

LCM OPERATIONS PTY LTD (ACN 616 451 033)

**REPRESENTATIVE PROCEEDING FUNDING AGREEMENT
MEMBER
THE 2017 QIN SCHEME**

REPRESENTATIVE PROCEEDING FUNDING AGREEMENT - MEMBER**TERMS SHEET****BETWEEN**

LCM OPERATIONS PTY LTD (ACN 616 451 033) of Level 25, Aurora Place, 88 Phillip Street, Sydney NSW 2000 ("**Funder**")

AND

The person/s whose particulars are stated in item 2 of the Schedule ("**Claimant**")

RECITALS

- A. The Claimant believes the Claimant has one or more valid claims as stated in item 3 of the Schedule ("**Claim**").
- B. Believing that other persons may have claims that are the same or similar to the Claim, the Funder has formed / intends to form a scheme bearing the name in item 1 of the Schedule ("**Scheme**") under which persons having such claims and agreeing to join the Scheme ("**Members**"), with the benefit of funding and other assistance from the Funder and using the services of the Lawyers, might recover damages or other compensation as regards those claims and for the mutual benefit of the Members and the Funder.
- C. This document provides for the Claimant to become a Member of the Scheme.

TERMS

1. Subject to clause 3, the Claimant becomes a Member of the Scheme on the terms of the Contract.
2. The Contract is comprised of the following documents (and any documents incorporated by reference therein) in the priority in which listed:
- (a) this Terms Sheet; and
 - (b) the Rules of the Scheme, now annexed.

For information purposes only, and not forming part of the Contract, the Funder's Australian Privacy Principle 5 – Notification is also annexed.

3. The Claimant was given advice about the Contract by an independent legal practitioner, or having been told that advice should be sought, the Claimant decided not to seek it.
4. The parties agree and acknowledge that an electronic indication of the Claimant's identity and the Claimant's intention to accept this Contract shall constitute execution, delivery and acceptance of this Contract.

SCHEDULE

Item No. 1	The 2017 QIN Scheme.
Scheme Name	

Item No. 2 Claimant's Details	<p>The Claimant's details are set out in the electronic application form that is being submitted to the Lawyers at the time of accepting this Contract online.</p> <p>Legal Name: ACN (if a company): D.O.B. (if an individual): Mailing Address:</p> <p>Contact Person (if not the Claimant personally):</p> <p>Daytime Ph: Email:</p> <p>Does the Claimant contract as legal personal representative / guardian / manager / attorney / insolvency administrator of a third party? Yes / No</p> <p>If yes, evidence of the authority should be produced.</p>
Item No. 3 Claim (brief summary)	<p>The Claimant's claims for loss and damage as a shareholder of Quintis Limited (QIN) to be brought by the shareholders of QIN against QIN, Mr Frank Cullity Wilson and Ernst & Young for misleading or deceptive conduct, false or misleading conduct and negligence in relation to QIN's financial statements for the years ended 30 June 2015 and 30 June 2016</p>
Item No. 4 Minimum number of binding Member Agreements	<p>1</p>
Item No. 5 Due Diligence Costs	<p>\$200,000 plus GST.</p>
Item No. 6 Funder's Interest	<p>6.1. The Funder's Interest is the greater of:</p> <p>6.1.1 The Funder's Share; or</p> <p>6.1.2 The Recovery Premium.</p> <p>6.2 The Funder's Share is calculated as follows:</p> <p>6.2.1 If any Recovery arises during the Due Diligence Period, then the Funder's Share is 15% of Recovery;</p>

	<p>6.2.2 If any Recovery arises after either:</p> <p>(a) the Funder gives a Funding Confirmation Notice; or</p> <p>(b) an Originating Application (or Summons) for the Claims was served by the Lawyers on a Defendant with the Funder's prior written approval; or</p> <p>(c) 120 Business Days after the first of the Member Agreements becomes unconditional.</p> <p>(whichever date is earlier), then subject to 6.3 below the Funder's Share is 35% of Recovery;</p> <p>6.3 If any Recovery arises after commencement of an Appeal:</p> <p>6.3.1 the Funder's Share is 5% of Recovery; plus</p> <p>6.3.2 that percentage of Recovery stated in any above paragraph as applicable.</p> <p>6.4 The Recovery Premium is calculated as three times the aggregate of the Outstanding Funding as at the date of distribution of the Recovery in accordance with rule 60.2.</p>
<p>Item No. 7 The State</p>	<p>New South Wales</p>

NOTES ON COMPLETING THIS DOCUMENT

What name of the Claimant to use?

Type of Claimant	Correct	Incorrect
<p>Individual Use given names in full, not initials.</p>	<p>James Andrew Brown</p>	<p>J.A. Brown</p>
<p>Joint Claimants Use both names in full, not initials.</p>	<p>James Andrew Brown and Laura Kate Brown</p>	<p>J.A. Brown and LK Brown</p>
<p>Company Use the company title, not abbreviations.</p>	<p>MNO Pty Ltd</p>	<p>MNO P/L</p>
<p>Superannuation fund Use the name of the trustee, not the name of the fund.</p>	<p>James Brown Pty Ltd Superannuation Scheme A/C</p>	<p>James Brown Pty Ltd</p>

Type of Claimant	Correct	Incorrect
Trusts Use the name of the trustee, not the name of the trust.	Laura Brown <Laura Brown Family Trust A/C>	Laura Brown Family Trust
Minor (a person under the age of 18 years) Use the name of the responsible adult, not the minor.	James Andrew Brown <James Brown Jnr>	James Brown Jnr
Deceased Estate Use the name of the executor, not the name of the deceased.	Laura Brown <Est James Brown A/C>	Estate of the Late James Brown
Partnership Use the partners' personal names, not the name of the partnership.	James Brown and James Brown Jnr <James Brown & Son A/C>	James Brown & Son

Who should provide electronic indication of the Claimant's identity and intention to accept this Contract?

