

Litigation Funding Agreement Covid-19 Vaccine Class Action

BETWEEN:

Dr Melissa McCann

AND

Lead Applicants

N R Barbi Solicitor Pty Ltd
Suite 15, 900 Brunswick Street
New Farm Qld 4005
Phone: (07) 3358 5800

Registration & Acceptance of Terms Form

Covid-19 Vaccine Class Action

Name:		
Street Address:		
Phone:		
Email:		
SIGNED by or on behalf of and with the authority of the Applicant:		
SIGNATURE	PRINT NAME	DATE
Please confirm the capacity in which you are signing this document:	<ul style="list-style-type: none"> • In my personal capacity; • As executor or representative of the Estate of the Claim; or • As agent of the Claimant 	
SIGNED on behalf of and with the authority of:		
SIGNATURE	PRINT NAME	DATE

LITIGATION FUNDING AGREEMENT

THIS IS AN AGREEMENT BETWEEN:

Dr Melissa McCann (“the Funder”)

AND

the Lead Applicants (“the Applicant”)

RECITALS:

1. The Applicant and numerous Other Funded Persons have one more Claims against:-
 - a. Secretary of The Department of Health – Brendan Murphy;
 - b. Former Deputy Secretary of Health Products Regulation Group – Adjunct Professor John Skerritt;
 - c. Chief Medical Officer – Professor Paul Kelly;
 - d. Minister For Health and Aged Care – Mark Butler;
 - e. Former Minister for Health and Aged Care – Greg Hunt (24 January 2017 – 23 May 2022); and
 - f. The Commonwealth of Australia (“the Respondents”).
2. Proceedings are proposed to be commenced against the Respondents in respect of some or all of the Claims of the Applicant and the Other Claims of the Other Funded Persons in order to prosecute and resolve the Claims and the Other Claims.
3. The Applicant and the Funder have agreed that the Funder will provide funding for the Proceedings on the terms set out in this Agreement (hereafter “the LFA”).
4. The Funder proposes to appoint the Lawyers to provide the Legal Work to the Applicant and to Other Funded Persons on the terms set out in the document entitled Terms of Engagement attached to this LFA as Schedule 1.
5. The Applicant acknowledges that it has, by virtue of its obligations and entitlement set out in this LFA, an interest in the Claims, the Proceedings, and any Resolution Sum.

AGREEMENT:

1. Investigation, Monitoring, and Reporting

- 1.1 The Applicant acknowledges that by virtue of the terms of this LFA, the Funder has an interest in the outcome of any Proceedings.

1.2 The Applicant consents to the Funder:

- a. Obtaining access to material documents and statements concerning the Claims and the Proceedings from the Lawyers, including any documents obtained by way of discovery, subpoena, or other coercive power of the Court which may lawfully be accessed by the Funder for the purpose of:
 - i. Investigating the evidentiary basis for the Claims (documentary and oral);
 - ii. Collating the material documents and statements;
 - iii. Monitoring the process of the Proceedings; or
 - iv. Evaluating the settlement offer.
- b. Investigating, designing, and implementing any Alternative Dispute Resolution Process for the Resolution of the Claim and the Other Claims, other than through legal Proceedings;
- c. Investigating any other matter that the Funder determines is relevant to its financial interest in the Claims and the Proceedings; and
- d. Investigating the capacity of the Respondents to meet any award or order made against them relating to the Claims and/or Proceedings; and
- e. Otherwise communicating with the Lawyers in relation to the progress of the Proceedings.

1.3 The Applicant hereby authorises the Funder to seek and obtain any information and documentation which the Funder believes may be relevant to the Claims from any person or entity.

1.4 The Applicant consents to the Funder providing a copy of this LFA to third parties who request evidence of the authority granted to the Funder pursuant to sub-clause 1.2.

2. The Lawyers, Retainer

2.1 The Funder will appoint the Lawyers to provide Legal Work to the Applicant and Other Funded Persons pursuant to the Terms of Engagement.

2.2 The Lawyers will charge for Legal Costs and Disbursements in accordance with the Terms of Engagement and Legal Costs agreement.

2.3 The Applicant agrees that if there are any inconsistencies between the terms of the Legal Costs Agreement between the Applicant and the Lawyers and this LFA or the Terms of Engagement, the terms of this LFA or the Terms of Engagement as applicable will prevail.

2.4 In the event that the Terms of Engagement are amended by agreement between the Funder and the Lawyers, the Funder will promptly provide written notice to the Claim of the amendment(s).

3. Proceedings and Control of Litigation

3.1 The Applicant and the Funder agree that the Lawyers may appoint one of more representatives with respect to some of all of the Claims and/or Other Claims.

3.2 Subject to this clause and clauses 4, 5, and 13 the Representative will give binding instructions to the Lawyers and make binding decisions on behalf of the Applicant in relation to the Claims and Other Claims up to the delivery of judgement on the common issues raised by the Proceedings, finalisation of a settlement or discontinuance of the Proceedings.

3.3 In the event that a Representative relinquishes or is removed from their representative role, or the Applicant and the Funder are subject to any order of the Court, the Lawyers may appoint one or more replacement Representatives with respect to the relevant Claims and/or Other Claims.

3.4 The Applicant and the Funder agree that the Funder does not have control over, or the right to make final decisions in any of the Proceedings, other than as outlined in this LFA.

3.5 The Funder may give day to day instructions to the Lawyers on all matters concerning the Claims and/or Proceedings, however, subject to this clause and clauses 4, 5 and 13, the Representative in any Proceeding may override any instruction given by the Funder regarding that Proceeding by giving instructions directly to the Lawyers.

3.6 Unless otherwise dealt with by this LFA, if the Lawyers notify the Funder and the Applicant that the Lawyers believe that circumstances have arisen such that they may be in a position of conflict with respect to any obligations they owe to the Funder and those they owe to the Applicant, then the Lawyers' obligations to the Applicant prevail. For the avoidance of doubt, the Lawyers can continue to offer advice to and take instructions from the Applicant in such circumstances.

3.7 Nothing in sub-clause 3.5 or sub-clause 3.6 entitles the Applicant to breach, or authorises the breach of, any terms of this LFA.

3.8 The Applicant acknowledges that it will be bound by an order of the Court in any Proceeding in which the Applicant is represented regarding its rights with respect to the Claims, including delivery of Judgment on common issues, the making of common findings, or approval of a Settlement.

3.9 The Funder will not retain the Lawyers as their solicitors for any purpose connected with this LFA or connected with any Proceedings to which this LFA applies.

4. Settlement decisions

4.1 Without limiting the authority of the Representative pursuant to sub-clause 3.2 or the rights of the Applicant pursuant to sub-clause 4.3, the Applicant authorises the Representative to make or take any action constituting a Settlement Decision (and if the Applicant is the Representative, the Applicant agrees to take such action on its own behalf) provided that the Lawyers have advised that the Settlement Decision is reasonable in all the circumstances.

