4.1.1 all Legal Costs and Disbursements of the Claimant subject to and in accordance with the Budget and this Agreement, including in respect of counsel, and the cost of any expert or experts in connection with the preparation and prosecution of the Proceedings and of any settlement negotiations; and
  - 4.1.2 any Adverse Costs Order or other Costs Order which the Court makes in the Proceedings against the Claimant in so far as those costs were incurred during the term that this Agreement was operative.
- 4.2 The Lawyers shall be paid directly by each Co-Funder, in equal shares, on behalf of the Claimant, Plaintiffs and Funded Persons, subject to and in accordance with the Budget and the Standard Lawyer Terms.
- 4.3 The Co-Funders will in equal shares on a several basis provide any security for costs in the Proceedings, in the form ordered by the Court or, in the absence of any such order, in such other form as the Co-Funders reasonably determine and the Defendants accept, relating to costs incurred during the term that this Agreement is operative.
- 4.4 If security for costs has been provided by way of payment into Court or by way of partial reimbursement of one Co-Funder by another for such payment into Court, and the Court orders that any amount of this security be released, then each Co-Funder's equal share of that security shall be released directly to that Funder, and the Lawyers shall be instructed by the Claimant to take all necessary steps to facilitate that arrangement.

##### **CO-FUNDERS' PAST FUNDING OF PROCEEDINGS**

- 4.5 The Claimant acknowledges that the Co-Funders, pursuant to previous funding agreements agreed with certain Funded Persons and relevant orders of the Court, have each paid:
- 4.5.1 amounts incurred separately by each of them prior to the Consolidation Order and that this includes:
    - 4.5.1.1 in respect of Burford, the Lawyers Pre-Consolidation Costs; and
    - 4.5.1.2 in respect of Omni Bridgeway, the Former Lawyers' Pre-Consolidation Costs, (together, the "**Pre-Consolidation Costs**"); and
  - 4.5.2 amounts incurred as Legal Costs and Disbursements of the Lawyers after the Consolidation Order up to the Commencement Date in equal shares in accordance with the Budget (the "**Pre-Funding Agreement Consolidated Costs**"); and
  - 4.5.3 security for costs in the amount of \$4.2million paid into Court in equal shares.
- 4.6 The Claimant acknowledges that the Former Lawyers' Pre-Consolidation Costs were paid by Omni Bridgeway on the basis that the Former Lawyers would be entitled to apply to the Court to recover the Former Lawyers' At Risk Fees upon Resolution.
- 4.7 The Co-Funders will not seek reimbursement from any Funded Person of any internal overheads incurred as part of the Project.

#### **5. APPEALS**

- 5.1 Each Co-Funder shall elect whether or not it wishes to participate in the funding of an appeal of a final order, or the defence of an appeal of a final order, or any further appeal or the defence of any further appeal of a final order (an "**Appeal**"). In such event, the Co-Funder(s) will pay the reasonable legal costs and disbursements of the Appeal and any Adverse Costs Order if the defence of the Appeal is unsuccessful.
- 5.2 If a Co-Funder elects not to fund an Appeal, it will be deemed to be a Defaulting Co-Funder for the purpose of clause 14.

#### **6. OTHER OBLIGATIONS OF THE CO-FUNDERS**

- 6.1 The Co-Funders:

## CO-FUNDING AGREEMENT

- 6.1.1 will not retain the Lawyers as their solicitors for any purpose connected with the Proceedings;
  - 6.1.2 will observe the Conflicts of Interest Policy, thereby complying with the requirements of the Corporations Amendment Regulation 2012 (No.6) (Cth) and notify the Plaintiffs and the Lawyers of any changes to such policy;
  - 6.1.3 will disclose to the Plaintiffs whether or not there is any agreement between them and the Lawyers in connection with the subject matter of this Agreement; and
  - 6.1.4 will provide timely and clear disclosure to the Plaintiffs of any material breach of the Corporations Amendment Regulation 2012 (No. 6) (Cth) by the Co-Funders in relation to the subject matter of this Agreement.
- 6.2 The Co-Funders shall form a committee to be comprised of a representative of each Co-Funder (the “**Co-Funders’ Committee**”) and the following conditions shall apply:
- 6.2.1 the Co-Funders’ Committee will meet (in person or by telephone) to discuss and review any developments in the Proceedings with the Lawyers each fortnight (unless otherwise agreed by all of the Co-Funders in writing) and as often as is reasonably required in light of any material development in the Proceedings’ at the reasonable instigation of any of the Co-Funders;
  - 6.2.2 decisions of the Co-Funders’ Committee shall be taken unanimously. Where a unanimous decision cannot be reached, the decision shall be referred as a dispute between the Co-Funders to be determined in accordance with the Dispute Resolution Procedure;
  - 6.2.3 the Lawyers may communicate with the Co-Funders’ Committee by email at the email address provided by each of the members of the Co-Funders’ Committee;
  - 6.2.4 the Co-Funders’ Committee will vote on one representative of the Co-Funders’ Committee attending any mediation or settlement discussions. Absent unanimous agreement amongst the Co-Funders’ Committee on one representative attending any mediation or settlement discussion, the Co-Funders may each attend any mediation or settlement discussions;
  - 6.2.5 where a representative of the Co-Funders’ Committee is to attend any mediation or settlement discussion on behalf of the Co-Funders’ Committee, that representative shall attend any mediation and settlement discussions promptly and reasonably consult with the Co-Funders’ Committee about the progress of such discussions and any material issues of substance or process that arise including any settlement offer. In the event of a dispute in respect of the scope and performance of a Co-Funder’s obligations under this sub-clause 6.2.5, the dispute shall be referred for resolution in accordance with the Dispute Resolution Procedure; and
  - 6.2.6 any decision to vary the Budget shall be made by the Co-Funders’ Committee in accordance with Term 6 of the Standard Lawyer Terms.
- 6.3 The Co-Funders may provide the following management services during the term of this Agreement at the request and direction of the Plaintiffs and in consultation with the Lawyers:
- 6.3.1 negotiating and seeking compliance with the Budget;
  - 6.3.2 database and document management;
  - 6.3.3 facilitating reports to the Funded Persons in respect of progress; and
  - 6.3.4 facilitating any Alternative Dispute Resolution Process.

## 7. OBLIGATIONS OF THE CLAIMANT

- 7.1 For the duration of this Agreement, the Claimant must:
- 7.1.1 provide full and honest information to and do anything reasonably requested by the Lawyers promptly in such manner as to avoid unnecessary cost and delay including following the Lawyers’ reasonable legal advice;
  - 7.1.2 inform the Lawyers of any change in contact details or any information, circumstances or change in circumstances likely to affect any issue in the Proceedings;



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- 7.1.3 inform the Co-Funders of any information which has or may have a material impact on the Claims, the Proceedings or the potential for any Resolution Sum to be recovered.
  - 7.1.4 immediately notify the Co-Funders or the Lawyers of any communications with any Defendant or a representative of any Defendant relating to a settlement or possible settlement of the Claimant's Claims; and
  - 7.1.5 not do or permit to be done anything likely to deprive any Party of the benefits for which the Party entered this Agreement.
- 7.2 For the duration of this Agreement, the Claimant must not, without the prior written consent of the Co-Funders (which consent will not be unreasonably withheld):
  - 7.2.1 discontinue, abandon, withdraw or Settle the Proceedings or any Claim against any Defendant or make any admission in relation to any Claims, unless such action is contemplated by and taken by the Claimant in accordance with this Agreement;
  - 7.2.2 have any communication with the Defendant, its officers, servants or agents relating to the Claims or any compromise of the Claims, other than through the Lawyers or upon their reasonable advice;
  - 7.2.3 cause the Plaintiffs to terminate the Retainer or otherwise disavow the retainer of the Lawyers or the Standard Lawyers Terms;
  - 7.2.4 retain any other solicitors in place of the Lawyers in respect of the Proceedings or any Claims;
  - 7.2.5 seek any order from any court which may detrimentally affect the Co-Funders' rights under this Agreement, other than with the consent of each of the Co-Funders and other than as arises out of any material breach by the Co-Funders of their obligations under this Agreement; or
  - 7.2.6 after any termination disclose to the Defendant any Confidential Information.
- 7.3 For the duration of this Agreement, the Claimant acknowledges that the Plaintiffs irrevocably instruct the Lawyers to:
  - 7.3.1 take all steps as are reasonable and contemplated by clause 6.2;
  - 7.3.2 comply with all orders of the Court and all statutory provisions, regulations, rules and directions;
  - 7.3.3 conduct the Proceedings efficiently and effectively, within the Budget and in accordance with the Overarching Obligation;
  - 7.3.4 immediately inform the Co-Funders of any Adverse Costs Order or of any circumstances which might reasonably give rise to an Adverse Costs Order;
  - 7.3.5 on behalf of the Claimant, sign any document and take any step necessary to give full effect to and enforce any Settlement reached in accordance with the terms of this Agreement and approved by the Court (if applicable);
  - 7.3.6 provide the Co-Funders with a copy of all advice given by the Lawyers or counsel to the Claimant in relation to the Proceedings and the Claims and, if requested to do so by the Co-Funders, a copy of all documents obtained from, or provided to, any Defendant in the Proceedings;
  - 7.3.7 keep the Co-Funders fully informed of all material developments in the Proceedings and in relation to the Claims, including immediately informing the Co-Funders if, in the Lawyers' opinion, the Claimant's prospects of achieving success in the Proceedings or the Defendant's capacity to pay any judgement is or is likely to be impaired; and
  - 7.3.8 obtain, at the Co-Funders' expense and with the Co-Funders' written agreement, a taxation or assessment of any Defendant's costs comprising any Adverse Costs Order and provide a copy of all documents relating to the taxation or assessment to the Co-Funders.
- 7.4 The Claimant agrees to keep and preserve any documents relating to any Defendant, the Proceedings and/or the Claims and Other Claims that the Claimant has in his, her or its possession, custody or control and the Claimant:
  - 7.4.1 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;