Who is the Claimant?	Who must provide indication?
Individuals / Joint Claimants	The individuals / all joint Claimants
Company	Two directors, or a director and a company secretary
Sole director company	The director, or a duly authorised officer or attorney
Trust	The trustee
Minor	An adult as trustee for the minor
Deceased Estate	The executor
Partnership	All partners

RULES OF THE 2017 QIN SCHEME

(May 2017 edition)

PART 1: PRELIMINARY

1. About these rules:

- 1.1 Subject to any special conditions stated in all Member Agreements, these rules govern the Scheme.
- 1.2 These rules may be modified only by written agreement of the Funder and at least 75% in number of the Members.
- 1.3 These rules and the Member Agreement of a Member (and documents referred to therein) together are the entire agreement between that Member and the other parties to the Scheme. A party waives a right under that agreement only in writing signed by that party. The laws in the State govern that agreement.
- 1.4 If any rule is or becomes inconsistent with the Rules of Court (or similar) applicable to an Action on foot, as regards that Action such rule must be read down or failing that is ineffective to the extent of the inconsistency. This does not affect the validity or enforceability of that rule as regards any other Action, nor the remainder of these rules in any Action.

2. Dictionary:

In these rules:

- 2.1 **"Action"** means, as regards Claims, as applicable:
 - 2.1.1 Proceedings before a court, arbitrator or tribunal;
 - 2.1.2 Submission of an issue to a binding determination by an expert;
 - 2.1.3 Steps taken for, or in, a mediation of an issue;
 - 2.1.4 Proceedings before a court to recover Recovery in enforcement of a prior court judgment, arbitral award, determination of an expert or settlement agreement,

but excludes an Appeal.
- 2.2 **"Action Costs"** mean:
 - 2.2.1 Due Diligence Costs;
 - 2.2.2 Lawyers' Costs in:
 - (a) Identifying and recruiting Members;
 - (b) Preparing, settling, filing at Court and serving on any Defendants any documents in an Action and / or an Appeal (such as originating application or summons, statement of claim, affidavit/s, third party notice/s, defence to a counter-claim, application/s for an order for discovery of documents, minutes of order);

- (c) Corresponding with the Defendants and any representatives of the Defendants;
 - (d) Preparing for and attending to interview such Members as they think necessary for an Action, then preparing witness statements;
 - (e) Preparing for and attending to confer with experts and preparing records of such conferences;
 - (f) Preparing for and attending any pre-trial hearing or other step preliminary to a trial of an Action;
 - (g) Obtaining, compiling and analysing evidence, including documentary evidence;
 - (h) Preparing for and attending at any hearing of an Action or settlement conference or mediation, and making record of the proceedings – including any transcript fee charged by a Court;
 - (i) Negotiating, preparing or settling any agreement to settle an Action (in whole or in part) out of the Court;
- 2.2.3 Such other Lawyers' Costs that are incurred for the dominant purpose of assisting with preparing, conducting and / or resolving prosecution of the Claims;
- 2.2.4 To the extent not included in Lawyers' Costs, the reasonable fees and disbursements charged by barristers, accountants and other professionals for the dominant purpose of assisting with preparing, conducting and / or resolving prosecution of the Claims, and calculated at rates for which the Funder gave prior written approval;
- 2.2.5 To the extent not included in Lawyers' Costs, Court filing fees and other incidental Court fees;
- 2.2.6 To the extent not included in Lawyers' Costs, witness fees and expenses;
- 2.2.7 Any premiums associated with any policy of ATE Insurance that are paid by the Funder or that the Funder is liable to pay in accordance with rule 50;
- 2.2.8 Taxes, duties or other costs associated with any policy of ATE Insurance;
- 2.2.9 All costs and expenses (including legal fees, Counsel fees, expert or consultant fees, disbursement, travel and accommodation costs) incurred by the Funder with respect to the Claims and / or the Scheme, including but not limited to:
- (a) Identifying and recruiting Members;
 - (b) Negotiating, preparing, administering or enforcing any Member Agreements or the Retainer Agreement;
 - (c) Due Diligence;
 - (d) Funding any security for Adverse Costs, including by way of a Deed of Indemnity;

- (e) Quantifying any Adverse Costs order;
 - (f) Meetings with the Lawyers and other interested parties for the dominant purpose of preparing, conducting and / or resolving prosecution of the Claims or in relation to the Scheme;
- 2.2.10 Fees, costs and expenses payable by the Scheme to a mediator or arbitrator in any Action;
 - 2.2.11 Representative's remuneration (if any);
 - 2.2.12 Fees, costs and expenses payable by the Scheme to an expert making a binding determination of the Claims (in whole or in part).

To avoid doubt, any costs or expenses incurred by a Member in connection with their Member Agreement or participation in the Scheme are excluded from Action Costs, unless and to the extent such Member is a Representative and has a contract with the Lawyers and the Funder for recovery of those separate costs or expenses on terms for which the Funder gave prior written approval.

- 2.3 "**Adverse Costs**" mean costs incurred or to be incurred by a Defendant in an Action or in legal processes before an Action, which costs a Court orders that the Scheme / Representative / Funder must pay or that the Members and the Funder agree the Funder must pay.
- 2.4 "**Appeal**" means an appeal from a ruling or judgment made in an Action, whether initiated by the Scheme or a Defendant.
- 2.5 "**ATE Insurance**" means an after-the-event insurance policy in relation to the Action, the Action Costs and/or the Adverse Costs, which in the Funder's absolute discretion is on terms satisfactory to the Funder.
- 2.6 "**Business Day**" means a day other than:
 - 2.6.1 A Saturday, Sunday;
 - 2.6.2 A day which is a public holiday or bank holiday; or
 - 2.6.3 A day that falls between Christmas and the following New Year's Day, at the principal place of business or residence of the party obliged to perform an obligation or receiving a notice under these rules as applicable.
- 2.7 "**Claim Information**" means any legal advice, information, communications and documents disclosed to, provided to, generated by or exchanged between the parties to the Scheme and/or the Lawyers in relation to the Action.
- 2.8 "**Claims**" mean Members' claims the subject of the respective Member Agreements.
- 2.9 "**Cost Limit**" means at any time the maximum aggregate amount the Funder is willing to risk for the purposes of the Scheme.
- 2.10 "**Court**" principally means the Federal Court of Australia (via its State / Territory Registry most convenient to the Scheme in the opinion of the Lawyers), and includes any court having jurisdiction to hear an appeal from the trial Court. If an Action is before another court, or an arbitrator, tribunal or expert "**Court**" means, as regards that Action, that court / arbitrator / tribunal / expert as applicable.