4.2 The Lawyers must provide clear and full disclosure and advice to the Applicant about the proposed Settlement and its terms at least 14 days prior to the proposed Settlement becoming binding on the Applicant. If applicable, the Lawyers must provide clear and full disclosure of the terms of the proposed Settlement to the Court prior to the proposed Settlement becoming binding on the Applicant.

4.3 In recognition of the fact that the Funder has an interest in the Resolution Sum, if:

a. the Representative:

- i. wants to settle a Proceeding for less than the Funder considers appropriate; or
- ii. does not want to settle a Proceeding when the Funder considers it appropriate to do so and/or on the terms that the Funder considers appropriate.

b. the Applicant:

- i. wants to settle their Claim or Claims for less than the Funder considers appropriate; or
- ii. does not want to settle the Claim or Claims when the Funder considers it appropriate to do so and/or on the terms that the Funder considers appropriate.

then the Applicant agrees that the Funder and the Representative and/or Applicant, as applicable will seek to resolve their difference of opinion in accordance with the Settlement dispute Resolution procedure set out at sub-clause 13.3.

4.4 Where there is a proposed Settlement of any Claims not yet the subject of Proceedings, which also involves the Settlement of Other Claims, the Applicant agrees to be bound by that proposed Settlement and agrees that the Lawyers are instructed to do all that is necessary to settle the Claims as part of that proposed Settlement, provided:

- a. advice is received from the most senior counsel of those retained by the Lawyers in respect of the Proceedings and the Claims (or if no counsel has been retained, Independent Counsel appointed and suitably briefed by the Lawyers) that the proposed Settlement is fair and reasonable in all of the circumstances; and
- b. the Lawyers will determine the value of each Claim for the purposes of this sub-clause.

4.5 Counsel may proceed as he or she sees fit to inform himself or herself before forming and delivering his or her opinion pursuant to sub-clause 4.4 and shall have regard to the matters set out in Schedule 2. 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 Funder (and in the case of a Class Action that has commenced, the Representative) agree otherwise.

4.6 The costs of counsel in providing the opinion referred to in sub-clause 4.5 will be paid by the Funder and will form part of the Project Costs.

5. Appeal Decisions

5.1 The Funder retains full discretion over whether it provides funding for any litigation in appeal of a decision made by a Court in any Proceeding. If the Funder does elect to fund an Appeal, the Funder will pay the Legal Costs and Disbursements in connection with the Appeal and will pay any Adverse Costs Order if the Appeal is unsuccessful. The costs of any Appeal will form part of the Project Costs.

5.2 If there is a decision in any Proceeding (whether final or interlocutory in nature) which is not in favour of the Applicant or Representative, and the Funder wishes an Appeal to be lodged then, subject to the Representative's instructions, the Lawyers will lodge and prosecute the Appeal in the name of the Representative.

5.3 If there is a decision in any Proceeding (whether final or interlocutory in nature) in favour of the Applicant or Representative, the Respondent appeals, and the Funder wishes to defend the appeal then, subject to the Representative's instructions, the Lawyers will defend the Appeal in the name of the Representative.

6. Obligations of Applicant

6.1 The Applicant must:

- a. provide full and honest instructions to the Lawyers, including, without limitation, full and accurate instructions in respect of the information required to be supplied in the Registration & Acceptance of This Form;
- b. do anything reasonably requested by the Lawyers promptly in such manner as to avoid unnecessary cost and delay;
- c. inform the Lawyers and the Funder of any change in contact details or any information, circumstance or change in circumstances likely to affect any issue in any of the Proceedings;
- d. follow all reasonable legal advice given by the Lawyers and/or counsel retained by the Lawyers in relation to the Proceedings; and
- e. if costed by the Lawyers, provide a written statement in relation to the Claims, give evidence and where appropriate procure its officers, servants, and agents to do so.

6.2 The Applicant agrees to keep and preserve any documents relating to the Respondents, the Proceedings and/or the Claims that the Applicant has in his, her or its possession, custody or control and the Applicant:

- a. will provide to the Lawyers all information and documents relevant to the Proceedings and the Claims if and when so requested;
- b. authorises the Lawyers, without waiving privilege, to provide the information and documents referred to above to the Funder; and
- c. if ordered to do so by a Court in Proceedings relevant to its Claims, authorises the Lawyers to provide the information and documents to the Respondents and any third party the subject of an order of the Court.

6.3 The Applicant agrees that all information, communication or documents provided to it at any time by the Lawyers, the Funder or their respective officers, servants or agents in relation to the Claims:

- a. is or may be, and will be treated as, confidential information within the meaning of equity, and attracts privilege within the meaning of Part 3.10 of the *Evidence Act 1995* (Cth); and
- b. may be subject to joint interest privilege that the Applicant is not at liberty to waive.

6.4 The Applicant:

- a. will immediately notify the Funder if the Applicant is requested or required to disclose any information relating to the negotiation, terms or performance of this LFA and if so requested by the Funder and will take such steps as may reasonably be available to prevent disclosure of such parts of the information as the Funder may nominate;
- b. will not disclose to any person, save for its legal and financial advisors for the purpose of obtaining confidential legal or financial advice, or the Funder, any information:
 - i. to which sub-clause 6.3 applies;
 - ii. to which Privilege or obligations of confidence attach; or
 - iii. which is or may be protected from disclosure by reason that disclosure would or may provide the Respondents with a strategic or tactical advantage in any Proceeding;

save in accordance with advice from the Lawyers for the purposes of the prosecution of those Proceedings or the prior written consent of the Funder (if the information was provided by it), or the Lawyers if the information was provided by them).

6.5 The obligations in sub-clause 6.4 are continuing obligations.

6.6 The Applicant will not during the period of this LFA:

- a. have any communication with the Respondents, 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;
- b. disclose to the Respondents any information of a kind referred to in sub-clause 6.5;
- c. terminate the Applicant's instructions to the Lawyers or instruct other Lawyers unless this LFA is terminated in accordance with clause 16.

6.7 The Applicant hereby authorises the Lawyers to make any application in those Proceedings which are taken for the benefit of the Applicant for an order permitting officers, servants or agents of the Funder to obtain copies of documents obtained in those Proceedings by subpoena, discovery, notice to produce, call or other process upon such terms and conditions as the Court may deem appropriate. Without limiting anything else in this LFA the costs of and incidental to such application and the costs of inspecting, copying and reviewing any documents permitted to be provided to the Funder under this clause shall form part of the costs for which the Funder is liable to pay under this LFA.

