

SETTLEMENT DISTRIBUTION SCHEME

BACKGROUND

- A** This Settlement Distribution Scheme (**SDS**) establishes a procedure for verifying, allocating and distributing the Settlement Sum to be paid by Peter Campbell, Michael Quinn, Dr John Holaday, Dibbs Barker and Morgans Corporate Limited (**Respondents**) pursuant to a Court approved settlement of the case Kenquist Nominees Pty Limited ATF The Kenquist Superannuation Fund v Peter Campbell & Ors NSD 1364/2015.
- B** This SDS:
1. establishes a procedure for distributing the Settlement Sum to be paid by the Respondents pursuant to the Settlement of the Proceeding; and
 2. does not become operative unless and until the Court has made the Approval Orders.
- C** This SDS involves the following major steps:
1. [##] will be appointed as Administrator of the SDS.
 2. Prior to making any Distribution, the Administrator will deduct from the Settlement Sum and pay all Funder Payments, the Unpaid Costs Payments, the Applicant Payment and the Administration Costs, leaving the Residual Settlement Sum plus any Settlement Interest.
 3. The Administrator will send each Settlement Group Member a Notice of Estimated Distribution and provide the Settlement Group Member with an opportunity to correct, amend or Dispute the Trade Data underlying the estimate and/or the estimated distribution.
 4. Settlement Group Members must confirm their satisfaction with the Notice of Estimated Distribution or otherwise provide further information to the Administrator with a view to correcting, amending or Disputing the information in the notice.
 5. The Administrator must review and assess any information provided by Settlement Group Members and resolve any issues arising or otherwise refer any continuing Disputes to Independent Counsel for a binding resolution.
 6. The Administrator will distribute all or part of the Residual Settlement Sum to the Settlement Group Members in accordance with the formulae contained in this SDS and its schedule and provide Settlement Group Members with a Distribution Statement.
 7. At the conclusion of the scheme the Administrator will provide a short Distribution Report to the Court.

OPERATIVE PART

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise:

Act means the *Federal Court of Australia Act 1976* (Cth).

Administrator means the person that will administer this SDS as provided for in clauses 4.1 or 4.2.

Administration Costs means \$155,000.00 (incl GST) and represents costs to be incurred by the Administrator which is set out in clause 5.1(b), plus any additional costs of the Administrator pursuant to clause 5.3, as approved by the Court.

Applicant means the applicant named in the Proceeding, Kenquist Nominees Pty Limited ATF The Kenquist Superannuation Fund.

Applicant Payment means an amount of \$4,500.00 (incl GST) by way of compensation for time and expenditure reasonably incurred by the Applicant in the interests of prosecuting the Proceeding on behalf of the Group Members as a whole, awarded to the Applicant by an order pursuant to s 33ZF of the Act and payable to the Applicant in accordance with clause 8.4, as approved by the Court.

Applicant's Paid Legal Costs means the Applicant's reasonable legal costs and disbursements, including fees payable to counsel and to experts, on a solicitor and own client basis incurred on its own behalf and on behalf of all Group Members in the Proceeding, but not including any uplift fees, paid by the Funder and exceeding in total but approved by the Court in the amount of \$3,401,497.20 (incl GST).

Applicant's Unpaid Legal Costs means the Applicant's reasonable legal costs and disbursements, including fees payable to counsel and to experts, on a solicitor and own client basis incurred on its own behalf and on behalf of all Group Members in the Proceeding, but not including any uplift fees, not paid by the Funder and as approved by the Court in the total amount of \$376,891.58 including GST, comprising:

- (a) Corrs Chambers Westgarth - \$237,722.59 including GST.
- (b) Gillis Delaney - \$65,858.77 including GST.
- (c) Antony Martin SC - \$73,310.22 including GST.

Approval Orders means orders approving the Settlement of the Proceeding pursuant to section 33V of the Act.

Approval Orders Date means the later of the date on which:

- (a) the Court makes the Approval Orders and any appeal period with respect to those Approval Orders has expired without any appeal or application for leave to appeal being filed (but not before that time); and
- (b) if the Approval Orders are made and an appeal or an application for leave to appeal from the Approval Orders is commenced, then 3 Business Days after the date of the ultimate determination of the matters the subject of the appeal (including any subsequent appeal or application to appeal) where the outcome is that the Approval Orders are upheld.

Business Day means a day other than a Saturday, Sunday or public holiday in New South Wales.

Closing Date means the date being the later of the following:

- (a) all Distributions to Settlement Group Members have been made; and
- (b) any amounts payable in accordance with clauses 5, 8, 10 and 11 are paid; or
- (c) there remain no funds in the Settlement Distribution Fund.

Contingent ATE Premium means the premium for the after-the-event (ATE) insurance taken out by the Applicant to insure the risk of the Applicant being ordered to pay the costs of the Respondents in the Proceeding in the sum of \$348,437.50, including stamp duty and GST.