- 2.11 "**Deed of Indemnity**" means a deed whereby an insurer indemnifies a Defendant in respect of part or all of its costs of the Action on terms satisfactory to the Funder in its absolute discretion.
- 2.12 "**Defendant**" means each individual and/or corporation that is named or that may reasonably be named as a defendant, cross-defendant or third party in the Action.
- 2.13 "**Due Diligence**" means due diligence investigations by the Funder and / or the Lawyers at the request of the Funder of:
- 2.13.1 The merits and quantum of the Claims;
 - 2.13.2 The likely Action Costs (including cost of ATE Insurance);
 - 2.13.3 The likely Adverse Costs;
 - 2.13.4 The prospects of recovery of damages or other monetary compensation sufficiently exceeding Action Costs.
- 2.14 "**Due Diligence Costs**" mean the Funder's costs of performing Due Diligence.
- 2.15 "**Due Diligence Period**" means the period:
- 2.15.1 Starting when at least the number of binding Member Agreements specified in Item 4 of the Schedule have been executed;
 - 2.15.2 Ending on the earliest of:
 - (a) The date the Funder issues a Funding Confirmation Notice;
 - (b) The date the Funder terminates the Member Agreement;
 - (c) The date, with the Funder's prior written approval, a Defendant is served an originating application (or summons) for an Action; and
 - (d) 120 Business Days after the first of the Member Agreements becomes unconditional.
- 2.16 "**Funding Confirmation Notice**" means a notice issued by the Funder under rule 36.
- 2.17 "**Funder**" means LCM Operations Pty Ltd (ACN 616 451 033).
- 2.18 "**Funder's Interest**" has the meaning given in Item 6 of the Schedule.
- 2.19 "**Judgment**" means any judgment or award of a competent Court, arbitral tribunal or other decision making body agreed by the Parties in favour of the Claimant in respect of the Action
- 2.20 "**Lawyers**" means at any time the lawyers retained by the Representative with the approval of the Funder to represent the Members collectively to prosecute their respective Claims via the Scheme
- 2.21 "**Lawyers' Costs**" mean reasonable fees and disbursements charged by the Lawyers in relation to the Action and/or Claims calculated in accordance with the Retainer Agreement/s or, if at the time the fee or expense is incurred no Retainer Agreement exists, calculated at rates approved by the Funder in writing.

- 2.22 **"Member"** means the person/s named as the Claimant on a Member Agreement, and **"Members"** mean at any time all participants in the Scheme other than the Funder or the Lawyers.

Note: While membership is potentially open to any person/s asserting a Claim, without giving reasons, the Lawyers or the Funder may reject any applicant for membership of the Scheme.

- 2.23 **"Member Agreement"** means the Terms Sheet and these rules which form the contract between the Funder and a Member for that Member to join the Scheme.

- 2.24 **"Outstanding Funding"** means at any time the whole or any of the following:

2.24.1 Action Costs paid or payable by the Funder and not yet reimbursed;

2.24.2 Adverse Costs paid or payable by the Funder and not yet reimbursed; and

2.24.3 Any security for Adverse Costs provided or due to be provided by the Funder in an Action and / or an Appeal, (other than by way of ATE Insurance or a Deed of Indemnity);

- 2.25 **"Prior Class Actions"** means proceedings commenced against Quintis Ltd by Mr Andrew Wyma (Federal Court of Australia proceedings no: NSD1568/2017) and by Excel Texel Pty Limited (as trustee for the Mandex Family Trust) (Federal Court of Australia proceedings no: NSD1983/2017);

- 2.26 **"Recovery"** means all and any amounts received by the Claimant, or to which the Claimant is or becomes entitled (whether paid or liable to be paid by the Defendant, insurers or other third parties in any combination) related to or arising out of the Action, including (whether paid in a lump sum or by instalments):

2.26.1 Any Judgment, settlement sum or compromise in an Action or as negotiated in settlement;

2.26.2 Any order, award, settlement sum or compromise in respect of interest and/or costs paid in by any Defendant/s, insurer/s or other third party in any combination;

2.26.3 Any capital sum or income;

2.26.4 The value of any releases or other consideration or benefits of whatever form received by the Claimant.

To avoid doubt, any interest earned on moneys posted as security, or any costs paid by a Defendant in favour of the Scheme, is included.

If as a result of final resolution of their Claim, a Member obtains from a third party a set off or other value (other than a distribution from the Scheme), the Member must bring that value to account as Recovery.

- 2.27 **"Representative"** means one or more Members in whose personal name/s an Action (and if applicable, an Appeal) to prosecute the Claims is brought for themselves and as representative of all Members as regards issues common to all Members and for their mutual benefit.

- 2.28 **"Retainer Agreement"** means the agreement between the Representative, the Funder and the Lawyers on such terms as the Funder in its absolute discretion requires.
- 2.29 **"Schedule"** means the schedule in the Terms Sheet.
- 2.30 **"Scheme"** means a scheme:
- 2.30.1 Having the name stated at the head of these rules;
 - 2.30.2 Comprised of Members and the Funder;
 - 2.30.3 Formed and operated for the sole purpose of prosecuting and making recovery in respect of the Claims.
- 2.31 **"State"** means the State or Territory of Australia specified in Item 7 of the Schedule.
- 2.32 **"Terms Sheet"** means the document to which these Rules are annexed.
3. **Interpretation:** In these rules: neuter includes masculine and feminine; singular includes plural and *vice versa*; reference to a person includes a body politic or corporate, an individual and a partnership and *vice versa*; headings do not affect construction; another grammatical form of a defined word has a corresponding meaning; if a Member is more than one person, each is bound jointly and severally.

PART 2: SCHEME

4. **Purpose:** The purpose of the Scheme is to provide a structure by which Members, with benefit of funding from the Funder and using the services of the Lawyers, might recover damages or other compensation in respect of each of their Claims and for the mutual benefit of the Members and the Funder.