6.8 For the duration of this LFA, the Applicant irrevocably instructs the Lawyers to:

- a. Comply with all orders of the Court and all statutory provisions, regulations, rules and directions which apply to the Applicant in relation to the Claims and the Proceedings;
- b. keep the Funder fully informed of the progress of any Proceedings relevant to the Claims of the Applicant;
- c. immediately inform the Funder of all Settlement offers or offers to engage in any Alternative Dispute Resolution Process received from the Respondent and allow the Funder the opportunity to attend any Alternative Dispute Resolution Process agreed with any Respondent;
- d. on behalf of the Applicant, take any step necessary to give full effect to and enforce any Settlement reached in accordance with the terms of the LFA and if approved by the Court (if applicable),

and this sub-clause is evidence of those instructions.

7. Confidentiality and Provision of Documents

7.1 Unless specifically prohibited by the terms of a Court order or another professional obligation, the Lawyers will provide to the Funder a copy of any document obtained in any Proceeding by way of discovery, subpoena or any other coercive power of the Court, subject to the Funder, its officers and employees' implied undertaking given to the Court.

7.2 In providing to the Funder any documents or information about the Claims and the Proceedings, the Applicant does not intend to waive any Privilege that may attach to such documents or information.

7.3 The Funder and the Applicant agree that all information, communications and documents provided to it or that is generated by the Funder in the course of the Project or that is provided to it by the Lawyers or any counsel instructed by the Lawyers, is provided, acquired or generated in circumstances where the Applicant is contemplating, participating in or conducting litigation against one or more of the Respondents.

7.4 The Funder and the Applicant acknowledge that all information referred to in sub-clause 7.1 is, or may be, and will be treated as, confidential information within the meaning of equity, and attracts privilege within the meaning of Part 3.10 of the Evidence Act 1995 (Cth); unless already in the public domain. The Funder agrees to preserve that confidentiality and privilege unless disclosure is authorised, agreed or contemplated by this LFA, or is otherwise required by law.

7.5 Where any information is provided to the Funder they shall:

- a. adopt proper and effective procedures for maintaining the confidentiality and safe custody of the information;
- b. ensure that access to the information is only provided to the Funder's staff who are engaged in the functions for which the information was provided to the Funder;
- c. only use the information for purposes for which the information was provided; and
- d. not disclose the information contained therein to any person other than the Lawyers or counsel retained in any Proceedings.

8. Disclosure of information

8.1 The Applicant warrants that, to the best of the Applicant's knowledge, at the date of this LPA there is no information in the custody, possession or control of the Applicant which has been requested and is materially relevant to the Claims, the outcome of the Proceedings or the potential for any judgment Sum to be recovered in respect of the Claims, which has not been disclosed to the Funder.

8.2 If, after the date of this LFA, the Funder requests any further information or the Applicant becomes aware of any information which has or may have a material impact on the Claims, the Proceedings or the potential for any judgment Sum to be recovered, the Applicant will immediately inform the Funder of that information.

9. Funding and Project Costs

9.1 The Funder will fund the Project Costs of the Applicant and other Funded Persons on the terms of this LFA and the Terms of Engagement, subject to the following conditions:

- a. the Applicant meeting its obligations under this LFA;
- b. the Funder retains its rights of termination of this LFA and Other Funding Agreements under clause 15.

9.2 If the Respondents make any payment by way of costs during the course of any Proceedings then such payment will be made into the Trust Account on trust for the Funder and may be utilized by the Funder in paying or reimbursing Project Costs in that Proceeding and by the Lawyers in paying or reimbursing the Remaining Costs. The Lawyers will make payment of such monies in accordance with this LFA as directed by the Funder from time to time.

10. Receipt of Resolution Sum

10.1 The Applicant and the Funder agree that the Lawyers are authorised to:

- a. receive any Resolution Sum;
- b. immediately pay any Resolution Sum into the Trust Account kept for that purpose;
- c. maintain separate records for each Resolution Sum arising from the Proceedings; and
- d. pay out of the Trust Account all payments referred to in sub-clauses 11.4(a) to 11.4(d) (inclusive) upon cleared funds becoming available and a determination of the amounts owing to each Applicant.

10.2 The Applicant consents to:

- a. any Resolution Sum comprising money being combined in the Trust Account with other Resolution Sums comprising money under Other Funding Agreements; and
- b. the appointment of the Lawyers or any other person as advised by the Lawyers as Administrators of any scheme for the distribution of any Resolution Sum (with fees to be charged on the same basis as fees for Legal Work).

10.3 The Lawyers will hold that part of the Resolution Sum assigned and disposed of or otherwise due to the Funder under this LFA on trust for the Funder.

10.4 Subject to the instructions of both the Representative and the Funder, the Lawyers are authorised to make arrangements for an alternative method for distribution of the Resolution Sum, as long as that process requires the deposit of that part of the Resolution Sum assigned and disposed of or otherwise due to the Funder under this LFA into the Trust Account.

11. Distribution of Resolution Sum

11.1 Immediately upon Resolution, the Funder is entitled, as assignee under the Assignments, to be paid from any Resolution Sum an amount (including any applicable GST) equal to the Applicant's share of the Project Costs incurred by the Funder in the Proceedings and/or Settlement to which the Resolution Sum relates up to the date of Resolution.

11.2 The Applicant hereby assigns and disposes to the Funder, as consideration for the provision of funding for the Project Costs, that part of any Resolution Sum equal to the amount referred to in sub-clause 11.1.

11.3 Upon Resolution, but subject to sub-clause 11.4:

- a. the Lawyers are entitled to be paid from the Resolution Sum the Remaining Costs that have been incurred under this LFA and in accordance with the Terms of Engagement, in respect of the performance of Legal Work to date; and
- b. any Administrator is entitled to be paid from the Resolution Sum any Administration Expenses.

11.4 Subject to any Court order, the Applicant authorises the Lawyers to pay from the Resolution Sum:

- a. first, to the Funder, any amounts referred to in sub-clause 11.1;
- b. second, to the Lawyers, any amounts referred to in sub-clause 11.3(a);
- c. third, to any Administrator, any amounts referred to in sub-clause 11.3(b); and
- d. fourth, subject to clause 11.9, the balance to the Applicant and Other Funded Persons (whose Other Claims are the subject of the Resolution Sum) on a pro rata basis by reference to the amount of the Claim and the Other Claims the subject of the Resolution Sum, such amount to be determined in each case by the Lawyers (with, if necessary, the assistance of the Administrator).

11.5 The Applicant and the Funder agree that the Funder's total entitlement under the assignments made pursuant to subclause 11.2 cannot exceed the total amount of the Resolution Sum after deducting any amounts payable from the Resolution Sum pursuant to sub-clause 11.3.

11.6 If, in spite of sub-clause 10.1, but subject to sub-clause 10.4, the Applicant directly or indirectly receives all or any part of the Resolution Sum, the Applicant will pay it over to the Lawyers to be paid into the Trust Account and dealt with on the terms of this LFA.