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7.4.2 authorises the Lawyers, without waiving privilege, to provide the information and documents referred to above to the Co-Funders; and

7.4.3 if ordered to do so by a Court in any Proceedings relating to his, her or its Claims, authorise the Lawyers to provide the information and documents to any Defendant and to any third party the subject of a Court order.

### 7.5 The Claimant:

7.5.1 will immediately notify the Co-Funders if the Claimant is requested or required to disclose any information relating to the negotiation, existence, terms or performance of this Agreement and if so requested by the Co-Funders will take such steps as may reasonably be available to prevent disclosure of such parts of the information as the Co-Funders may nominate; and

7.5.2 will not disclose to any person, other than the Lawyers or its legal and financial advisors for the purpose of obtaining confidential legal or financial advice, or to the Co-Funders, any information:

7.5.2.1 to which Privilege or obligations of confidence attach; or

7.5.2.2 which is or may be protected from disclosure by reason that disclosure would or may provide any Defendant with a strategic or tactical advantage in any Proceedings,

unless the disclosure is in accordance with advice from the Lawyers and is necessary for the purposes of the prosecution of any Proceedings.

7.6 The obligations in clause 7.5 are continuing obligations and survive the Termination of this Agreement.

7.7 The Claimant will not, during the period of this Agreement, have any communication with any Defendant, or any officer, servant or agent of any Defendant relating to the Claims 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.

## 8. CO-FUNDERS' REMUNERATION

8.1 Upon each Resolution, the Co-Funders shall be entitled, as assignees under the Assignments, to be paid (if money) or to have distributed (if Non-Cash Proceeds) the following amounts from any Resolution Sum in accordance with this Agreement:

8.1.1 the Claimant's Share of the Co-Funders' Investment;

8.1.2 an amount equal to the GST payable by the Co-Funders for any Taxable Supply made by the Claimant to the Co-Funders under or in connection with this Agreement;

8.1.3 an amount, as remuneration for funding the Proceedings, calculated as follows:

Time to Resolution	Percentage of Resolution Sum
For each Resolution which occurs on or before 30 June 2020	10%
For each Resolution which occurs on or after 1 July 2020 but on or before 31 December 2020	12.5%
For each Resolution which occurs on or after 1 January 2021 but on or before 30 June 2021	17.5%
For each Resolution which occurs on or after 1 July 2021 but on or before 31 December 2022.	22.5%
For each Resolution which occurs on or after 1 January 2023	25%

## CO-FUNDING AGREEMENT

- 8.2 If the Co-Funders fund an appeal, or the defence of an appeal, or any further appeal or the defence of any further appeal, a further 2.5% of the Resolution Sum shall be paid to the Co-Funders, in respect of each appeal so funded.
- 8.3 The Claimant assigns to the Co-Funders, as consideration for the Co-Funders' obligations under this Agreement, the following parts of any Resolution Sum:
- 8.3.1 the total of the amounts referred to in sub-clauses 8.1.1 and 8.1.2; and
  - 8.3.2 each amount payable under sub-clause 8.1.3.
- 8.4 If the Resolution Sum is not money ("**Non-Cash Proceeds**") the Parties agree that:
- 8.4.1 the Lawyers will take possession of the Non-Cash Proceeds on trust for the Parties;
  - 8.4.2 the value of the consideration received will be calculated by reference to the Fair Market Value of the consideration;
  - 8.4.3 if feasible, the Lawyers will sell the Non-Cash Proceeds on an arms-length basis and pay any proceeds into the Trust Account to be dealt with in accordance with the terms of this Agreement; and
  - 8.4.4 the amounts referred to in clause 8.1 above shall be received as cash or, where the Co-Funders' Committee so elects, allocation or transfer of the consideration in kind.
- 8.5 The Parties agree that:
- 8.5.1 the Co-Funders' entitlement to be paid money or otherwise receive Non-Cash Proceeds comprising the Resolution Sum under this Agreement arises upon each Resolution and by virtue of the Assignments;
  - 8.5.2 the Co-Funders' total entitlement under the Assignments cannot exceed the Resolution Sum;
  - 8.5.3 other than paying the Co-Funders any Input Tax Credits under sub-clause 8.6 the Claimant has no obligation to pay the Co-Funders any fees, costs, expenses or commission other than as is necessary to give effect to the Assignments; and
  - 8.5.4 the Assignments are, and are intended to be, absolute assignments to the Co-Funders and not by way of security.
- 8.6 The Claimant will, at the Co-Funders' request, pay to the Co-Funders any Input Tax Credit to which the Claimant is entitled under the GST Act in respect of the incurrence of the costs contained in the Budget. If the Co-Funders make a request, any such amount is payable at the earliest time the Claimant 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 the Co-Funders, that is payable or would be payable if Omni Bridgeway had made a request under this clause, then the Co-Funders will be entitled to receive payment under clause 8 of the GST (paid by the Co-Funders) to which that Input Tax Credit relates or would relate.
- 8.7 The Co-Funders agree that this clause 8 is reasonably necessary to give effect to the joint venture engaged in by the Co-Funders.

## 9. RECEIPT AND PAYMENT OF THE RESOLUTION SUM

- 9.1 The Claimant and the Co-Funders agree and irrevocably direct the Lawyers to:
- 9.1.1 receive any Resolution Sum and hold that part of the Resolution Sum assigned to the Co-Funders under the Assignments on trust for the Co-Funders and the part due to the Claimant on trust for the Claimant in accordance with their respective entitlements under this Agreement;
  - 9.1.2 immediately pay any Resolution Sum comprising money into an interest-bearing trust account to be kept for that purpose (a "**Trust Account**");
  - 9.1.3 deal with any Non-Cash Proceeds in accordance with this Agreement;
  - 9.1.4 maintain separate records for each Resolution Sum arising from the Proceedings; and

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- 9.1.5 the directions contained in this clause 9.1 shall constitute a written direction to the Lawyers for the purposes of Part 4.2 of the *Legal Profession Uniform Law (NSW)*.
- 9.2 Without affecting clauses 9.6 and 9.7 the Claimant and the Co-Funders agree and irrevocably direct the Lawyers forthwith upon cleared funds becoming available, subject to the terms of any Common Fund Order or Fund Equalisation Order made by the Court, to make the following payments out of the monetary component of any Resolution Sum in the strict order of priority set out below, with all payments within a priority level to be made *pari passu* and *pro rata*:
- 9.2.1 as a first priority, pay to the Co-Funders, an amount equal to the sum of the amounts calculated pursuant to clauses 8.1.1 and 8.1.2;
- 9.2.2 as a second priority, pay to the Co-Funders in equal shares an amount equal to the sum of the amounts calculated pursuant to clause 8.1.3;
- 9.2.3 as a third priority, pay the balance of the Resolution Sum to the Claimant at the Claimant's request and direction; and
- 9.2.4 the directions contained in this clause 9.2 shall constitute a written direction to the Lawyers for the purposes of Part 4.2 of the *Legal Profession Uniform Law (NSW)*.
- 9.3 If, despite sub-clause 9.1, the Claimant directly or indirectly receives all or any part of the Resolution Sum, then the Claimant will immediately (if it is money) pay it to the Lawyers to be paid into the Trust Account or (if it is not money) give possession of it to the Lawyers, in each case to be dealt with on the terms of this Agreement.
- 9.4 The Claimant acknowledges that:
- 9.4.1 the conduct of the Proceedings will or may encourage a Defendant to seek to compromise the Claims or the Other Claims; and
- 9.4.2 the Proceedings may have the effect set out in sub-clause 9.4.1 notwithstanding that the Claimant may have terminated this Agreement and terminated its involvement in the Proceedings.
- 9.5 Subject to any Court order (including a Common Fund Order), if a lump sum amount is received in Settlement or by way of Judgement, in respect of the Claims or as an *ex gratia* payment, then after deducting all amounts required to be paid to the Co-Funders or other named parties by this Agreement and any Other Funding Agreement, the balance will be distributed to the Claimant and Other Funded Persons (whose Other Claims are the subject of the Settlement, Judgement or payment) on a *pro rata* basis by reference to the amount of the Claims and the Other Claims the subject of the Settlement, Judgement or payment, such amount to be determined in each case by the Lawyers.
- 9.6 If any Defendant makes any payment by way of costs during the course of any Proceedings then the payment will be paid into the Trust Account on trust for the Co-Funders and may be utilised by the Co-Funders in paying or reimbursing any Legal Costs. The Lawyers will pay such monies in accordance with this Agreement as directed by the Co-Funders, jointly, from time to time.
- 9.7 If there is any Resolution Sum that is money in the Trust Account at the time an Adverse Costs Order is payable, then that money will first be employed to pay the Adverse Costs Order and the Co-Funders will pay any balance outstanding after such payment. The Claimant, the Co-Funders hereby instruct the Lawyers to pay that money from the Trust Account as directed by the Co-Funders jointly.
- 9.8 The obligations in this clause 9 shall be continuing obligations and survive any Termination of this Agreement.