PART 3: MEMBERS

5. **Applicants:** An applicant for membership of the Scheme becomes a Member only if having made a Member Agreement, which Member Agreement is or becomes unconditional.
6. **Nature of membership:** Membership of the Scheme is personal to the Member and not transferrable except that upon the death of a Member who was an individual, his or her membership may vest in the legal personal representative/s of the deceased Member, and / or the heirs of the deceased Member.
7. **Role of Members:** A Member, while a Member, retains the Lawyers exclusively to act for the Member in prosecution of their Claim and via the Scheme
8. **Delegation:** A Member has no right to interfere in the prosecution of their Claim until common questions are decided and then as these rules allow.
9. **Members bound by common issues:** As regards any issues of fact or liability common to all Members, the Member is bound by an order of the Court in any Action in which the Member is represented regarding its rights with respect to the Claim, which order may include:
- 9.1 A Judgment on common questions raised in the Action;

- 9.2 The making of common findings; and
 - 9.3 The approval of a settlement of the Action.
10. **Members may be bound:** As regards any issues of fact or liability peculiar to a Member (not common to all Members), the Member is only bound by operation of rule 16.3 if:
- 10.1 The Member informed their peculiar circumstances to the Lawyers; and
 - 10.2 With the Member's express or implied consent, those circumstances were put in evidence in an Action and became subject to a ruling or Judgment in that Action.
11. **Members' risk:** Absent their fraud, dishonesty or wilful breach of these rules, a Member is not liable to another party to the Scheme for any moneys at risk in the Scheme.
12. **Outcomes to Members:** None of the Scheme, the Lawyers, the Funder or their respective officers, employees or consultants offers any assurance as to any economic benefit to a Member from participating in the Scheme.

PART 4: REPRESENTATIVE/S IN AN ACTION

13. **Qualification for office:** At all times, a Representative must be a Member.
14. **Representative taking office:** By separate contract between the Funder and the Member/s concerned as selected by the Lawyers after consultation with the Funder, that Member or those Members may act as Representative/s in an Action.
15. **Representative's remuneration:** Any remuneration or expenses paid or payable to a Representative under such contract with the Lawyers are, to the extent the Funder gave its agreement:
- 15.1 For that Representative's sole benefit; and
 - 15.2 Included in Action Costs.
16. **Representative's role:** A Representative has the following functions:
- 16.1 To lend their name to an Action as plaintiff, applicant or complainant (as applicable) and, so far as they are able, conform to the Rules of Court (or similar) applicable to such plaintiff / applicant / complainant;
 - 16.2 To instruct the Lawyers for the purposes of prosecuting the Claims;
 - 16.3 Generally, but subject to rule 10, to bind all the Members as to any step/s to be taken, or not taken, in prosecuting, abandoning, postponing or settling the Claims.
17. **Representative vacating office:** A Representative who ceases to be a Member ceases to be a Representative in any Action.
18. **Substitutions:** If any Representative provides instructions, or exercises rights to relinquish, or is removed by the Funder from, their representative role, the Lawyers and the Funder may select and appoint one or more substitutes within 120 days [Business Days] or such other period as the Court allows.

PART 5: LAWYERS

19. **Role of the Lawyers:** The Lawyers act for the Members in prosecution of their respective Claims via the Scheme.
20. **Retainers Agreements:** A Retainer Agreement may not be modified except:
- 20.1 To comply with law; or
 - 20.2 By written consent of the Funder.
21. **Changing the Lawyers:** At any time, the Funder may terminate, and may require the Representative to terminate, the Retainer Agreement and replace any Lawyers then acting, conditional upon the incoming Lawyers and the Representative entering into a Retainer Agreement.

PART 6: THE FUNDER

22. **Role of the Funder:** While party to the Scheme, the Funder:
- 22.1 Will pay the Action Costs and any Adverse Costs, subject to and in accordance with the terms of these rules and the separate contract between the Lawyers, the Funder and the Representative;
 - 22.2 If an Action requires, will meet any order for security for Adverse Costs and in its discretion may arrange for the order to be met by ATE Insurance or a Deed of Indemnity;
 - 22.3 Will direct the steps to be taken, or not taken, in preparing, conducting, abandoning, postponing or resolving the Claims. This includes:
 - 22.3.1 Discussing the prosecution of the Claims with the Lawyers with no Member present;
 - 22.3.2 Having access and input to documents being prepared by the Lawyers for an Action or to be put in evidence;
 - 22.3.3 Attending and speaking at meetings with any Defendant or insurer as regards disposal of the Claims;
 - 22.4 May retain its own lawyer to keep informed of the progress of the Claims (including any pending or actual Action or Appeal) but only at the Funder's expense and with no right of such lawyer to interfere in the management or resolution of the Claims.
23. **Funder's risk:** The Funder bears the risk of loss of the whole or part of its Outstanding Funding to the extent that the Recovery (if any) is insufficient to repay the Outstanding Funding.
24. **Funder's liability:**
- 24.1 The Funder does not offer any opinion or recommendation on the merits of the Claims, or on the creditworthiness of any Defendant or any insurers of a Defendant, including that when the Funder undertakes Due Diligence, the Funder does so for its sole benefit and without liability to others.
 - 24.2 Nor does the Funder assume a duty of care or fiduciary duty in favour of the Scheme or any Members.

PART 7: EXIT FROM THE SCHEME

25. **Opting out by a Member:** If, and only if, applicable law or the Rules of Court (or similar) in which an Action is brought require that a Member have right to opt out of the Scheme, that Member may opt out in accordance with that right.
26. **Expulsion of a Member:** The Funder may expel a Member from the Scheme by so notifying the Member. The Funder may do so at its discretion, including but not limited to if:
- 26.1 That Member committed a breach of these rules not capable of remedy; or
 - 26.2 That Member fails to remedy their breach of these rules capable of remedy within 10 Business Days after notice from the Funder identifying the breach and requiring its remedy; or
 - 26.3 Any issues of fact or liability of that Member are not common to the other Members;
27. **Termination by the Funder:** This Member Agreement terminates if and when the Funder:
- 27.1 Notifies the Member that:
 - 27.1.1 The Due Diligence was unsatisfactory;
 - 27.1.2 In the Funder's opinion, a suitable Member with strong prospects of success in an Action is not willing to act as Representative;
 - 27.1.3 In the Funder's opinion, there are insufficient Members in the Scheme;
 - 27.1.4 The quantum of Claims is not sufficient for the Funder to commercially justify the likely costs of progressing the Action; or
 - 27.1.5 In the Funder's opinion, it has an irreconcilable and unavoidable conflict of interest in continuing to be party to the Scheme; or
 - 27.2 In its absolute discretion gives the Representative and/or all Members 15 Business Days written notice that the Funder will exit the Scheme; or
 - 27.3 In its absolute discretion gives the Member 15 Business Days written notice of termination of this Member Agreement; or
 - 27.4 Expels the Member that is party to this Member Agreement from the Scheme pursuant to rule 26.
28. **Consequences of termination by the Funder:**
- 28.1 If this Member Agreement is terminated by the Funder:
 - 28.1.1 Subject to clause 28.1.2, the Funder's obligation to pay Action Costs, any Adverse Costs, any security for costs or any other sum ceases effective on the date of termination, save for any Action Costs and/or Adverse Costs incurred up to and including the date of termination;
 - 28.1.2 If such termination is pursuant to clause 27.1 or 27.2, the Funder agrees to pay the Action Costs associated with any application to discontinue the Claims made within 28 days [Business Days] of the date of termination;

28.1.3 Termination of this Member Agreement does not affect the Funder's right to be paid from the Recovery the amounts referred to in rule 60, and this rule shall survive termination.