11.7 The obligation in sub-clause 11.6 is a continuing obligation and survives any Termination of this LFA save for a termination under sub-clause 19.1.

11.8 The Funder may assign, transfer and otherwise grant participations or sub-participations in all or any part of the benefit of this LFA, including its interest in the Resolution Sum and the assignments under sub-clause 11.2.

11.9 In the event that the Claims are to be, or are, Settled by way of mediation or conciliation over a period of time which is greater than 4 weeks in duration, the Lawyers may withhold from the distribution specified in paragraph 11.4(e) a percentage of the balance to be distributed between the Applicant and Other Funded Persons (such percentage to be calculated by the Lawyers, with the assistance of the Administrator if appointed) so as to ensure that at the end

of the mediation or conciliation process, the integrity of the pro rata distribution to Applicants and Other Funded Persons required by clause 11.4(e) is preserved having regard to the ongoing incurring of Project Costs whilst the mediation or conciliation is underway and any administrative costs associated with that process.

12. No Encumbrance

12.1 The Applicant will not cause, permit or assert any charge, lien or other encumbrance or right over or otherwise attaching to the Resolution Sum after the date of this LFA, except with the prior written consent of the Funder which consent may be withheld by the Funder at its discretion.

13. Dispute Resolution

13.1 The Applicant acknowledges that:

- a. the Proceedings are intended to be brought on behalf of Other Funded Persons as well as the Applicant;
- b. the majority of decisions made regarding the Claims and/or Proceedings will be made on behalf of all Funded Persons, and it is reasonable for the Funder to provide day to day instructions to the Lawyers on all matters concerning the Claims and/or Proceedings subject to the rights of the Representative and/or the Applicant under this LFA;
- c. in order to resolve the Claims and the Other Claims in a timely and cost-effective manner, it may be necessary to compromise the Claims pursuant to a Settlement;
- d. typically, time is of the essence in negotiating and securing any proposed Settlement with any Respondents; and
- e. having regard to the above matters, the dispute Resolution processes set out under this clause 13 are reasonable and fair.

13.2 The Applicant and the Funder agree that:

- a. all disputes regarding Settlement Decisions and Settlement will be dealt with under sub-clause 13.3 of this LFA;
- b. all disputes concerning the Claims and/or Proceedings other than in respect of Settlement Decisions and Settlement or Major Decisions will be dealt with in accordance with under sub-clause 13.3 of this LFA; and
- c. all disputes regarding Major Decisions other than Settlement Decisions and Settlement will be dealt with under sub-clause 13.5 of this LFA; and
- d. unless they have exhausted the dispute Resolution processes outlined in this clause 13, no party may institute court or arbitration Proceedings in respect of any dispute

arising from this document, or in respect of the requirements of this LFA (including any dispute as to subject matter, breach, termination or validity of the document or as to any Claim in tort, equity or pursuant to any statute).

13.3 The Applicant and the Funder agree that all disputes regarding Settlement Decisions and Settlement will be referred to counsel for advice on whether, in counsel's opinion, Settlement of the Proceeding or Claims on the terms and in the circumstances identified by the Representative, the Funder or both is reasonable in the circumstances. Under this sub-clause:

- a. the Applicant and/or Representative (as applicable) must provide notice of any objection to the proposed Settlement within 5 business days of receiving the advice from the Lawyers referred to in sub-clause 4.2;
- b. upon receiving the objection referred to in sub-clause 13.3(a), the Lawyers shall brief counsel within 5 business days of receiving the objection;
- c. for the purposes of this sub-clause 13.3, in the first instance counsel will be the most senior counsel of those retained by the Lawyers in respect of the Proceedings and/or Claims concerned. If no counsel has been retained, then independent counsel will be appointed and suitably briefed by the Lawyers;
- d. counsel may proceed as he or she sees fit to inform himself or herself before forming and delivering his or her opinion pursuant to this sub-clause 13.3, and shall have regard to the matters set out in Schedule 2;
- e. if counsel's opinion is that the Settlement is reasonable then the Applicant agrees that the Lawyers will be instructed to do all that is necessary to settle the Proceeding, provided that any necessary approvals from the Court to the Settlement are sought and obtained;
- f. the costs of counsel in providing an opinion under this sub-clause 13.3 will be paid by the Funder and will form part of the Project Costs;
- g. the Applicant agrees that, if it does not provide notice of objection to the proposed Settlement within the time specified in sub-clause 13.3(a), the Lawyers and the Representative shall take all action necessary to implement the Settlement;
- h. nothing set out in sub-clauses 13.3(a) to 13.3(g) (inclusive) above affects the Applicant's right to lodge an objection to the proposed Settlement in accordance with the Court approval process.

13.4 Where a dispute arises regarding the Claims and/or Proceedings other than in respect of Settlement Decisions and Settlement or Major Decisions, the dispute will be referred to counsel who will issue a binding Determination of the dispute. Under this clause:

- a. the Lawyers shall brief counsel within 5 business days of receiving notice of the dispute from any party;

- b. in the first instance counsel will be the most senior counsel of those retained by the Lawyers in respect of the Proceeding and/or Claims concerned. If no counsel has been retained, then independent counsel will be appointed and suitably briefed by the Lawyers;
- c. the Determination will be final and binding; and
- d. the parties to the dispute will pay, in equal shares, the costs of the Determination.

13.5 Where a dispute arises regarding a Major Decision other than a Settlement Decision and Settlement:

- a. a party will give the other notice of the existence of that dispute. Within 7 days of the receipt of that notice, each party, either personally or through their nominated representative, will meet and discuss the dispute with a view to agreeing a Resolution to it.
- b. So long as the dispute does not give rise to a conflict between the interests of the Applicant and the interest of Other Funded Persons, the Lawyers may act as representatives for the Applicant Under no circumstances will the Lawyers act as representatives for the Funder.
- c. If, within 14 days of receipt of the notice of a dispute issued under sub-clause 13.5(a), that dispute has not been resolved, either party may refer that dispute to mediation. The mediation will be conducted by a mediator agreed by both parties or, failing agreement, a person nominated by the President of the New South Wales Law Society.
- d. The mediation will be conducted in a manner and at a place specified by the person appointed as mediator, and must be completed within 14 days of the appointment of the mediator, or one month from the date on which the dispute was referred to mediation (whichever is later). The costs of the mediator will be shared by the parties equally.
- e. If the dispute is not resolved within the time specified in sub-clause 13.5(d), then, within 40 days of the date on which the dispute was referred to mediation, either party to the dispute may issue a notice referring the dispute to an independent third party for Determination. The independent third party will be a person agreed between the Applicant and the Funder, or failing agreement, a person nominated by the President of the New South Wales Law Society.
- f. The Applicant and the Funder agree that, if a Determination of a dispute raised by the Applicant is issued under sub-clause 13.5(e), then:
 - i. the Determination will be final and binding; and
 - ii. the parties to the dispute will pay, in equal shares, the costs of the Determination.