## 10. SETTLEMENT

- 10.1 The Claimant acknowledges that he, she or it will be bound by an order of the Court made in any Proceedings approving the Settlement of the Proceedings (unless the Claimant has validly opted out).
- 10.2 In recognition of the fact that the Co-Funders have an interest in the Resolution Sum, if the Plaintiffs:
- 10.2.1 want to Settle the Proceedings for less than the Co-Funders consider appropriate; or
- 10.2.2 do not want to Settle the Proceedings when the Co-Funders consider it appropriate to do so,

## CO-FUNDING AGREEMENT

then the Claimant agrees that the Co-Funders and the Plaintiffs must seek to resolve their difference of opinion by referring it to counsel for advice on whether, in counsel's opinion, Settlement of the Proceedings on the terms and in the circumstances identified by either the Co-Funders or the Plaintiffs or both, is fair and reasonable in all of the circumstances. For the avoidance of doubt, either the Co-Funders or the Plaintiffs or both may seek counsel's opinion.

- 10.3 For the purposes of clause 10.2, counsel will be the most senior counsel of those retained by the Lawyers, in respect of the Proceedings concerned. If no counsel has been retained then the Lawyers, in consultation with the Plaintiffs and the Co-Funders, will appoint counsel for that purpose. If the Co-Funders and the Plaintiffs are unable to agree on the selection of counsel, then counsel will be appointed by the President of the New South Wales Bar Association for that purpose.
- 10.4 If counsel's opinion is that the Settlement is fair and reasonable then the Claimant and the Co-Funders agree that the Lawyers are instructed to do all that is necessary to Settle the Proceedings consistently with the terms of the Settlement advised by counsel, provided that the Court's approval of the Settlement is obtained.
- 10.5 The Co-Funders will pay the costs of counsel in providing the opinion referred to in clauses 10.2 as part of the Disbursements.
- 10.6 The procedure set out in clauses 10.2 to 10.5 (inclusive) will also apply where the Plaintiffs:
- 10.6.1 want to Settle any Claim not yet the subject of Proceedings for less than the Co-Funders consider appropriate; or
- 10.6.2 do not want to Settle any Claim not yet the subject of Proceedings when the Co-Funders consider it appropriate to do so.
- 10.7 Counsel may proceed as he or she sees fit to inform himself or herself before forming and delivering his or her opinion pursuant to clauses 10.2 and should have regard to the factors set out in Schedule 2 (*Senior Counsel Settlement Criteria*) (to the extent that counsel considers them relevant). Counsel may give his or her opinion orally or in writing. If the opinion is given orally, counsel shall also provide it in writing at the earliest opportunity unless the Co-Funders and (in the case of Proceedings that have commenced) the Plaintiffs agree otherwise.

## 11. DISPUTE RESOLUTION PROCEDURE

- 11.1 Except as otherwise set out in this Agreement, if any disagreement or dispute arises in respect of the Claims and/or the Proceedings' between:
- 11.1.1 the Claimant and one or both of the Co-Funders;
- 11.1.2 the Co-Funders; and/or
- 11.1.3 one or more of the Plaintiffs and one or both of the Co-Funders,
- the applicable Party may raise a dispute by giving a written notice of such dispute ("**Notice**") to the other Party or Parties (as applicable).
- 11.2 The applicable Parties will meet to discuss, and endeavour in good faith to resolve, the dispute within 28 days of the Notice being received.
- 11.3 If the dispute is not resolved within 28 days, the Lawyers shall notify the most senior Senior Counsel briefed in the matter of the disagreement or dispute that and that Senior Counsel shall proceed as he or she thinks fit for the purpose of determining the dispute and determine the disagreement or dispute, which determination shall be binding on the Claimant, the Co-Funders, the Plaintiffs and the Lawyers.

## 12. USE AND DISCLOSURE OF DOCUMENTS

- 12.1 The Co-Funders shall strictly maintain the confidentiality of any information provided to them by the Claimant or the Lawyers for a purpose connected to the Proceedings, and shall adopt proper and effective procedures for maintaining the confidentiality and safe custody of the information.
- 12.2 All information, communication or documents provided to the Claimant at any time by the Lawyers, the Co-Funders or their respective officers, servants or agents for or in contemplation of the Proceedings or in relation to the Claims

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### ("Protected Information"):

- 12.2.1 is or may be, and will be treated as, confidential information within the meaning of equity, and "confidential communications" or "confidential documents" within the meaning of Part 3.10 of the *Evidence Act 1995* (Cth); and
- 12.2.2 may be subject to joint interest privilege that the Plaintiffs are not at liberty to waive.
- 12.3 The Claimant will not disclose any Protected Information to any other person without the prior written consent of:
  - 12.3.1 the Co-Funders' Committee (if the information was provided by a Consolidated Funder); or
  - 12.3.2 the Lawyers (if the information was provided by them).
- 12.4 In recognition of the fact that the Co-Funders each have an interest in the Resolution Sum and the efficient and effective prosecution of the Proceedings, the Claimant irrevocably instructs the Lawyers to:
  - 12.4.1 keep the Co-Funders' Committee fully informed of all matters concerning the Proceedings, including any mediation and settlement discussions (and, for the avoidance of doubt shall immediately inform the Co-Funders' Committee of all settlement offers or offers to engage in any Alternative Dispute Resolution Process received from the Defendants and, consistently with sub-clauses 6.2.4 and 6.2.5, allow the Co-Funders to attend any such process agreed with the Defendants);
  - 12.4.2 consult with the Co-Funders' Committee with regard to any issue in or in connection with the Proceedings;
  - 12.4.3 properly consider the Co-Funders' Committee's expressed views as to any matter or issue arising in or in connection with the Proceedings or the conduct of the Proceedings;
  - 12.4.4 promptly provide to the Co-Funders' Committee any information or document reasonably requested by it relating to the Proceedings;
  - 12.4.5 unless specifically prohibited by the terms of a Court order or another professional obligation, provide to the Co-Funders' Committee with a copy of any document obtained in the Proceedings by way of discovery, subpoena or any other coercive power of the Court, subject to the Co-Funders and their respective officers' and employees' implied undertaking given to the Court; and
  - 12.4.6 subject to any contrary order or requirement of a Court or rules of a Court, to disclose to the Co-Funders' Committee such matters, consistent with the Lawyers' professional obligations to the Claimant, Plaintiffs and Funded Persons, as may be necessary or convenient to enable the Co-Funders to assess or manage their risk in or in connection with the Proceedings or exercise any right or discretion provided by this Agreement.
- 12.5 Without limiting the preceding paragraph, the Claimant acknowledges that the Lawyers may provide to the Co-Funders' Committee information communicated to or by potential and actual witnesses, provided that:
  - 12.5.1 the disclosure does not cause any loss of confidentiality or privilege in the information, or is otherwise the subject of contrary advice from the Lawyers having regard to the interests of the Plaintiffs or the Group Members; and
  - 12.5.2 each Co-Funder remains obligated to treat the information as:
    - 12.5.2.1 confidential; and
    - 12.5.2.2 subject to privilege that the Co-Funder is not at liberty to waive.
- 12.6 The Claimant agrees that the Lawyers are entitled to take, upon request from the Co-Funders' Committee, such steps as the Lawyers deem consistent with the interests of the Claimant, Plaintiffs, and Funded Persons/Group Members to obtain from any necessary court or tribunal orders permitting the Lawyers to disclose to the Co-Funders' Committee any information or documents obtained from discovery, subpoenas, notices to produce, filings, examinations or any other coercive procedure, upon such terms as the Court may order.
- 12.7 The Claimant, in providing to the Co-Funders' Committee any documents or information about the Claims and the Proceedings, does not waive any privilege that may attach to such documents or information unless any such privilege is expressly waived.