28.2 For the avoidance of doubt:

28.2.1 The Funder has no obligation to pay any security for costs, or part of security for costs, that is due to be paid on or before a date after the date of termination, including circumstances where the payment of security for costs is:

- (a) Ordered by the Court; or
- (b) Agreed between the parties to the Action

on a date before the date of termination.

28.2.2 Where the Funder terminates all Member Agreements pursuant to rules 27.1 or 27.2, the Funder ceases to be a party to the Scheme for the purposes of rule 60;

28.2.3 Where the Funder terminates a Member Agreement pursuant to rule 27.3 or 27.4:

- (a) Rule 28.1 only applies to the Member that receives notice under rule 27.3 or 27.4 and that Member's Member Agreement; and
- (b) The Funder does not cease to be a party to the Scheme for the purposes of rule 60, or otherwise.

29. **Run-out obligations:** A former party to the Scheme (whether as a Member or the Funder) remains bound by rule 28, 51, 52, 53 and rule 61.

PART 8: INPUT FROM MEMBERS

30. **Initial disclosures by Members:** During the Due Diligence Period, upon request by the Lawyers or the Funder, a Member must fairly and promptly disclose any likely equity, defence (including a defence by way of a right of set-off) or counter-claim a Defendant may have in relation to the Member's Claim, not common to all Claims, and known to the Member.

31. **Other input from Members:** A Member must:

31.1 Consistent with the diligent prosecution of the Action, use best endeavours to minimise the quantum of Action Costs and any Adverse Costs;

31.2 Keep and preserve any documents relating to the Action, the Claim and/or the Defendant;

31.3 Provide the Funder with:

31.3.1 All reasonable information requested by the Funder; and

31.3.2 Copies of all documents requested by the Funder that are in the possession or control of the Member and/or the Lawyers and/or obtained from, or provided to, the Defendant relating to the Action.

- 31.4 Immediately inform the Funder and the Lawyers of any information, circumstance or change in circumstance that is material to:
- 31.4.1 The operation of this Member Agreement;
 - 31.4.2 The prospects of success or failure of the Claim and/or the Action;
 - 31.4.3 The prospects of recovering the Recovery; or
 - 31.4.4 The distribution of the Recovery.
- 31.5 Promptly provide information, documents and full, frank and honest instructions to the Lawyers;
- 31.6 Do all things necessary to enable the Lawyers and/or the Representative to assist with diligently prosecuting the Action;
- 31.7 If required by the Lawyers, give written or oral evidence and, where appropriate, procure the Member's officers, servants and agents to give such evidence;
- 31.8 Consent to the Funder and/or a nominee of the Funder being present at any meetings or communications with any Defendant or other party for the purpose of negotiating or discussing a settlement of the Action;
- 31.9 Inform the Lawyers of any change in contact details;
- 31.10 Make payment to the Funder in accordance with rule 60;
- 31.11 Instruct the Lawyers to make payment to the Funder in accordance with rule 60; and
- 31.12 Act at all times with the utmost good faith.
- 31.13 Not, without the prior written consent of the Funder, communicate with the Defendant.

If a Member is a company or other body corporate, it must cause such of its officers or employees with personal knowledge of the facts or extent of the Claim to comply with the above provisions.

PART 9: CLAIMS

32. **Dealings with Claims:** Except with the prior written consent of the Lawyers and the Funder and other than in respect of the Prior Class Actions a Member may not:
- 32.1 Waive or compromise their Claim;
 - 32.2 Assign (at law or in equity) their Claim or contingent share of Recovery;
 - 32.3 Bring or permit to be brought or continue any proceeding which claims relief arising out of the same or similar facts pleaded in any Action, or any proceeding which could result in a reduction in the amount recoverable pursuant to any Action; or
 - 32.4 (Except one in favour of the Funder) grant a security interest over their Claim or contingent share of Recovery – disregarding the general lien at law held by the Lawyers.

If a Member's Claim or contingent share of Recovery is or becomes the subject of a security interest held by a third party (except such general lien as above), the Member must take promptly all steps required to ensure that the Funder's security interest has, and continues to have, priority over that third party security interest.

33. **Value of Claims:** If not finally determined in an Action, the value of Claims one against the other will be finally determined by the Lawyers. Absent any such determination, all Claims have equal value.

PART 10: DUE DILIGENCE

34. **Due Diligence:** During the Due Diligence Period:
- 34.1 The Funder will carry out Due Diligence; and
 - 34.2 If requested by the Funder, the Lawyers may carry out Due Diligence as to inform the Funder's own investigation.
35. **Funder's obligations:** Notwithstanding any other obligations to the Scheme, during the Due Diligence Period the Funder's obligation is limited to the payment of Due Diligence Costs in an amount not exceeding the sum specified in Item 5 of the Schedule. This rule does not prevent the Funder from exceeding that sum for Due Diligence Costs in its absolute discretion.
36. **Outcomes of Due Diligence:** The Funder may notify the Lawyers that outcomes of the Funder's Due Diligence were satisfactory. Notice so given is a "**Funding Confirmation Notice**".