- g. In the case of a dispute raised by the Applicant under sub-clause 13.5, if the Applicant fails to comply with sub-clauses 13.5(a) to 13.5(f) inclusive, then, to the extent permitted by law:
 - i. the Funder will not be liable upon any Claim by the Applicant; and
 - ii. the Applicant will be absolutely barred from making any Claim against the Funder, arising out of or in any way in connection with the event, circumstance, act, omission, fact, matter or thing (as the case may be) in respect of which the dispute arose.

13.6 The Parties agree to use their best endeavours to resolve any dispute under this clause 13.

13.7 Unless and until this LFA is validly terminated under this clause 13, each party shall continue to perform its obligations under this LFA notwithstanding the existence of the dispute and without prejudice to any adjustment to each party's rights, duties and liabilities as may be required on the Resolution of the dispute.

13.8 Sub-clauses 13.1 to 13.7 inclusive survive the termination of this LFA.

14. Duration of Agreement

14.1 Subject to clauses 15, 16 and 19 below, this LFA commences on the Date of Commencement and continues in operation until:

- a. all Proceedings, and any appeals funded by the Funder, have concluded; and
- b. the Funder has complied with all of its obligations arising pursuant to this LFA or Other Funding Agreements, and the Resolution Sums (if any) have been disbursed in accordance with the said agreements.

15. Termination by the Funder

15.1 The Funder is entitled to terminate its obligations under this LFA, other than obligations accrued, by issuing a Funding Termination Notice giving 7 days written notice to the Applicant that the LFA and the Funder 's obligations (other than obligations accrued) are terminated.

15.2 If the Funder's appointment of the Lawyers to provide Legal Work to the Applicant is terminated, the Funder will promptly issue a Lawyers Termination Notice to the Applicant, and inform the Applicant whether the Funder wishes to appoint other solicitors in place of the Lawyers.

15.3 If sub-clause 15.2 applies and the Funder informs the Applicant that the Funder wishes to appoint other solicitors in place of the Lawyers, those solicitors will become the Lawyers for the purposes of this LFA in place of the existing Lawyers. If this occurs:

- a. it does not result in termination of this LFA, however the Applicant will have the right to terminate the LFA pursuant to sub-clause 16.1(b); and
 - b. it will not result in the replacement solicitors assuming any obligations of the Lawyers accrued to the date the appointment of the Lawyers is terminated.
- 15.4 If the Funder appoints other solicitors in place of the Lawyers, and the Applicant does not exercise its rights of termination of the LFA under sub-clause 16.1(b), then:
- a. the Applicant's Legal Costs Agreement with the existing Lawyers will terminate under the terms of that Legal Costs Agreement; and
 - b. the Applicant will enter into a new Legal Costs Agreement, on substantially the same terms, with the new Lawyers.
- 15.5 If sub-clause 15.2 applies and the Funder informs the Applicant that the Funder does not wish to appoint other solicitors in place of the Lawyers:
- a. This the Funder will terminate as at the date of such notice;
 - b. the Funder remains liable for the obligations referred to in sub-clause 15.7; and
 - c. it will not result in the replacement solicitors assuming any obligations of the Lawyers accrued to the date the appointment of the Lawyers is terminated.
- 15.6 If the Funder terminates its obligations pursuant to sub-clauses 15.1 or 15.5, the Funder will continue to be entitled to receive amounts pursuant to sub-clause 11.1.
- 15.7 All obligations of the Funder under this LFA cease on the date the Funder's termination becomes effective, save for obligations accrued to that date, and the Funder shall account to the Applicant for any money held by the Funder on behalf of the Applicant which is payable to the Applicant in respect of accrued obligations pursuant to this LFA.
- 15.8 The accrued obligations of the Funder referred to in sub-clause 15.7 comprise:
- a. payment of any outstanding Project Costs incurred up to the date the Funder's termination becomes effective; and
 - b. payment of any Adverse Costs Order in respect of costs which arise in, or are attributed to, the period beginning on the Date of Commencement and ending on the date the Funder's termination becomes effective.

16. Termination by Applicant

16.1 The Applicant may terminate this LFA by written notice to the Funder:

- a. if the Funder commits a serious breach of this LFA and does not remedy the breach within 30 days after receiving written notice from the Applicant; or

- b. if the Funder serves a Lawyers Termination Notice to the Applicant and the Funder appoints other solicitors in place of the Lawyers pursuant to clause 15.3.

16.2 If this LFA is terminated by the Applicant pursuant to sub-clause 16.1(a) above then:

- a. the Funder remains liable for the obligations referred to in sub-clause 15.8 above; and
- b. the Funder will continue to be entitled to receive amounts pursuant to sub-clause 11.1.

16.3 If this LFA is terminated by the Applicant pursuant to sub-clause 16.1(b) above, then:

- a. the Funder remains liable for the obligations referred to in sub-clause 15.8 above; and
- b. the Funder will continue to be entitled to receive amounts pursuant to sub-clause 11.1.

16.4 If the Proceedings are conducted as a representative Proceeding or class action and the Applicant provides instructions or exercises a right to exclude itself from that action, then upon exercise of those instructions or that right, this LFA will terminate. If there is a Resolution of the Claims at the time of that Termination or at any later time, clause 10 and clause 11 will continue to apply and the Applicant will be liable to account to the Funder from the relevant Resolution Sum, the amounts set out in sub-clause 11.1. The obligations in this clause are continuing obligations and survive any termination of this LFA.

16.5 The Applicant acknowledges that the Funder will have invested significant funds in respect of the Project, and it would therefore be inequitable for the Applicant to have a unilateral right to terminate this LFA at any time.

17. Assignment

17.1 Neither this LFA nor any right or obligation hereunder can be assigned, in whole or part, by either party without the prior express written consent of the other. Such written consent shall not be unreasonably withheld, and no additional consideration shall be necessary.

18. General

18.1 The written terms of this LFA constitute the entire agreement between the parties.

18.2 Neither the Applicant nor the Funder intend to be partners or fiduciaries with or to each other. Nothing in this LFA shall constitute the Applicant and the Funder as partners or fiduciaries.

18.3 There shall be no variation or amendment to the terms of this LFA except in writing signed by each of the Applicant and the Funder.

18.4 A facsimile, email, or DocuSign transmission of this LFA signed by any party to it will be treated as an original signed by that party.

18.5 The Applicant and the Funder will:

- a. act in good faith toward each other and be just and faithful in their dealings with each other in all matters arising out of or connected with this LFA; and
- b. save as provided in this LFA, not do or permit to be done anything likely to deprive any party of the benefit for which the party entered this LFA.