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- 12.8 Where any information is provided to the Co-Funders' Committee by the Claimant, or the Lawyers for a purpose connected to this Agreement or any Proceedings to which this Agreement applies (whether as a result of a related application or otherwise) each Co-Funder shall:
- 12.8.1 strictly maintain the confidentiality of the information;
  - 12.8.2 adopt proper and effective procedures for maintaining the confidentiality and safe custody of the information;
  - 12.8.3 ensure that access to the information is only provided to the applicable Co-Funders' staff who are engaged in the functions for which the information was provided to the Co-Funders;
  - 12.8.4 only use the information for purposes for which the information was provided;
  - 12.8.5 not disclose the information contained therein to any person other than the Lawyers or Counsel retained in the Proceedings; and
  - 12.8.6 at its election return or destroy in accordance with its data protection and document retention standards all records of the information to the Lawyers at the conclusion of all Proceedings to which this Agreement or other Funding Agreements apply.
- 12.9 This clause 12 shall survive Termination of this Agreement.

## 13. TERMINATION

### CO-FUNDERS' TERMINATION

- 13.1 The Co-Funders (acting jointly, unless clause 14 applies) are entitled, in their sole discretion, to terminate their obligations under this Agreement, other than their accrued obligations, by giving 14 days' written notice to the Claimant that this Agreement and the Co-Funders' obligations under it are terminated. If the Co-Funders jointly terminate this Agreement pursuant to this sub-clause 13.1 then the property referred to in sub-clause 8.3.2 is, on the termination taking effect, reassigned to the Claimant (but the Co-Funders will continue to be entitled to the property referred to in paragraph 8.3.1). The Claimant must notify the Co-Funders upon receipt by the Claimant of any Resolution Sum. This sub-clause survives Termination of this Agreement.
- 13.2 All obligations of the Co-Funders under this Agreement cease on the date the Co-Funders' joint termination becomes effective, save for obligations accrued prior to that date and any obligations expressed to survive Termination of this Agreement.
- 13.3 The accrued obligations of each of the Co-Funders referred to in paragraphs 13.1 and 13.2 comprise payment in equal shares severally of:
- 13.3.1 any outstanding Legal Costs and Disbursements incurred up to the date the notice of termination takes effect; and
  - 13.3.2 any Adverse Costs Order against the Claimant in any Proceedings in respect of costs which arise in, or are attributed to, the period beginning on 16 November 2018 and ending on the date the Co-Funders' termination becomes effective.

### CLAIMANT TERMINATION

- 13.4 If the Co-Funders or one of them commits a material breach of this Agreement and both Co-Funders are unable and/or unwilling to remedy the breach within 30 days after receiving written notice from the Claimant (including by a Remaining Co-Funder exercising its rights under sub-clause 14.5), the Claimant may terminate this Agreement forthwith by written notice to the Co-Funders. If this Agreement is terminated by the Claimant pursuant to this sub-clause 13.4 then the Co-Funders remain liable for the obligations referred to in sub-clause 13.2 and all the property assigned to the Co-Funders pursuant to sub-clause 8.3 is, on the Termination taking effect, immediately reassigned to the Claimant.
- 13.5 If the Proceedings are conducted as a Class Action and the Claimant exercises a right to opt out of the Class Action, then upon the exercise of that right this Agreement will terminate. If there is a Resolution of the Claims of the Claimant at any time, clause 7 of this Agreement and sub-clause 9.2 will continue to apply and the Claimant will be liable to pay to the

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Co-Funders, from the relevant Resolution Sum, the amounts set out in sub-clause 8.1. The obligations in this sub-clause 13.5 are continuing obligations and survive any termination of this Agreement.

- 13.6 Termination of this Agreement shall not affect any obligations in respect of confidentiality or Privilege owed by the Claimant.

### 14. TERMINATION OR DEFAULT BY ONE CO-FUNDER

#### TERMINATION BY A CO-FUNDER

- 14.1 A Co-Funder may elect to terminate its obligations under this Agreement on 21 days written notice to the Claimant and the other Co-Funder (a “**Terminating Co-Funder**”).

#### DEFAULT BY A CO-FUNDER

- 14.2 If a Co-Funder fails to comply with its obligations under this Agreement and such failure is not rectified within fourteen (14) days of the giving of written notice by the Claimant or Plaintiffs, or by the non-defaulting Co-Funder, that Co-Funder will be a defaulting Co-Funder (a “**Defaulting Co-Funder**”).

#### CONSEQUENCES OF TERMINATION OR DEFAULT BY ONE CO-FUNDER

- 14.3 In the event of either:

14.3.1 notice being given by a Terminating Co-Funder under sub-clause 14.1; or

14.3.2 a Co-Funder becoming a Defaulting Co-Funder under sub-clause 14.2;

the other Co-Funder (the “**Remaining Co-Funder**”) may notify the Claimant in writing within 14 days whether it is prepared to adopt the obligations of the Terminating Co-Funder or the Defaulting Co-Funder (as applicable).

- 14.4 If the Remaining Co-Funder:

14.4.1 notifies the Claimant pursuant to sub-clause 14.3 that it does not intend to adopt the obligations of the Terminating Co-Funder or the Defaulting Co-Funder (as applicable); or

14.4.2 does not provide notice to the Claimant of its determination pursuant to clause 14.3 within the time period specified;

this Agreement shall end and all obligations of the Co-Funders shall cease save for the accrued obligations set out in clause 13.3 and any other obligations expressed to survive Termination of this Agreement. The property referred to in sub-clause 8.3.2 is, on the termination taking effect, reassigned to the Claimant (but the Co-Funders will continue to be entitled to the property referred to in paragraph 8.3.1). The Claimant must notify the Co-Funders upon receipt by the Claimant of any Resolution Sum.

- 14.5 If the Remaining Co-Funder notifies the Claimant pursuant to sub-clause 14.3 that it will adopt the obligations of the Terminating Co-Funder or the Defaulting Co-Funder (as applicable, and referred to below as the “**Departing Co-Funder**”):

14.5.1 the Departing Co-Funder’s obligations pursuant to sub-clauses 4.1, 4.2, 4.3 and 10.5 shall cease;

14.5.2 the Remaining Co-Funder shall meet all outstanding and future obligations of the Departing Co-Funder under sub-clause 4.1, 4.2, 4.3 and 10.5;

14.5.3 references in this Agreement to rights of the Co-Funders shall be read as references to the Remaining Co-Funder who may exercise such rights at their sole discretion;

14.5.4 the entirety of the Departing Co-Funder’s entitlement to receive any amount pursuant to sub-clause 8.1.3 will pass to the Remaining Co-Funder with the property assigned to the Departing Co-Funder pursuant to sub-clause 8.3.2 being instead assigned to the Remaining Co-Funder and the Departing Co-Funder shall have no entitlement to any amounts pursuant to sub-clause 8.1.3;

14.5.5 the Departing Co-Funder shall remain entitled to receive the amount due to it under sub-clauses 8.1.1 and 8.1.2 and to the property assigned to it under sub-clause 8.3.1;



## CO-FUNDING AGREEMENT

- 14.5.6 the Departing Co-Funder's entitlement to such amounts as are released by the Court pursuant to clause 4.4 shall comprise such *pro rata* amount of the total reimbursed amount as reflects the Departing Co-Funder's overall cash contribution to Security for Costs; and
- 14.5.7 the Departing Co-Funder shall be liable to indemnify the Remaining Co-Funder for any reasonable costs arising as a direct result of the Departing Co-Funder's termination or default.

14.6 The obligations in this clause 14 shall be continuing obligations and survive any Termination of this Agreement.

## 15. DURATION OF THE AGREEMENT

- 15.1 Subject to clauses 13 and sub-clauses 14.4 and 16.2, this Agreement commences on the Contract Date and continues in operation until:
- 15.1.1 all Proceedings, and any appeals funded by the Co-Funders, have concluded;
  - 15.1.2 the Co-Funders have complied with all of their respective obligations under this Agreement and the Other Funding Agreements;
  - 15.1.3 the Claimant has complied with all of his, her or its obligations under this Agreement; and
  - 15.1.4 the total Resolution Sum (if any) and any "Resolution Sums" as defined in each relevant other Funding Agreement have been disbursed in accordance with all of those agreements.

## 16. MISCELLANEOUS

### COOLING OFF

- 16.1 The Claimant may, by written notice given to the Co-Funders within 21 days from the Contract Date, terminate this Agreement (a "**Cooling Off Notice**"). Time is of the essence. The Claimant may waive its right to this cooling-off period by giving written notice of this to the Co-Funders.
- 16.2 Upon the receipt of a Cooling Off Notice, this Agreement will come to an end and the following will apply:
- 16.2.1 the property referred to in sub-clauses 8.3.1 and 8.3.2 shall be reassigned to the Claimant;
  - 16.2.2 No Party will have any continuing or further rights or obligations to the other Party save for:
    - 16.2.2.1 any obligations of confidence arising in respect of the terms of this Agreement and any other information received by the Claimant from the Lawyers or the Co-Funders;
    - 16.2.2.2 any obligations in relation to Privilege attaching to any information received by the Claimant or the Co-Funders pursuant to or in connection with this Agreement; and
    - 16.2.2.3 any further rights or obligations otherwise expressed in this Agreement as surviving a Termination.