PART 11: ACTIONS

37. **Management of Actions:** The Funder and the Representative must agree as to the strategy and tactics of prosecuting the Claims including:
- 37.1 Any matter related to settlement of the Action, including any decision as to the making or acceptance of an offer of settlement or compromise and whether to put the Claims to mediation before or after an Action is commenced;
 - 37.2 The Defendant/s to any Action;
 - 37.3 The forum for trial of the merits of an Action (a Court, arbitration, referral to an expert) - it being the intention when establishing the Scheme that an Action be brought in the Federal Court of Australia as a *representative proceeding* under Part IVA of the *Federal Court of Australia Act 1976* (Cth);
 - 37.4 Whether to take any steps at Court (such an order for pre-action discovery) before filing an originating application (or similar) at Court;
 - 37.5 Filing and service of any interlocutory application in any Action;
 - 37.6 Any step proposed to be taken that is likely to have a material effect on the Action, the Recovery, the Action Costs and/or the Adverse Costs;

- 37.7 Whether to proceed as a "test case" on any issues of fact or liability common to all Claims, or on a full trial of all Claims; and
- 37.8 The engagement of barrister/s and/or experts.

In the absence of agreement between the Funder and the Representative, the provisions of Part 18 shall apply.

PART 12: APPEALS

38. Funding of an Appeal:

- 38.1 Despite any other provision of these rules, the Funder is not obliged to fund or support an Appeal except if and to the extent the Funder notifies the Lawyers otherwise and in advance.
- 38.2 The Funder not funding an Appeal does not prejudice the Funder's right to payments from Recovery as may result from an Appeal, save that reasonable costs and expenses of the Appeal may be deducted before the payments rule 60 requires are made.

PART 13: FUNDING

39. **Funder's obligations:** Notwithstanding any other obligations to the Scheme, prior to the commencement of the Due Diligence Period, the Funder shall have no obligation to fund the Actions or make any payments in respect of the Scheme. During the Due Diligence Period the Funder's obligation is limited to the payment of Due Diligence Costs in an amount not exceeding the sum specified in Item 5 of the Schedule. This rule does not prevent the Funder from exceeding that sum for Due Diligence Costs in its absolute discretion.
40. **Cap on funding:** If the Funder remains a party to the Scheme following the completion of the Due Diligence Period, subject to the other rules, so long as the Funder remains party to the Scheme the Funder must fund one or more Actions for sums not exceeding in aggregate the Cost Limit.
41. **Cost Limit:** The Lawyers and the Funder will agree a Cost Limit. The Cost Limit is confidential. The Lawyers are to advise the Members when the Cost Limit has been exceeded.
42. **Form of funding:** Funding by the Funder may take the form of:
- 42.1 Payment of Action Costs;
- 42.2 Payment of Adverse Costs; and
- 42.3 Payment of security for Adverse Costs which may include procuring ATE Insurance or providing a Deed of Indemnity.
43. **Use of funds:** The Scheme may use funding from the Funder only towards defraying Action Costs and Adverse Costs incurred or to be incurred or, where applicable, in providing security for Adverse Costs.

44. **Evidence of funding:** A certificate signed by any then director of the Funder as to the total and / or composition of the Outstanding Funding on a certain date is sufficient evidence of the matter unless proved incorrect.
45. **Prior funding:** These rules govern any moneys provided by the Funder for the purposes defraying any Action Costs or Adverse Costs before a Member becomes a Member.
46. **Cessation of funding:** To avoid doubt, the Funder is not obliged to fund or otherwise support any Action (or Appeal) after the Funder ceases to be party to the Scheme.

PART 14: ATE INSURANCE

47. **ATE Insurance:** The Funder may procure ATE Insurance for the benefit of, and at a cost to, the Scheme.
48. **Insurance terms:** The Funder has the sole decision:
 - 48.1 Whether to obtain ATE Insurance; and
 - 48.2 The terms and conditions of any ATE Insurance obtained (including exclusions from cover, the premium and when payable, whether the "insured" would be named as the Funder, the Representative/s, or the Members as a class).
49. **Unwinding the insurance:** If the Funder ceases to be a party to the Scheme and is personally liable to pay the premium of ATE Insurance not yet paid to the insurer, the Funder would endeavour to convey the policy and responsibility for that payment to a nominee of the Lawyers, and failing that the Funder may cancel the policy.
50. **ATE Insurance premium:** The premium for ATE Insurance (before GST and stamp duty) is customarily between 25% and 45% of the likely quantum of Adverse Costs. To the extent that the premium (or any part thereof) is paid by the Funder it is to be an Action Cost. To the extent that the premium (or any part thereof) is deferred, it is to be paid out of the Recovery and is not to be an Action Cost.

PART 15: CONFIDENTIALITY

51. **Privileged communications:** At all times pending final resolution of the Claims, information concerning the Scheme, the Claims or an Action exchanged between any of the Lawyers, a Member and / or the Funder is subject to legal professional privilege or common interest privilege. Except upon the Lawyers' prior written recommendation, no party must allow anything that would waive that privilege over any such information.
52. **Duty of confidence:** At all times pending final resolution of the Claims, a party who obtains information because they are, or have been, a party to the Scheme must not improperly use the information to cause detriment to the Scheme or to another person who is or was a party to the Scheme and the parties agree:
 - 52.1 The Member Agreement is strictly confidential and must be protected from disclosure by reason that disclosure would or may provide the Defendant with a strategic or tactical advantage in any Action;
 - 52.2 Any information concerning the Claim:

- 52.2.1 Is disclosed, provided, generated or exchanged:
- (a) On a strictly confidential basis;
 - (b) Solely for the purposes of the Member Agreement;
 - (c) In contemplation of, or in the conduct of, legal proceedings in relation to the Claim; and
- 52.2.2 May be subject to legal professional privilege.
- 52.3 The Member does not by any disclosure of Claim Information to the Funder and/or other Members waive any legal professional privilege;
- 52.4 For the purposes of the Member Agreement, the Members have a common interest in the sharing of Claim Information;
- 52.5 A party must not disclose any information concerning a Claim or the Member Agreement to any third party (except the Lawyers) unless such disclosure is:
- 52.5.1 Required by law;
 - 52.5.2 Authorised by the Member Agreement;
 - 52.5.3 Made on a confidential basis with the Funder's prior written consent to the fact and contents of that confidential disclosure;
 - 52.5.4 Made by the Funder for the purposes of obtaining legal or financial advice or assistance; or
 - 52.5.5 Required by the rules of any financial market on which the Funder is listed.

This rule survives the termination of the Member Agreement.