18.6 If any provision of this LFA, or the application thereof to any person or circumstances, shall be or become invalid or unenforceable, the remaining provisions shall not be affected and each provision shall be valid and enforceable to the full extent permitted by law.

18.7 If this LFA or any part thereof is annulled, voided, *or* held unenforceable the Applicant will forthwith do all things necessary, including without limitation executing any further or other agreement *or* instrument, to ensure that the Funder receives any remuneration, entitlement *or* other benefit to which this LFA refers *or* is contemplated by this LFA. The Applicant irrevocably agrees that production of a copy of this LFA shall be conclusive evidence of the Applicant's undertaking as set out in this clause.

18.8 The Applicant and the Funder will promptly execute all documents and do all things that either of them from time to time reasonably requires of the other to effect, perfect or complete the provisions of this LFA and any transaction contemplated by it.

18.9 The Applicant and the Funder will keep the contents of this LFA confidential in so far as it concerns the terms of the relationship between the Applicant and the Funder, except where disclosure to a Court is required or disclosure is made by the Funder to the Respondents or their agents.

18.10 The Applicant acknowledges and accepts that:

- a. the Funder has entered into or will enter into Other Funding Agreements, the terms of which may differ from the terms of this LFA, and may fund other Claims and Proceedings against the Respondents which are unrelated to the Claims;
- b. it is possible that there may be members of a Proceeding who have not entered into an Other Funding Agreement with the Funder.

18.11 Termination of this LFA will not affect the Funder's right to do anything authorised or contemplated by any Other Funding Agreement.

18.12 The singular includes the plural and vice versa.

19. Cooling off Period

19.1 The Applicant, may, by written notice given to the Funder within 5 days after the Date of Commencement, withdraw from this LFA. Such Withdrawal (although terminating this LFA) will not be treated as a Termination. Time is of the essence.

19.2 If the Applicant withdraws in accordance with sub-clause 19.1, the Applicant shall have no continuing or further obligation to the Funder save for any obligations of confidence arising in respect of information received by the Applicant prior to the Withdrawal. Nothing in sub-clause 19.1 shall derogate from any obligations in relation to Privilege attaching to any information received by the Applicant prior to the Withdrawal.

20. Governing Law

20.1 This LFA is to be construed in accordance with and governed by the laws of New South Wales and the parties submit to the exclusive jurisdiction of New South Wales.

21. Notices

21.1 All notices given under this LFA shall be in writing and may be served personally, by post, facsimile or by email. The parties agree that the most efficient and least costly way for them to communicate with each other is by email and that, wherever possible, written communications between them will be by email and not by posted or faxed paper documents. The Applicant accordingly consents to receiving communications (including copies of documents) from the Funder by email.

21.2 The address for service of the Funder will be:

N R Barbi Solicitor Pty Ltd
Suite 15, 900 Brunswick Street
New Farm Qld 4005
Email: natalie@nrbarbisolicitor.com.au

21.3 Unless the Funder agrees otherwise with the Applicant:

- a. the address for service of the Applicant will be the email address of the Applicant's Lawyers noted on the Registration and Acceptance of Terms Form included in this LFA, or otherwise as notified to the Funder and the Lawyers in writing if that address changes; and
- b. in circumstances where the Funder and the Lawyers are not so notified of a change in address, service of any notice by the Funder (including any Funding Confirmation Notice, Funding Termination Notice or Lawyers Termination Notice) will be deemed effective if the notice is sent by email transmission to the last known email address of the Applicant or the Applicant's Lawyers, as previously notified by the Applicant to the Funder.

21.4 Notices shall be deemed to be received on the day after they are posted and the day they are transmitted by facsimile or email.

22. Acknowledgment

22.1 By signing this LFA, the Applicant acknowledges that the Funder recommended to the Applicant that the Applicant obtain independent legal advice prior to executing the LFA as to the LFA's meaning and effect.

23. Definitions and Interpretation

Administration Expenses means the cost of the administration of any scheme for the distribution of any Resolution Sum, including fees charged by the Administrator and expenses paid by the Administrator including (but limited to) court fees, barristers' fees, external photocopying fees, IT project management fees, data processing fees, process service fees, expert report fees, external costs consultants fees, interstate agents' fees, travel and accommodation fees.

Administrator means the person or entity appointed to administrate a scheme for the distribution of any Resolution Sum.

Adverse Costs Order means any costs order made in favour of a Respondent against the Representative or Applicant in any of the Proceedings in respect of costs incurred during the term of this LFA.

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, and includes, without limitation, any such process instituted prior to the commencement of Proceedings.

Appeal means an appeal under clause 5.

Assignments means the assignments by the Applicant, as assignor, to the Funder, as assignee, of part of the Resolution Sum pursuant to sub-clause 11.2 of this LFA.

Applicant means the individual whose details appear on page 2 of this LFA and the successors or assigns of that individual.

Claims means the Claims the Applicant and/or other Funded Persons have or may have against the Respondents, for relief in relation to this Class Action.

Class Action means this Proceeding(s).

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

Court means the court in which any of the Proceedings are conducted.

Date of Commencement means the date which this LFA is signed by the Applicant.

Determination means a determination issued by counsel or an independent third party (as applicable) of a dispute between the Applicant and the Funder under sub-clauses 13.4 or 13.8 of this LFA.

External Controller means:

- a. in relation to an individual, the Official Trustee in Bankruptcy, the 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.

Funded Person means any person who has entered into this LFA or an Other Funding Agreement, and whose LFA or Other Funding Agreement has not been terminated pursuant to this LFA. Except where the context otherwise indicates, Funded Persons include the Applicant.

Funding Termination Notice means a Notice issued by the Funder pursuant sub-clause 15.1 confirming that the LFA is terminated

GST has the same meaning as in the *GST Act*.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Independent Counsel means a barrister with at least fifteen (15) years of experience in litigation similar to the Proceedings and who is not affiliated in any way with the Applicant, the Lawyers or the Funder .

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

LFA means this funding agreement.

Lawyers means the Funder or any other solicitors appointed in their place by agreement of the Funder and the Representative.

Lawyers Termination Notice means a Notice issued by the Funder pursuant to sub-clause 15.2 confirming that the Funder 's appointment of the Lawyers to provide Legal Work to the Applicant is terminated.

Legal Costs Agreement means the agreement or agreements entered into between the Lawyers and the Applicant and Other Funded Persons for the Lawyers to as Lawyers to investigate and prosecute the Claims.

Legal Costs and Disbursements means fees and disbursements charged by the Lawyers under the Legal Costs Agreement and Terms of Engagement

Legal Work means such advice, legal and administrative services :which the Lawyers consider reasonably necessary to investigate and prosecute the Proceedings, as defined in the Legal Costs Agreement.