Corrs Chambers Westgarth means the law firm operating as Corrs Chambers Westgarth.

Court means the Federal Court of Australia.

Dispute means any dispute, difference of opinion or disagreement between the Administrator and any Settlement Group Member arising out of or in connection with the administration of the Settlement Distribution Fund and/or the operation of this SDS, including any request by a Settlement Group Member for a review of their Settlement Entitlement.

Distribution means the Settlement Entitlement distributed to a Settlement Group Member in accordance with this SDS.

Distribution Account means the interest-bearing account opened by the Administrator with an Australian bank into which the Settlement Sum will be deposited by the Respondents and which is to be held on trust for distribution in accordance with the terms of the Settlement Deed and this SDS.

Distribution Date means the date determined by the Administrator on which distributions are made to Settlement Group Members in accordance with clause 9.1 being a date after the Approval Orders Date.

Distribution Report means the report referred to in clause 13.1.

Distribution Statement means the statement referred to in clause 9.2(b).

Estimate means the amount referred to in clause 8.2(b).

Existing Trade Data means the Trade Data collected by Corrs Chambers Westgarth pursuant to the Group Member registration process ordered by the Court on 13 September 2018 and otherwise augmented in the case of information provided by Settlement Group Members falling within sub-clause (b) of the definition of that term.

Funder means JustKapital Portfolio Pty Limited ACN 612 224 521 of level 16, 56 Pitt Street, Sydney NSW 2000.

Funder Payments means the sum of the Applicant's Paid Legal Costs and the Paid ATE Costs.

Group Members means the persons on whose behalf the Applicant commenced the Proceeding as described in paragraph 2 of the Second Further Amended Statement of Claim filed on 13 February 2018, and excluding those persons who opted-out of the Proceeding pursuant to the orders made by the Court on 13 September 2018, and, unless the context requires otherwise, includes the Applicant.

GST means the goods and services tax imposed under the GST Act.

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

Independent Counsel means James Mack of Level 22 Chambers or such other barrister of the NSW Bar having at least 5 years' post-admission experience nominated by the Administrator.

Loss Assessment Formula means the formula by which losses are calculated as contained in Confidential Schedule A to this SDS.

Notice of Estimated Distribution means the notice prepared by the Administrator in accordance with clause 7.2(a) or 12(c).

Paid ATE Costs means the premiums and other costs for the after the event (**ATE**) insurance taken out by the Applicant and for deeds of indemnity issued by the insurer, and paid by the Funder, to insure or secure the risk of the Applicant being ordered to pay the costs of the Respondents in the Proceeding in the sum of \$617,706.37 including stamp duty and GST.

Proceeding means the action constituted as Kenquist Nominees Pty Limited ATF The Kenquist Superannuation Fund v Peter Campbell & Ors, Federal Court of Australia proceeding NSD 1364/2015.

QRx means QRxPharma Limited.

Registration Costs means the reasonable costs of administering the registration of claims pursuant to order [##] made by the Court on [##] 2020 in the amount of \$[##] as approved by the Court on [##] 2020.

Relevant Period means the period from 6 November 2009 to 25 June 2012 inclusive.

Residual Settlement Sum means the amount calculated by deducting from the Settlement Sum the Funder Payments, the Unpaid Costs Payments, the Applicant Payment, the Registration Costs and the Administration Costs.

Settlement means the settlement provided for in the Settlement Deed and this SDS and approved pursuant to the Approval Orders.

Settlement Deed means the Settlement and Release Deed exchanged on 4 February 2020 and executed by the Applicant, the Respondents, the Funder and Corrs Chambers Westgarth.

Settlement Distribution Fund means the fund held in the Distribution Account on trust by the Administrator and comprising the Settlement Sum and Settlement Interest.

Settlement Entitlement means the entitlement of each Settlement Group Member determined in accordance with clause 7 (and if applicable clause 12).

Settlement Group Members means Group Members who have not opted out of the Proceeding in accordance with the orders made by the Court on 13 September 2018 and have either:

- (a) registered to participate in a settlement in accordance with the orders made by the Court on 13 September 2018; or
- (b) been permitted to benefit from the settlement of the Proceeding pursuant to order [##] of the orders made by the Court on [##] 2020.

Settlement Group Member Database means the database referred to in clause 6.1.

Settlement Interest means the interest earned on the Settlement Sum in the Distribution Account.

Settlement Sum means \$7,000,000.00.

Statutory Declaration means a statutory declaration in accordance with the *Statutory Declarations Act 1959* (Cth) or, for Settlement Group Members who reside outside the Commonwealth of Australia, an equivalent declaration under the law of their home jurisdiction.

Summary Trade Data means a summary of the information contained within the Trade Data required by the Administrator in order to perform the Settlement Entitlement calculation using the Loss Assessment Formula.