53. **Confidential settlement:** If to the knowledge of a party to the Scheme the Claims are resolved on terms that are confidential, that party must adhere to such confidentiality.

PART 16: RESOLUTION OF THE CLAIMS

54. **Resolution of Claims out of Court:** The Lawyers, with the Funder's agreement, have irrevocable authority to, whether before or during an Action:
- 54.1 (With prior approval of the Representative/s or, if there is no Representative, with the agreement of at least 75% in number of the Members) abandon the prosecution of the Claims on the written opinion of senior counsel (the costs of which would be a Scheme Expense) in terms that prosecution of the Claims is likely to either fail or be unprofitable to the Members; and
 - 54.2 (Subject to the next following rule) resolve the Claims by negotiation.
55. **Offers to settle:** If the Scheme proposes to make, or receives, an offer to settle the Claims (in whole or in part) and there is a dispute between the Representative and the Funder whether such offer should be made or accepted:

- 55.1 The Scheme (via the Lawyers) must seek the written opinion of senior counsel (the costs of which would be a Scheme Expense) whether settlement on the terms proposed is fair and reasonable; and
- 55.2 If in the senior counsel's opinion such settlement is fair and reasonable, the Lawyers will do all that is necessary to arrange settlement on those terms (including seek an order of the Court approving settlement if so required by the Rules of Court (or similar)).
56. **Senior counsel:** In rules 54 and 55, "**senior counsel**" means the most senior counsel retained by the Lawyers in respect of the Claims (or an Action, if then on foot). If no senior counsel has been retained, the senior counsel must be a barrister selected by agreement of the Funder and the Representative or, in the absence of such agreement, an individual selected by the President of the Law Society of the State at the instigation of the Lawyers.

PART 17: RECOVERY

57. **Payments in:** Except as a Court may order otherwise without instigation by any Members, in the first instance any and all Recovery is to be paid or conveyed to the Lawyers on trust for the Members and the Funder.
58. **Non-cash Recovery:** Any Recovery conveyed to the Lawyers in form other than money must be converted promptly into money at a market price, which money (minus costs of sale or other conversion) is then included in the Recovery.
59. **Member's direction to Lawyers:** Each Member shall give an irrevocable direction to the Lawyers, in a form approved by the Funder, requiring the Lawyers to apply the Recovery promptly in as set out in rule 60. The Member appoints the Funder as its attorney should the Member fail to provide this irrevocable direction to the Lawyers.
60. **Application of Recovery:**
- 60.1 In consideration of the Funder agreeing to enter into this Member Agreement and performing its obligations, the Member agrees that the Funder is entitled to receive payment of an amount equal to the Funder's Interest.
- 60.2 As soon as reasonably practicable the Lawyers are to take all steps necessary to distribute the Recovery in the following priority:
- 60.2.1 First, in paying any ATE Insurance premium (or any part thereof) and GST that is payable out of the Recovery pursuant to any ATE Insurance policy;
- 60.2.2 Next, in defraying Action Costs and / or Adverse Costs incurred but yet to be satisfied;
- 60.2.3 Next, in payment of the Outstanding Funding and the Funder's Interest* to the Funder (and the Funder has a charge over all Recovery as security for such payment);
- 60.2.4 Next, in payment of Action Costs which exceed the Costs Limit and any additional legal costs (including any uplift fee) payable under the terms of engagement between the Lawyers and the Representative; and

- 60.2.5 Next, in payment to Members in the proportion that the value of their respective Claims bears to the aggregate value of the Claims of all Members.

* If at the time the Recovery is fully earned the Funder is no longer party to the Scheme, the Funder's Interest is not payable to the Funder from the Recovery.

PART 18: DISPUTE RESOLUTION

61. **Procedure:** Subject to rule 55, the procedure under this Part must be applied to any dispute between any parties to the Scheme in connection with the Scheme, except any decision by the Funder to cease to be party to the Scheme.
62. **Saving:** The procedure under this Part does not prejudice the right of a party:
- 62.1 To seek injunctive relief to prevent immediate and irreparable harm; or
- 62.2 To terminate a party being party to the Scheme where the basis for doing so is not in dispute.
63. **Step 1:** A party to the dispute (**Party 1**) must promptly notify each other party to the dispute (**Party 2**):
- 63.1 The nature of the dispute, giving reasonable details; and
- 63.2 What action (if any) Party 1 thinks will resolve the dispute.
64. **Step 2:** A Party 1 who complies with the previous step may at the same or a later time notify each Party 2 that Party 1 requires a meeting at a mutually convenient location in the State within 5 Business Days after the giving of such notice. In that case, each party to the dispute must either attend personally or send to the meeting an agent with authority to resolve the dispute, and at the meeting make a good faith attempt to resolve the dispute.
65. **Step 3:** Despite whether any previous step was taken, a dispute not resolved within 20 Business Days must be referred to arbitration, as to which:
- 65.1 There must be only 1 arbitrator, being an individual agreed by the parties in dispute or, if they cannot agree within 5 Business Days, an arbitrator nominated by the then Chairperson of that Chapter of The Institute of Arbitrators and Mediators Australia of the State;
- 65.2 The role of the arbitrator is to resolve the dispute and make decisions binding on the parties in dispute;
- 65.3 The arbitration must take place in the State;
- 65.4 A party to the dispute must cooperate in arranging and expediting arbitration;
- 65.5 A party to the dispute must either attend personally or send to the arbitration an agent with authority to resolve the dispute,
- 65.6 The parties in dispute may provide evidence and give written and verbal submissions to the arbitrator within the time set by the arbitrator;
- 65.7 The arbitrator must:

- 65.7.1 Consider the evidence and submissions;
 - 65.7.2 Take into account the economics of the matter, from both the perspective of the Funder and the Members, including having regard to actual and likely Action Costs, estimated and likely Adverse Costs, the likely amount and recovery of damages or other monetary compensation in respect of Claims;
 - 65.7.3 Decide the dispute; and
 - 65.7.4 Give written reasons to each party to the dispute;
- 65.8 Subject to these rules, the arbitrator must fix the rules of arbitration;
- 65.9 The costs and expenses of the arbitrator, and of each party to the dispute, must be borne as the arbitrator decides.
66. **Complaint against the Funder:** Where a Member has a complaint against only the Funder, the Member may initiate the Funder's internal dispute resolution system as described in the Funder's Complaints Policy (copy available upon request).