Major Decisions means decisions to be made regarding:

- (a) the commencement of any Proceeding;
- (b) the Settlement or discontinuance of any Proceeding;
- (c) any Appeal of any Proceeding;
- (d) the addition or removal of Respondents to or from any Proceeding;
- (e) the amendment by the Funder of the Terms of Engagement under sub-clause 2.4 of this LFA;
- (f) the termination of this LFA by the Funder under clause 15 of this LFA;

(g) the termination by the Funder of the Lawyers' appointment to provide Legal Work to the Applicant under

(h) sub-clause 15.2 of this LFA;

(i) the appointment by the Funder of alternative Lawyers to provide Legal Work to the Applicant under sub-clause 15.3 of this LPA; or

(j) whether any party to this LFA has materially breached any obligation under this LFA.

Other Claims means Claims Other Funded Persons have or may have against one or more of the Respondents for loss and damage caused to those Other Funded Persons by the conduct of those one or more Respondents which Claims are the same, similar, or related to the Claims.

Other Funded Person means any Funded Person other than the Applicant

Other Funding Agreement means any agreement for the provision of funding by the Funder to a person other than the Applicant with the same, similar or related Claims as the Claims.

Privilege means unless the context otherwise requires. legal professional privilege and includes any joint privilege *or* common interest privilege.

Proceeding(s) means any and all Proceedings brought on behalf of the Applicant, whether individually or as a Class Action, to prosecute some **or** all of the Claims of the Applicant and/or some or all of the Other Claims of Other Funded Persons, and Proceedings brought in contemplation of a Class Action, and includes, without limitation:

(a) Proceedings brought on a representative basis under Part *ITTA* of the *Federal Court of Australia Act 1976* (Cth) against one or mote of the Respondent;

(b) Proceedings brought as a 'test case' to establish findings which are of benefit to some or all of the Claims;

(c) any Alternative Dispute Resolution Process;

(d) Proceedings brought in contemplation of Proceedings, including without limitation Proceedings for preliminary discovery and/or applications for Court directions in respect of any matter relevant to the contemplated Proceedings;

(e) any Appeal;

(f) if any Respondent (or any property assets or liabilities of any Respondent) comes under the control of an External Controller, all relevant methods of pursuing some or all of the Claims in the external administration of that Respondent, including the lodgement of proofs of debt; and

(g) Proceedings brought by an individual Applicant in reliance of the findings made in any Judgment.

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

Project Costs means those costs and expenses incurred at any time up to the conclusion of this LFA comprising:

- (a) the Legal Costs and Disbursements charged by the Lawyers for all Legal Work in accordance with this LFA, including costs incurred in the course of the Project Investigation;
- (b) the costs involved in the provision by the Funder of any security for costs;
- (c) any Adverse Costs Order paid by the Funder;
- (d) all of the Funder out of pocket costs and expenses paid or incurred in relation to the Project (including in relation to any consultants engaged by the Funder other than those already referred to in this definition);
- (e) any costs associated with any scheme for the distribution of any Resolution Sum, including the costs of any Administrator which is appointed;
- (f) the costs of any subsequent Proceeding brought by an Applicant in reliance on the findings made in any Judgment; and
- (g) any GST payable on any Supply made by any entity as a result of the above costs or expense being incurred.

Registration & Acceptance of Terms Form means pages 2 to 4 of this LFA.

Regulations means the *Corporations Amendment Regulation 2012 (No. 6)* (Cth) as amended from time to time.

Remaining Costs means the following amounts (including GST) which do not form part of the Project Costs, but which are recoverable by the Lawyers from any Resolution Sum arising out of any Proceeding to which the Remaining Costs relate, pursuant to sub-clauses 11.3 and 11.4:

- (a) any Legal Costs and Disbursements incurred by the Lawyers which were not paid by the Funder;
- (b) any Uplift Fee payable on the Lawyers' fees incurred but not paid by the Funder; and
- (c) interest under Term 8 of the Terms of Engagement.

Representative means any Funded Person who is a representative party in a Proceeding.

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

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

and any payments in respect of the Claims where any Respondent (or any property, assets or liabilities of any Respondent) is, or comes under, the control of an External Controller.

Respondents means:-

- a. Secretary of The Department of Health – Brendan Murphy;
- b. Former Deputy Secretary of Health Products Regulation Group – Adjunct Professor John Skerritt;
- c. Chief Medical Officer – Professor Paul Kelly;
- d. Minister For Health and Aged Care – Mark Butler;
- e. Former Minister for Health and Aged Care – Greg Hunt (24 January 2017 – 23 May 2022);
- f. The Commonwealth of Australia (“the Respondents”); and
- g. and any other person or entity which the Lawyers recommend be joined to any of the Proceedings and in respect of whom the Funder accepts, in its absolute discretion and in writing.

Settlement means any settlement, compromise, discontinuance or waiver, except where approval of the Court is required, in which case it means any settlement, compromise, discontinuance or waiver with the approval of the court and "Settle," "Settles" or "Settled" shall be construed accordingly.

Settlement Decision means a decision to enter into a Settlement or a decision to not enter into a Settlement.

Supply has the same meaning as in the GST Act.

Termination means:

- (a) a termination in accordance with clauses 15 or 16; and
- (b) any completion, failure, avoidance, rescission, annulment or other cessation of effect of this LFA.

Terms of Engagement means the terms and conditions applicable to the engagement of the Lawyers by the Funder which are attached as Schedule 1 to this LPA and as amended.

Trust Account means the account kept by the Lawyers.

Withdrawal means a withdrawal under sub-clause 19.1.

Schedule 1

Terms of Engagement

This agreement is made day of 2023.

Between:

Melissa McCann

AND

NR Barbi Solicitor Pty Ltd

1. Interpretation

Unless otherwise defined herein or the context clearly requires otherwise:

- (a) terms defined in the LFA will have the meanings when used herein as so defined; and
- (b) terms defined in the text of these Terms will have the meanings when used herein as so defined.

2. Appointment of the Lawyers

(a) the Funder hereby appoints the Lawyers to represent and advise the Applicant with respect to the Claims and the prosecution of the Claims and to provide project management and administrative services with respect thereto (collectively, Lawyers Professional Fees).

(b) The Lawyers will:

- a. Act consistently with the terms of the LPA; and
- b. Do all things which the LFA contemplates the Lawyers will do.

(c) The Lawyers agree that if there is any inconsistency between these terms and the terms of any retainer (including the Legal Costs Agreement) between the Lawyers and the Applicant, these Terms prevail.