### ASSIGNMENT AND TRANSFER

- 16.3 The Claimant agrees that:
- 16.3.1 each of the Co-Funders shall be entitled to assign or transfer any of its rights and obligations under this Agreement to an Affiliate or the other Co-Funder; and
  - 16.3.2 the Co-Funders shall otherwise be entitled to assign or transfer any of their rights and obligations under this Agreement with the consent of the other Parties (not to be unreasonably withheld or delayed), provided that the transferee covenants with the other parties to perform, comply with and be bound by the terms of this Agreement insofar as they remain to be observed.
- 16.4 Nothing in this clause shall affect a Party's accrued rights and obligations under this Agreement or shall be construed as requiring any Party to perform again any obligation or discharge any liability already performed or discharged, or as entitling any Party to receive again any benefit already enjoyed.
- 16.5 The accrued obligations of a Co-Funder referred to in sub-clause 16.4 comprise payment on an equal basis severally of:
- 16.5.1 any outstanding Legal Costs and Disbursements incurred up to the date of assignment or transfer; and

## CO-FUNDING AGREEMENT

16.5.2 any Adverse Costs Order against the Claimant in any Proceedings in respect of costs which arise in, or are attributable to, the period beginning on the Date of Commencement and ending on the date of assignment or transfer.

16.6 This Agreement is personal to the Claimant and the Claimant must not assign, transfer or deal in any other manner with this Agreement or the Claimant's rights and benefits under it without the Co-Funders' written consent.

### **ANNULMENT**

16.7 If this Agreement or any part of it is annulled, avoided or held to be unenforceable the Claimant will, without delay, do everything necessary, including without limitation signing any further or other agreement or instrument, to ensure that the Co-Funders receive any remuneration, entitlement or other benefit to which this Agreement refers or is contemplated by this Agreement. The Claimant irrevocably agrees that production of a copy of this Agreement shall be conclusive evidence of the Claimant's undertaking as set out in this sub-clause 16.7.

### **CLAIMANT ACKNOWLEDGEMENTS**

16.8 The Claimant acknowledges and accepts that:

16.8.1 the Co-Funders have either entered into or will enter into Other Funding Agreements;

16.8.2 the Co-Funders may fund Other Claims and proceedings against the Defendants which are unrelated to the Claims; and

16.8.3 if any Defendant or any of the Defendant's property, assets or liabilities come under the control of an External Controller, the Co-Funders may fund claims of the Defendant and the External Controller for consideration additional to that which the Co-Funders may receive from Funded Persons.

16.9 The Claimant accepts that it is possible that where Proceedings are conducted as a Class Action there may be members of the class who have not entered into a funding agreement with the Co-Funders.

16.10 By signing this Agreement, the Claimant:

16.10.1 acknowledges that the Claimant has been given the opportunity to obtain, and has obtained, all independent legal, financial and other professional advice in respect of this Agreement that the Claimant considers necessary;

16.10.2 acknowledges that the Claimant has received and read the Co-Funders' Disclosure Statement;

16.10.3 consents to the Co-Funders collecting, storing, using and disclosing personal information provided by the Claimant in accordance with and subject to this Agreement and any Conflicts of Interest Policy;

16.10.4 acknowledges and accepts that it will not be required to directly retain the Lawyers and the Lawyers will only take instructions in relation to the Claim and/or the Proceedings from the Plaintiffs and such retainer shall be between the Plaintiffs and Co-Funders;

16.10.5 acknowledges and accepts that the Lawyers are retained by the Plaintiffs, pursuant to the Retainer;

16.10.6 acknowledges and accepts that the Standard Lawyers Terms are between the Co-Funders and the Lawyers; and

16.10.7 acknowledges and accepts that the Claim and/or Proceedings will be conducted in accordance with the Retainer of the Lawyers by the Plaintiffs and the Standard Lawyers Terms, notwithstanding that they are not a party to the Retainer or the Standard Lawyers terms.

16.11 Termination of this Agreement will not affect the rights of the Co-Funders to do anything authorised or contemplated by any Other Funding Agreement.

### **NOTICES AND COMMUNICATIONS**

16.12 All notices given under this Agreement must be in writing and must be served personally, by post, by facsimile or by email.

## CO-FUNDING AGREEMENT

- 16.13 The Parties agree that the most efficient and least costly way for them to communicate with each other is by email. The Claimant will, at the Contract Date, provide the Co-Funders with an email address for the Claimant and will immediately notify the Co-Funders of any change to that email address or any other changes to the Claimant's contact details.
- 16.14 By providing an email address to the Co-Funders, the Claimant consents to receiving communications (including copies of documents) from the Co-Funders by email. The Claimant may withdraw his, her or its consent (or reinstate it, if it has been withdrawn) at any time on giving 21 days/ written notice of the Claimant's decision to the Co-Funders. If the consent is withdrawn, all communications from the Co-Funders from the date the notice becomes effective will be by posted or faxed paper documents.
- 16.15 The Parties agree that, for the duration of this Agreement, they will take all reasonable steps to ensure that their respective email addresses remain fully operational, allow unimpeded access to each Party's inbox for the emails of the other Party, and are checked daily.
- 16.16 The address for service of the Parties are as set out below:

Omni Bridgeway	Burford	Claimant
Omni Bridgeway Limited Level 6, 37 St Georges Terrace Perth WA 6000 Australia Email: <a href="mailto:legal@omnibridgeway.com">legal@omnibridgeway.com</a>	Burford Asia Investments Pte. Ltd. 77 Robinson Road #13-00, Robinson 77, Singapore (068896) <a href="mailto:info@burfordcapital.com">info@burfordcapital.com</a>	As set out in the "Contract Details" part of the Claimant Information Section, or as subsequently notified to the Co-Funders by the Claimant.

- 16.17 Notices shall be deemed to be received five days after they are posted and on the day they are transmitted by facsimile or email (unless the sender receives notification that the transmission was unsuccessful). If any Party receives notification that an email or facsimile transmission to another Party's notified address was unsuccessful, the Party must make all reasonable efforts to contact the other Party by telephone or mail. No party shall be responsible to another Party for any loss if the Party attempting to make the notification or communication has fully complied with all of the provisions of this clause 16.

### OTHER

- 16.18 The Parties will not do or permit to be done, save as provided in this Agreement, anything likely to deprive any Party of the benefit for which the Party entered into this Agreement.
- 16.19 If any Party fails, delays, relaxes or indulges any other Party in exercising a power or right it has under this Agreement, the first Party has not waived that power or right. A power or right may only be waived in writing signed by the Party bound by the waiver.

## 17. GOVERNING LAW

- 17.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes and claims) are governed by and construed in accordance with the law of the State of New South Wales. Subject to clauses 10 and 11, the Parties submit to the non-exclusive jurisdiction of the courts of that State and will not object to the exercise of jurisdiction by those courts on any basis.

# SCHEDULE 1

## STANDARD LAWYER TERMS (AGREED FORM)

This agreement is made the \_\_\_\_\_ day of \_\_\_\_\_ 2020\_\_

### PARTIES:

**Burford**                      **Burford Asia Investments Pte. Ltd.** of 77 Robinson Road, #13-00, Robinson 77, Singapore (068896);

**Omni Bridgeway**        **Omni Bridgeway Limited ACN 067 298 088** of Level 18, 68 Pitt Street, Sydney, New South Wales 2000 Australia in its capacity as appointed agent and investment manager for each of the Omni Bridgeway Funders,  
(Burford and Omni Bridgeway, together, the “**Co-Funders**”); and

**Lawyers**                    **Quinn Emmanuel Urquhart & Sullivan** of Level 15, 11 Elizabeth Street, Sydney NSW 2000.

### RECITALS

- A        The Co-Funders have entered into, or propose to enter into, the Funding Agreements.
- B        The Funding Agreements are all in the same, or substantially the same, terms.
- C        The Lawyers are aware of the terms of the Funding Agreements and have agreed to act consistently with, and in accordance with, the terms of the Funding Agreements and these Standard Lawyers Terms.

### AGREED TERMS

#### 1        DEFINITIONS

- 1.1       In these Terms, the following definitions shall apply:

**Alternative Dispute Resolution Process:** Means any form of negotiation, discussions, mediation, conciliation, expert determination or other form of consensual dispute resolution process which seeks to Settle the Claims and/or the Proceedings.