PART 19: REGULATORY MATTERS

67. **AFSL not required:** Under regulation 5C.11.01 of the *Corporations Regulations 2001*, the Scheme is not a managed investment scheme for the purposes of the *Corporations Act 2001* (Cth), and under regulation 7.6.01(1)(x) of the *Corporations Regulations 2001* (Cth) the Funder need not hold an Australian financial services licence for the purposes of the Scheme. If at any time, in the Funder's reasonable opinion, either or both of those exemptions cease to operate, the Funder may elect to terminate further funding to the Scheme, without prejudice to rights and obligations then accrued. In that case, the Funder remains entitled to recover the Outstanding Funding from any later Recovery.
68. **Funding agreement:** These terms constitute a funding agreement between the Members and the Funder for the purposes of regulation 5C.11.01(b)(v) of the *Corporations Regulations 2001* (Cth).
69. **Conflicts of interest:** the Funder declares that it holds, and so long as exempted under regulation 7.6.01(1)(x) of the *Corporations Regulations 2001* (Cth) and as party to the Scheme will hold, adequate practices for managing any conflict of interest that may arise in relation to activities that may be undertaken by the Funder or an agent of the Funder, in relation to the Scheme, where "adequate practices" has its meaning in regulation 7.6.01AB(4) of the *Corporations Regulations 2001* (Cth).
70. **National Credit Code:** Under ASIC Class Order [CO 13/18] made under the *National Credit Code* (Cth), the Funder's provision of credit to the Scheme / Members is excluded from that Code.

PART 20: OTHER MATTERS

71. **PPSA:**
- 71.1 At any time, without notice to or consent of any Member/s, the Funder in relation to the charge over the Recovery given effect by rule 60.2, may at its cost make

application to register one or more financing statements and / or one or more financing change statements against any Member/s under the *Personal Property Securities Act 2009* (Cth).

71.2 If at any time the Funder so requests, within 5 Business Days a Member must give to the Funder that information about the Member that that Act and Regulations under that Act would require for the Funder to register an effective financing statement with respect to the charge.

71.3 If at any time after an above registration against a Member any of the Member's details for the purposes of an effective registration change, that Member promptly must provide up-to-date details to the Funder.

72. Privacy:

72.1 The Members acknowledge the Funder may collect and use personal information (within the meaning given in the *Privacy Act 1988* (Cth)) about Members.

72.2 The Funder will manage and use that personal information only in accordance with that Act and the Funder's Privacy Policy.

72.3 A Member is requested to see Australian Privacy Principle 5 – Notification of the Collection of Person Information, as annexed to their Member Agreement.

73. Joint Members: In case of joint Members:

73.1 Either of them is able to bind the other/s in relation to the Scheme;

73.2 The Scheme may pay their share of any Recovery to any one or more of them; and

73.3 Notice to or from one of them is notice to or from all.

74. A Member acting as a fiduciary: Where a Member enters into their Member Agreement as a trustee, representative or in other fiduciary capacity (whether or not known to the Lawyers or the Funder):

74.1 That Member warrants that the Member entered into that Member Agreement in the proper performance of their duties as fiduciary;

74.2 The Member ceasing to act in that fiduciary capacity does not affect their past or continuing personal obligations under that Member Agreement; and

74.3 Except as required by law, the Scheme will not recognise any person as holding a Claim non-beneficially and the Scheme is not bound to recognise (even when having actual notice) any equitable, contingent, future or partial interest or any other right in respect of a Claim except the Member's absolute right of ownership.

75. Notices: To be effective, a notice under these rules must be in writing, name the Scheme, and be given either:

75.1 By hand delivery;

75.2 By mail / email to the recipient's mailing address / email address stated on the Member Agreement or as last notified; or

75.3 As permitted by legislation applicable to the recipient.

If a Member's contact details change, the Member must notify promptly the change to the Lawyers.

AUSTRALIAN PRIVACY PRINCIPLE 5 – NOTIFICATION OF THE COLLECTION OF PERSONAL INFORMATION

LCM Operations Pty Ltd (ACN 616 451 033) (**the Funder**) is bound by the *Privacy Act 1988* (Cth) (**Act**) and the Australian Privacy Principles (**APPs**).

To provide its services, the Funder collects and retains personal information including (but not limited to):

- your name, current address, occupation and contact information;
- certain sensitive information about you, such as information relating to your racial or ethnic origin, political opinions, membership of a political association which may be relevant to Funder's provision of services to you;
- billing, credit card information and other credit information including default information and information about court proceedings; and
- government issued identifiers, such as Tax File Numbers and Australian Business Numbers.

The Funder may collect your personal information from other parties and publicly available sources, such as from clients (if necessary when providing services to them), authorised representatives, the internet and social media.

The Funder collects your personal information in order to:

- offer and provide litigation funding to you;
- manage and account for its services, including recovering any debt you owe the Funder;
- manage its relationships with you and its other clients;
- provide you with information regarding legal developments, products or services that may be of interest to you; and
- facilitate its internal business operations, including fulfilling legal requirements and professional obligations.

If you do not give your personal information to the Funder it will affect its ability to meet its obligations to you.

The Funder may disclose your personal information:

- to courts;
- to any person where necessary or desirable in connection with its provision of services, such as regulatory authorities, or other partners or advisors;
- within the Funder;
- to any person, body or agency where the Funder is required or allowed by law;
- to its external service providers and advisers on a confidential basis; and
- otherwise with your consent (which may be express or implied).

The Funder may disclose your personal information to overseas recipients. As a result, your personal information may be disclosed to a recipient in a foreign country, including, but not limited to, the United Kingdom, the United States of America, Singapore, the Isle of Man and Malta.

The Funder utilises cloud-based software for case management, which is necessary to provide its services to you. The service hosting the software is maintained in the United States of America, which country imposes similar privacy obligations to that of Australia.

If you believe the Funder has not complied with its obligations under the Act or the APPs, you can make a complaint to the Funder.

The Privacy Policy of the Funder can be accessed at <<http://www.lcmfinance.com>>. The Privacy Policy includes important information about:

- contact details;
- how you may access your personal information held by the Funder, and how you can seek a correction of that information; and
- how you may complain about any failure by the Funder to comply with the Act, including the APPs, and how the Funder will deal with such a complaint.