3. Commencement of the Representation

The Lawyer will inform the Funder in writing in a timely fashion of:

- (a) the names of the individual Lawyers and experts who will undertake Legal Work in connection with the Claims and the Project;
- (b) the hourly and daily rates of barristers retained or proposed to be retained; and
- (c) the Lawyers' estimate of Lawyers Professional Fees and Disbursements to the conclusion of the Project, including any material change in any earlier estimates.

4. Reporting

- (a) The Lawyers will keep the Funder fully informed of all matters concerning the Claims and the Project, including any mediation and settlement discussions. The Lawyers will promptly provide to the Funder any document or information reasonably requested by the Funder. The Lawyers will ensure that the Claimant and the Funder are given all necessary information in order to facilitate informed instructions.
- (b) Without limiting Term 4(a), if, after the date of these Terms, the Lawyers become aware of any information which has or may have material impact on the Claims, the Proceedings, or the potential for any judgement Sum to be recovered, the Lawyers will immediately inform the Funder of that information.

5. Costs, Disbursements and Interest

- (a) The Lawyers will charge Lawyers Professional Fees by reference to the time reasonably and properly spent at the hourly rates as outlined in Term 8, subject to the Lawyers' right to increase the hourly rates by no more than five percent of the initial hourly rates on each anniversary of the date of these Terms.
- (b) The Lawyers are entitled to reimbursement from the Funder for Disbursements that are reasonably incurred by the Lawyers in the Project and including:
 - (i) external photocopying and scanning (at cost),
 - (ii) local, STD and ISD facsimiles at cost
 - (iii) travel and accommodation (where necessary), and
 - (iv) other reasonable expenditures supported by invoices.

6. Invoices

- (a) The Lawyers will render monthly invoices to the Funder and/or at other appropriate intervals.
- (b) The monthly invoices will outline at the hourly rates notified to the Funder under Term 9, the Lawyers Professional Fees incurred by the Lawyers since the preceding invoice.
- (c) Within one (1) month of receiving a monthly invoice for any Professional Fees and Disbursements other than those Lawyers Professional Fees and Disbursements required to be invoiced under Term 7, the Funder will pay to the Lawyers:
 - (i) the Lawyers Professional Fees inclusive of any applicable GST as invoiced in the prior month; and
 - (ii) the Disbursements invoiced in the prior month.

(d) The time details for fees of the Lawyers must include for each time entry:

- (i) the date upon which the time was spent;
- (ii) which solicitor or paralegal spent the time;
- (iii) the time spent in six-minute units; and
- (iv) a description of the Legal Work performed.

(e) In the event the Funder disputes the reasonableness of any Lawyers Professional Fees or Disbursements charged by the Lawyers hereunder (whether or not payable or reimbursable by the Funder or included in Remaining Costs) and the Lawyers and the Funder are unable to resolve such dispute within 15 days after such dispute is first brought to the attention of the Lawyers, such dispute shall be referred to Independent Counsel for Resolution, and the determination of such Independent Counsel shall be binding on the Lawyers and the Funder.

7. Payment of Remaining Costs

(a) The following costs are considered the Remaining Costs for the purposes of the LFA:

- (i) any Legal Costs and Disbursements incurred by the Lawyers which were not paid by the Funder;
- (ii) any Uplift Fee payable on Lawyers Professional Fees incurred but not paid by the Funder;
- (iii) interest from the date of the issue of a monthly statement or invoice with respect to any of the fees referred to in terms 8(a)(i) and 8(a)(ii) at the rate of 10% per annum simple interest.

(b) Remaining Costs will be payable only from the Resolution Sum pursuant to clause 11 of the LFA.

8. Hourly Rates

(a) The hourly rates (inclusive of GST) of the Lawyers notified to the Funder in these Terms are as follows:

Title	Hourly Rate (inc GST)
Director	\$660.00
Senior Associate	\$495.00

Associate/Solicitor	\$440.00
Paralegal/ Legal Clerk Legal Graduate	\$275.00
Administration Staff	\$165.00

(b) Each of the Hourly rates referred to in Term 9(a) can be increased in accordance with Term 5(a).

9. Termination of Appointment

(a) The Lawyers may terminate their appointment by the Funder to provide the Legal Work to the Claimant on 60 days' written notice to the Funder and to the Claimant concerned, in the following circumstances:

- (i) if the Funder fails to pay any costs in accordance with the Terms of the LFA or these Terms after the Funder has been given 30 days written notice to do so;
- (ii) if the LFA concerned is terminated; or
- (iii) if the Lawyers terminate the Agreement for Legal Services entered into between the Lawyers and the Claimant relating to the Proceedings in accordance with their right to do so.

(b) The Funder may terminate the appointment of the Lawyers to provide the Legal Work to the Claimant:

- (i) by agreement with the Lawyers;
- (ii) by written notice to the Lawyers in the event of professional misconduct or negligence by the Lawyers that has or is reasonably likely to cause material loss to the Claimant or the Funder; or
- (iii) upon 60 days' written notice to the Lawyers if the LFA is terminated.

(c) If the Lawyers' appointment to provide Legal Work to the Claimant is terminated pursuant to either Terms 10(a) or Term 10(b), the Lawyers remain liable for obligations under these Terms accrued to the date of termination of their appointment, but thereafter all obligations and entitlements of the Lawyers cease in so far as they concern the Funder, except:

- (i) the entitlements under Term 5 to receive the payments from the Funder in respect of Legal Work up to the date of termination; and

- (ii) the entitlement under Term 8(b) to receive such of the Remaining Costs in respect of Legal Work up to the date of termination.

10. Address for Service

- (a) the Funder 's address for service will be as set out in the LFA.
- (b) The Lawyers' address for service is:

N R Barbi Solicitor Pty Ltd
Suite 15, 900 Brunswick Street
New Farm Qld 4005

11. Variation

These Terms may only be varied in writing signed by the Lawyers and the Funder .

12. Acknowledgement

Neither LFS nor the Lawyers intend to be partners or joint ventures with or to each other. Nothing in this document shall constitute the Funder and the Lawyers as partners or joint ventures.

13. Governing Law

This document is entered into in New South Wales, Australia, and is to be construed in accordance with and governed by the laws of New South Wales.

Executed effective as of the date first written above.

Melissa McCann
The Funder

N R Barbi Solicitor Pty Ltd
The Lawyer

Schedule 2

Criteria to be applied by Counsel in giving an Opinion on a Proposed Settlement

1. In reviewing a proposed Settlement pursuant to sub-clauses 4.3 or 4.4 of the LFA, 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 Funder, 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 offered to each group member;
 - b. the prospects of success in the Proceedings (ie. the weaknesses, substantial 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 attitude of the group members to the proposed Settlement;
 - f. the likely duration and cost of the Proceedings if continued to judgment;
 - g. the terms of the LFA 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;
 - h. whether the Funder might refuse to continue to fund the Proceedings if the proposed Settlement does not take place; and
 - i. 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 member, 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."