**Budget:** Means the itemised budget of Legal Costs and Disbursements incurred and to be incurred in connection with the Proceedings

**Claims:** Means the claims, demands or causes of action asserted by a Funded Person against the Defendant in respect of or arising from the acquisition by a Funded Person of shares in the Defendant in the Relevant Period.

**Class Action:** Means a proceeding brought pursuant to Part 10 of the Civil Procedure Act 2005 (NSW).

**Co-Funders:** Has the meaning given in the introductory paragraph.

**Co-Funders’ Committee:** Means the committee formed in accordance with the Funding Agreements.

**Conflicts of Interest Policy:** Means the conflicts of interest policy of each of the Co-Funders.

**Court:** Means the court in which the Proceedings are conducted

**Defendant:** Means:

- (i)       RCR Tomlinson Limited (in liquidation) ACN 008 898 486;

- (ii) Messrs Paul Joseph Dagleish and Bruce Maxwell James, being former directors of RCR Tomlinson Limited; and
- (iii) any person or entity who becomes a defendant in the Proceedings through an application by, at the initiative or with the consent of, the Plaintiffs and the Co-Funders.

**Dispute Resolution Procedure:** Mean the procedure set out and defined in the Funding Agreements.

**External Controller:** Means:

- (a) In relation to an individual, the Official Trustee in Bankruptcy, an Official Receiver in Bankruptcy, a trustee in bankruptcy and a controlling trustee; and
- (b) In relation to a body corporate, an administrator (including a voluntary administrator and an administrator under a deed of company arrangement, scheme of arrangement, compromise or other arrangement), a provisional liquidator and a liquidator.

**Fair Market Value:** Means the amount at which an asset, equity or liability could be exchanged in an arms-length transaction between informed and willing parties, other than in a forced or liquidation sale.

**Funded Persons:** Means a Group Member who has entered into a funding agreement with the Co-Funders or either one of them which has not been terminated

**Funding Agreements:** Means all litigation funding agreements entered into by the Co-Funders, or either of them, with Funded Persons.

**Group Member:** Means the persons identified as group members in the Proceedings and who do not opt out of the Proceedings by the time specified by the Court for doing so, including Funded Persons.

**Omni Bridgeway Fund 2:** Means Omni Bridgeway (Fund 2) Pty Ltd (ACN 621 682 504)

**Omni Bridgeway Fund 3:** Means Omni Bridgeway (Fund 3) Pty Ltd (ACN 621 682 460)

**Omni Bridgeway Funder:** means:

- (a) Omni Bridgeway Fund 2; and
- (b) Omni Bridgeway Fund 3.

**Insolvency Event** means, in respect of a person, when one of the following occurs:

- (a) a controller (as defined in section 9 of the Corporations Act), receiver, receiver and manager, administrator or similar officer is appointed in respect of that person or any asset of that person;
- (b) a liquidator, provisional liquidator or administrator is appointed in respect of that person;
- (c) except for the purpose of a solvent reconstruction or amalgamation, any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in paragraph (a) or (b) of this definition;
  - (ii) winding up, dissolving or deregistering that person; or
  - (iii) proposing or implementing a company voluntary arrangement or a scheme of arrangement, other than with the prior approval by a Special Resolution of the Noteholders under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;

- (d) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
  - (i) moratorium of any debts of that person;
  - (ii) any other assignment, composition or arrangement (formal or informal) with that person's creditors; or
  - (iii) any similar proceeding or arrangement by which the assets of that person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,
 or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;
- (e) as a result of the operation of section 459F(1) of the Corporations Act, that person is taken to have failed to comply with a statutory demand (as defined in the Corporations Act);
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of that person;
- (g) anything analogous to anything referred to in paragraphs (a) to (f) inclusive of this definition, or which has a substantially similar effect, occurs with respect to that person under any law; or
- (h) that person is, or admits in writing that his, her or it is, or is declared to be, or is presumed or taken under any applicable law to be (for any purpose), insolvent or unable to pay his, her or its debts as they fall due.

**Judgment:** Means any judgment of a Court against any Defendants in respect of any Proceedings.

**Legal Work:** means the advice and any other legal services which the Lawyers consider reasonably necessary to prosecute the Proceedings and which form the basis of the Budget.

**Non-Cash Proceeds:** Has the meaning given in the Funding Agreements

**Plaintiffs:** Means any person who is a named plaintiff in the Proceedings whom, as at the Commencement Date are:

- (a) Ashita; and
- (b) CJMcG. (exact details to be given);
- (c) Mr Jorge Mayer

**Proceedings:** Means any and all Class Actions concerning all or some of the Claims, brought in contemplation of a Class Action including, without limitation, proceedings for preliminary discovery, and any other proceedings or process (including any Alternative Dispute Resolution Process engaged to resolve the Claims) as part of or consequent on a Class Action to prosecute and/or resolve all or some of the Claims. If any Defendant (or any property, assets or liabilities of a Defendant) come under the control of an External Controller, the Proceedings will also include all relevant methods of pursuing some or all of the Claims in the external administration of that Defendant, including the lodgement of proofs of debt. This includes any appeals of any such proceedings which the Co-Funders agree to fund pursuant to clause I5.

**Resolution Procedure:** Means the Procedure set out in Term 9.

**Resolution Sum:** Means the amount or amounts, or the value of any goods or services, to which the Claimant becomes entitled to in connection with or satisfaction or part satisfaction of the claims, as a

result of (without limitation) a settlement, judgment or arbitration and whether the said amount or value is provided by the Defendants or any other person, and for the avoidance of doubt includes any amount or value to be provided by or in respect of a person against whom any Defendant claims any indemnify, apportionment or contribution.

**Settlement:** means any settlement, compromise, discontinuance or waiver of the Claims or part of the Claims, and “settles” shall be construed accordingly.

**Terms:** means this agreement between Omni Bridgeway and the Lawyers and “**Term**” means a provision of these Standard Lawyers Terms.

- 1.2 Unless the contrary intention appears or unless specifically defined above, the definitions of words in the Funding Agreements apply to define the meaning of words used in these Terms.

## **2 STATUS OF OMNI BRIDGEWAY**

- 2.1 Omni Bridgeway executes these Terms in its capacity as investment manager and agent for each Omni Bridgeway Funder and represents that it has the power and authority do so under the terms of an investment management agreement between it and each Omni Bridgeway Funder.
- 2.2 The effect of these Terms is to create obligations between each Omni Bridgeway Funder and the Lawyers and Burford, respectively, on a several not joint and several basis, in the Applicable Omni Bridgeway Funder Percentage as if this Agreement was a separate agreement between the Lawyers, Burford and each Omni Bridgeway Funder. The termination of the investment management relationship between an Omni Bridgeway Funder and Omni Bridgeway will not affect the rights and obligations of the Omni Bridgeway Funder under these Terms.
- 2.3 The Lawyers are not responsible for any liability, loss or expenses arising as a result of any failure by Omni Bridgeway to comply with its obligations to the Omni Bridgeway Funders in its capacity as investment manager.

## **3 THE FUNDING AGREEMENTS**

- 3.1 The Lawyers will:
- 3.1.1 act consistently with the terms of the Funding Agreements (including complying with all instructions set out in, or provided pursuant to, the Funding Agreements); and
- 3.1.2 do all things which the Funding Agreements contemplate the Lawyers will do.
- 3.2 The Lawyers acknowledge that the Plaintiff has agreed with the co-Funders that if there is any inconsistency between the Funding Agreements and/or these Terms and the terms of any future retainer agreement (including any costs disclosure) between the Lawyers and the Plaintiff then the terms of the Funding Agreements will prevail.
- 3.3 The Lawyers shall enter into a retainer agreement with each Plaintiff and shall disclose or otherwise make available to each Funded Person the sources of all fees or other income they may receive in relation to this Project, including providing a budget for all estimated costs and expenses up to the conclusion of a trial in the proposed Proceedings which shall be consistent with the Budget.
- 3.4 The Lawyers will charge for the Legal Work performed by reference to the time reasonably and properly spent at the hourly rates notified to the Co-Funders in accordance with the Budget. Detailed time records must be kept to facilitate time details being provided.
- 3.5 The Lawyers will only seek reimbursement from the Co-Funders for expenditure reasonably incurred by the Lawyers in progressing the Proceedings being:

- 3.5.1 photocopying and scanning to be provided by third party document copying provides (such as LitSupport) wherever that is reasonably practicable. If the Lawyers choose not to utilise LitSupport for these services, they will ensure that:
- (a) all photocopying and scanning services are provided at the prices set out in the Retainer (and shall not be increased other than with the consent of the Co-Funders); and
  - (b) the basis for their pricing policy is identified on their accounts; and
- 3.5.2 other reasonable expenditure, supported by invoices where \$500 or above.
- 3.6 The Lawyers shall be paid directly by each Co-Funder, in equal shares, on behalf of the Plaintiff and the Funded Persons, subject to and in accordance with the Budget, upon valid tax invoices promptly being rendered monthly by the Lawyers to each Co-Funder, within thirty (30) days of receipt of such tax invoice. The Lawyers will notify the Co-Funders if any co-Funder fails to comply with this Term 3.6.
- 3.7 If any Co-Funder wishes to dispute an invoice, such dispute shall be referred to the Co-Funders' Committee, but shall not affect the obligations of the Co-Funders to pay the invoice under Term 3.6. If the Co-Funders' Committee and the Lawyers agree that any adjustments to the disputed invoice are necessary, the necessary adjustments and any necessary refund shall be made within thirty (30) days of such agreement. If the Co-Funders' Committee and the Lawyers cannot resolve the dispute, it shall be resolved pursuant to the Resolution Procedure (without prejudice to the right of the Plaintiff or either of the Co-Funders to have an invoice assessed pursuant to the *Legal Profession Uniform Law* (NSW) or equivalent legislation).
- 3.8 The Co-Funders may at their discretion require the Lawyers to submit any one or more of their invoices to taxation.

#### **4 INSTRUCTIONS TO THE LAWYERS**

- 4.1 The Co-Funders acknowledge that the Lawyers professional duties are owed to the Plaintiffs and Group Members.
- 4.2 The Lawyers shall:
- 4.2.1 receive instructions from the Plaintiffs as and when required concerning the Claims and/or the Proceedings; and
  - 4.2.2 ensure that the Plaintiffs are provided with all information necessary to give informed instructions (including, for the avoidance of doubt, any information which has or may have a material impact upon the Claims, the Proceedings, or the potential for any recoveries to be obtained therein).
- 4.3 If the Lawyers notify the Plaintiffs and the Co-Funders' Committee, in accordance with the Funding Agreements, that the Lawyers believe that circumstances exist that may give rise to a conflict of interest between the Plaintiffs and the Co-Funders, or any of them, then:
- 4.3.1 the Lawyers will refer the matter to the Dispute Resolution Procedure as set out in the Funding Agreements;
  - 4.3.2 for the purposes of the Dispute Resolution Procedure, and thereafter where consistent with the outcome of the Dispute Resolution Procedure the Lawyers:
    - 5.3.2.1 shall seek instructions from the Plaintiffs;
    - 5.3.2.2 shall advise and take instructions from the Plaintiffs, even though such advice and instructions is or may be contrary to the Co-Funders' interests; and



5.3.2.3 shall refrain from giving the Co-Funder advice and from acting on the Co-Funders' instructions, to the extent of the conflict of interest.

## **5 REPORTING TO THE CO-FUNDERS**

### **5.1 The Lawyers will:**

- 5.1.1 keep the Co-Funders fully informed of all matters concerning the Claims and the Proceedings, including any mediation and settlement discussions (and, for the avoidance of doubt shall immediately inform the Co-Funders' Committee of all settlement offers or offers to engage in any Alternative Dispute Resolution Process received from the Defendants and allow one or more of the Co-Funders to attend any such process agreed with the Defendants);
- 5.1.2 consult with the Co-Funders' Committee with regard to any issue in or in connection with the Proceedings;
- 5.1.3 properly consider the Co-Funders' Committee's expressed views as to any matter or issue arising in or in connection with the Proceedings or the conduct of the Proceedings;
- 5.1.4 promptly provide to the Co-Funders' Committee any information or document reasonably requested by it relating to the Proceedings;
- 5.1.5 attend meetings (in person or by telephone) with the Co-Funders' Committee to review any developments fortnightly (unless otherwise agreed by each of the Co-Funders) and as often as is required in light of any material development in the proceedings at the reasonable instigation of any of the Co-Funders;
- 5.1.6 unless specifically prohibited by the terms of a Court order or another professional obligation, provide the Co-Funders' Committee with a copy of any document obtained in the Proceedings by way of discovery, subpoena or any other coercive power of the Court, subject to the Co-Funders and their officers' and employees' implied undertaking given to the court;
- 5.1.7 subject to any contrary order or requirement of a Court or rules of a Court, to disclose to the Co-Funders' Committee such matters, consistent with the Lawyers' professional obligations to the Plaintiffs, as may be necessary or convenient to enable the Co-Funders to assess or manage their risk in or in connection with the Proceedings or exercise any right or discretion provided by the Funding Agreements; and
- 5.1.8 inform the Co-Funders, in writing and as soon as they become aware that:
  - 6.1.8.1 the Lawyers or any director, partner or senior employee (or any spouse or child of any director, partner or senior employee) of the Lawyers beneficially owns at least 1% of either of the Co-Funders' issued share capital; and
  - 6.1.8.2 any barrister or expert witness retained or briefed by the Lawyers in relation to the Project (or any spouse or child of any such barrister or witness) beneficially owns at least 1% of either of the Co-Funders' issued share capital,and the Lawyers agree:
  - 6.1.8.3 to make all reasonable enquiries, at the commencement of these Terms or when initially retaining all barristers and expert witnesses, in order to determine whether Terms 6.1.8.1 or 6.1.8.2 apply;
  - 6.1.8.4 to require, for the duration of these Terms, all persons referred to in this Term 5.1.2 to immediately inform the partner of the Lawyers with responsibility for this Project of any change in the circumstances referred to in Terms 6.1.8.1 and 6.1.8.2 which have been previously disclosed to the applicable Co-Funder; and

6.1.8.5 that the partner of the Lawyers with responsibility for this Project will immediately inform the applicable Co-Funder of any information received pursuant to Term 6.1.8.4.

5.2 Without limiting Term 5.1, 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 judgment sum to be recovered, the Lawyers will immediately inform the Co-Funders of that information.

5.3 The Lawyers may communicate with the Co-Funders' Committee by email at the email address provided by each of the members of the Co-Funders' Committee.

## **6 REVISED BUDGET**

6.1 The Lawyers will use their best endeavours to ensure that the total actual costs and disbursements set out in the Budget are not exceeded. If at any time the Lawyers form a view that the Budget is no longer their best estimate of the costs and disbursements for the Project, they will advise the Co-Funders in writing, setting out why they have come to that view, and identify their revised best estimate of the costs and disbursements. Such revised estimate, if approved by the Co-Funders, would constitute a Revised Budget.

6.2 Notwithstanding the operation of Term 6.1 the Co-Funders and the Lawyers may agree, in writing, that a material change in the scope of the Proceedings has occurred. In such event, the Budget may be increased to reflect the reasonable estimated fees and disbursements of the Lawyers to accommodate the costs referable to that material change. The Lawyers will detail such estimated fees in an updated Budget which will be subject to the Co-Funders' consent, such consent not to be unreasonably withheld.

6.3 If the Co-Funders are unable to reach a unanimous decision on a revision of the Budget, the decision shall be referred for resolution in accordance with the Resolution Procedure.

## **7 OTHER OBLIGATIONS OF THE LAWYERS**

7.1 The Lawyers agree not to seek payment of any amounts outstanding to them in excess of that for which the Co-Funders are liable under these Terms.

7.2 The Lawyers will maintain professional indemnity insurance of at least \$10 million for the duration of these Terms plus three years.

7.3 The Lawyers will provide evidence of the insurance to the Co-Funders on the Co-Funders' request.

7.4 The Lawyers will, in accordance with the Funding Agreements:

7.4.1 pay any Resolution Sum received under the Funding Agreements into an interest bearing trust account;

7.4.2 subject to any order of the Court, will apply any Resolution Sum received, out of the trust account referred to in paragraph 7.4.1, in accordance with the terms of the Funding Agreements;

7.4.3 deal with any Non-Cash Proceeds in accordance with the terms of the Funding Agreements including taking possession of the Non-Cash Proceeds on trust for the Co-Funders and the applicable Funded Persons and, if feasible, facilitating the sale of the Non-Cash Proceeds on an arms-length basis;

7.4.4 effect the return of any security for costs paid by either or both of the Co-Funders and reimbursed by the Court to the respective Co-Funders and in accordance with the terms of the Funding Agreements; and

- 7.4.5 do everything which it is anticipated the Lawyers will do including, but not limited to:
  - 8.4.5.1 determining, subject to any Court order, the balance to be distributed *pro rata* to the Funded Persons by reference to the value of the applicable Claims from any lump sum amount received in Settlement, or by way of Judgement or as an *ex gratia* payment in respect of the Claims after deducting the amounts required to be paid to the Co-Funders;
  - 8.4.5.2 providing the Co-Funders with any information communicated to or by any potential or actual witnesses in the Proceedings; and
  - 8.4.5.3 to take any steps, upon request of the Co-Funders' Committee and provided such steps are deemed by the Lawyers to be consistent with the interests of the Plaintiffs and the Funded Persons, to obtain from any necessary court or tribunal orders permitting the Lawyers to disclose to the Co-Funders' Committee any information or documents obtained from discovery, subpoenas, notices to produce, filings, examinations or any other coercive procedure, upon such terms as the Court may order.

## **8 TERMINATION OF THESE TERMS**

- 8.1 The Lawyers may terminate these Terms on 7 days' written notice to the Co-Funders in the following circumstances:
  - 8.1.1 if the Co-Funders fail to pay any costs in accordance with these Terms after the Co-Funders have been given 30 days' written notice to do so; or
  - 8.1.2 if the Lawyers terminate all retainers between the Lawyers and Funded Persons relating to the Proceedings in accordance with their right to do so.
- 8.2 the Co-Funders may terminate these Terms:
  - 8.2.1 by giving written notice, upon an Insolvency Event occurring in relation to the Lawyers;
  - 8.2.2 by agreement with the Lawyers;
  - 8.2.3 upon 7 days' written notice to the Lawyers in the event of professional misconduct or negligence by the Lawyers that has caused or is reasonably likely to cause material loss to a Funded Person or to the Co-Funders; or
- 8.3 If these Terms are terminated pursuant to either Term 8.1 or 8.2, the Lawyers remain liable for all obligations under these Terms accrued by them between the date of termination and the date of their appointment, but thereafter all obligations and entitlements of the Lawyers cease except:
  - 8.3.1 the obligations to receive and pay amounts from the Resolution Sum pursuant to the Funding Agreements, where the Lawyers are not replaced by other solicitors to provide the Legal Work;
  - 8.3.2 those entitlements under Term 7 (in respect of Legal Work up to the date of termination) unless the termination of the Lawyers is under Term 8.2.3; and
  - 8.3.3 the Lawyers shall continue to maintain any legal professional privilege attaching to, and the confidentiality of any documentation generated or received as a result of the Proceedings and/or the Funding Agreements.
- 8.4 If these Terms are terminated pursuant to Term 8.2.3 the Lawyers will be entitled only to payment under Term 7 in respect of Legal Work up to the date of termination, subject to a deduction for the amount of the loss caused by the Lawyers' professional misconduct or negligence.

- 8.5 These Terms will terminate when all of the Funding Agreements are terminated, such termination to take effect upon the last date on which the last of the Funding Agreements is terminated. If there is a termination pursuant to this Term each Party will remain liable for its obligations accrued to the date of termination. Nothing in these Terms shall affect or limit the Co-Funders' rights to terminate all or any of the Funding Agreements.
- 8.6 If one of the Co-Funders becomes a Terminating Co-Funder or a Defaulting Co-Funder in accordance with the definitions given to those terms in the Funding Agreements, and the Remaining Co-Funder (as defined in the Funding Agreements) adopts the obligations of the Departing Co-Funder, in accordance with the Funding Agreements:
- 8.6.1 the Remaining Co-Funder will provide notice of such adoption to the Lawyers;
  - 8.6.2 from the date of such notice, the Departing Co-Funder's obligations under these Terms shall cease;
  - 8.6.3 the Remaining Co-Funder shall meet all outstanding and future obligations of the Departing Co-Funder under these Terms; and
  - 8.6.4 references in these Terms to the rights of the Co-Funders shall be read as references to the Remaining Co-Funder who may exercise such rights at their sole discretion.

## **9 RESOLUTION PROCEDURE**

- 9.1 Any Party may raise a dispute by way of written notice ("**Notice**") to each other Party in respect of any disagreement between the Lawyers and the Co-Funders (or any combination of such parties) pursuant to a disputed invoice in accordance with Term 3.7 or a proposed revision to the Budget in accordance with Term 6.3. Such dispute will be resolved in accordance with the following procedure:
- 9.1.1 The applicable parties will meet to discuss, and endeavour in good faith to resolve, the dispute within 7 days of the Notice being received.
  - 9.1.2 If the dispute is not resolved within 7 days of receipt of the Notice, it shall be referred for resolution to an independent Senior Counsel who will be appointed by the President of the New South Wales Bar Association for that purpose.
  - 9.1.3 Senior Counsel appointed pursuant to paragraph 9.1.2 shall proceed as he or she sees fit before performing and delivering his or her opinion; may give his or her opinion in writing or orally at the earliest opportunity and the Parties will be bound by the opinion of Senior Counsel.

## **10 DISPUTE RESOLUTION**

- 10.1 Subject to the operation of Term 9, any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by mediation in accordance with the Australian Centre for International Commercial Arbitration ("ACICA") Mediation Rules. The mediation shall take place in Sydney, Australia and be administered by the ACICA.
- 10.2 If the dispute has not been settled pursuant to the said Rules within 60 days following the written invitation to mediate or within such other period as the parties may agree in writing, the dispute shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Sydney, Australia. The language of the arbitration shall be English. The number of arbitrators shall be three.

## 11 CONFIDENTIALITY

- 11.1 The Lawyers agree to keep the contents of the Funding Agreements, these Terms and any original documents produced by the Co-Funders to which the Lawyers have access (including the applicable Conflict of Interest policy) confidential and not to use them for any purpose other than the Project unless disclosure of any of this information by the Lawyers is agreed in writing by the applicable Co-Funders or is required by law. The obligations in this Term 11.1 will survive the termination of these Terms.

## 12 ADDRESS FOR SERVICE

- 12.1 The Co-Funders' addresses for service are as set out in the Funding Agreements.
- 12.2 The Lawyers' address for service is the address identified on the first page of these Terms or as otherwise notified to each of the Co-Funders in writing if that address changes.

## 13 VARIATION

- 13.1 These Terms may only be varied in writing signed by the Lawyers and the Co-Funders.

## 14 GOVERNING LAW

- 14.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes and claims) are governed by and construed in accordance with the law of the State of New South Wales.

## EXECUTION BY THE PARTIES

SIGNED by **Omni Bridgeway Limited** )  
**ACN 067 298 088** in its capacity as )  
appointed agent and investment )  
manager for each of the Omni )  
Bridgeway Funders, in accordance with )  
section 127 of the *Corporations Act 2001* )  
(Cth) )

Print Name:

Print name:

Title:

Title:

Date:

Signed by Burford Asia Investments Pte.  
Ltd.

Print Name:

Print name:

Title:

Title:

Date:

SIGNED for and on behalf of )

**Quinn Emmanuel Urquhart Sullivan** )

by its duly authorised representative, in )

the presence of: )

) Signature of authorised person

Print Name:

Position:

Date:

Witness signature

Print Name:

Address:

Occupation:

Date:

## SCHEDULE 2 – SENIOR COUNSEL SETTLEMENT CRITERIA

1. In reviewing a proposed Settlement pursuant to clause 10 of the Agreement, counsel must be satisfied that the Settlement will be fair and reasonable, taking into account the Claims and the Other Claims that will be the subject of the Settlement and any potential conflicts of interest between the Co-Funders, the Lawyers and the group members whose Claims and Other Claims are subject to the proposed Settlement.
2. In satisfying himself or herself that the proposed Settlement is fair and reasonable, counsel should take into account, among other things, the following factors:
  - (a) the amount of the proposed Settlement in light of the actual or potential losses of the plaintiffs and group members (if known);
  - (b) the prospects of success in the Proceedings (i.e. the weaknesses, substantive or procedural, in the case advanced by the Representative);
  - (c) the likelihood of the group members obtaining judgment for an amount significantly in excess of the proposed Settlement sum;
  - (d) whether the proposed Settlement sum falls within a realistic range of likely outcomes;
  - (e) the terms of any advice received from an independent expert on the issues that arise in the case;
  - (f) the likely attitude of the group members to the proposed Settlement ;
  - (g) the likely duration and cost of the Proceedings, if continued to judgment, including the likely amount of any adverse costs payable if orders were made in favour of the Defendant;
  - (h) the terms of the Agreement about the procedure to be applied in reviewing and deciding whether to accept any Settlement offer, including any factors that will and will not be taken into account in deciding to Settle;
  - (i) whether the Co-Funders might refuse to continue to fund the Proceedings if the proposed Settlement does not take place; and
  - (j) whether the proposed Settlement involves any unfairness to any group member or any categories of group members for the benefit of others.
3. Counsel should also take into account the potential for conflicts of interest between group members in accordance with the test applied by Jessup J in *Darwalla Milling Co Pty Ltd v F Hoffman-La Roche Ltd (No 2)* (2006) 236 ALR 322 at 41 which relevantly states:

*"I propose to turn then to the question whether the settlement, including the distribution scheme, involves any actual or potential unfairness to any group members, or categories of group members, having regard to all relevant matters, including whether the overall settlement sum, even if reasonable as such, involves unfair compromises by some members, or categories of members, for the benefit of others, and whether the distribution scheme fairly reflects the apparent or assumed relative losses suffered by particular members, or categories of members. Any consideration of the fairness and reasonableness of the settlement in the present case must take into account not only the overall settlement sum and its relationship with the amount that might be considered a best possible outcome after a successful trial, but also the structure and*

*workings of the scheme by which that sum is proposed to be distributed amongst group members. The fairness and reasonableness of the settlement, from the point of view of any one group member, will necessarily depend on both of these factors."*