Tax means a tax, levy, duty, charge, deduction or withholding or an imposition, however it is described, that is imposed by law of a government of Australia or elsewhere, together with any related interest, penalty, fine or other charge.

Tax and Accounting Costs means costs associated with:

- (a) obtaining a tax file number for the Settlement Distribution Fund if necessary;
- (b) obtaining any taxation and accounting advice required by the Administrator as trustee; and
- (c) preparing any necessary tax and GST returns, financial statements and associated documents or such other tax related lodgements as may be required.

Trade Data means the following information in respect of each Settlement Group Member:

- (a) the number of QRx ordinary shares held by the Settlement Group Member prior to the commencement of trading on the Australian Securities Exchange on 6 November 2009 together with all trades in QRx ordinary shares (both purchases and sales) occurring during the Relevant Period;
- (b) for each purchase of QRx ordinary shares by a Settlement Group Member in the Relevant Period, the:
 - (i) the date of purchase;
 - (ii) the quantity of QRx ordinary shares purchased; and
 - (iii) the consideration paid (including brokerage).
- (c) for each sale by the Settlement Group Member of QRx ordinary shares in the Relevant Period, the:
 - (i) the date of sale;
 - (ii) the quantity of QRx ordinary shares sold; and
 - (iii) the consideration received (net of brokerage).

Unpaid Costs Payments means the sum of the Contingent ATE Premium, the Applicant's Unpaid Legal Costs and the Estimate.

1.2 Interpretation

The following rules apply unless the context requires otherwise.

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (c) Nothing in this document is to be interpreted against a party solely on the ground that the party put forward this document or a relevant part of it.
- (d) The singular includes the plural, and the converse also applies.
- (e) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (f) A reference to a clause is a reference to a clause of this document.
- (g) A reference to an agreement, deed or document (including a reference to this document) is to the agreement, deed or document as amended, supplemented, novated or replaced, except to the extent prohibited by this document or that other agreement, deed or document, and includes the recitals, schedules and annexures to that agreement, deed or document.

- (h) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (i) A reference to a party to a deed, agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (j) A reference to legislation or to a provision of legislation includes an amendment or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (k) A reference to a right or obligation of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
- (l) All references to time are to Australian Eastern Standard time.
- (m) A reference to dollars or \$ is to Australian currency.

2 Commencement of SDS

The procedure outlined below will occur on and after the making of the Approval Orders, at which time the terms of the SDS become effective, subject to any further order of any court.

3 Settlement Distribution Fund – the Trust

- (a) Within 10 days after the Court makes the Approval Orders, the Administrator will cause to be opened the Distribution Account.
- (b) Within 28 days after the opening of the Distribution Account, the Respondents will pay the Settlement Sum into the Distribution Account in the proportions recorded in clause 3(b) of the Settlement Deed.
- (c) The Administrator will hold all monies in the Settlement Distribution Fund on trust:
 - (i) for the Respondents until either:
 - (A) the Approval Orders Date; or
 - (B) payment is made to the Respondents pursuant to clause 3(e); and
 - (ii) if clause 3(c)(i)(A) applies, thereafter, for Settlement Group Members, the Funder and Corrs Chambers Westgarth, Gillis Delaney and Antony Martin SC subject to the terms of this SDS.
- (d) The Administrator may withhold from the Settlement Distribution Fund any Tax:
 - (i) payable (or reasonably assessed by the Administrator as likely to become payable) by the Administrator as trustee and relating to or resulting from its role as Administrator of the SDS; and
 - (ii) required to be withheld by the Administrator as trustee from any Distributions made from the Settlement Distribution Fund,

and in each case the withheld sums must be paid to the relevant revenue authority imposing such a Tax whether or not pursuant to an assessment or notice issued by the relevant revenue authority.
- (e) If the Court “finally declines” to make the Approval Orders within the meaning of clause 3(f), the Administrator will pay the Settlement Sum, together with any

Settlement Interest, to the Respondents by direct credit to their respective nominated bank accounts, within 7 days, save that the Administrator may first deduct from the Settlement Distribution Fund and retain an amount equal to:

- (i) the Administrator's reasonable costs of obtaining any taxation and accounting advice required by the Administrator arising from its role as Administrator of the SDS up until the time the Court "finally declines" to make the Approval Orders relating to the income (in the form of Settlement Interest) and any tax liability for which the Administrator is liable arising from that income;
 - (ii) the Administrator's reasonable costs of preparing any necessary tax and GST returns, financial statements and associated documents or such other tax related lodgements as may be required by the Administrator arising from its role as Administrator of the SDS up until the time the Court "finally declines" to make the Approval Orders relating to the income (in the form of Settlement Interest) and any tax liability for which the Administrator is liable arising from that income;
 - (iii) the Tax payable (or reasonably assessed by the Administrator as likely to become payable) by it as trustee and relating to or resulting from its role as Administrator of the SDS relating to the income (in the form of Settlement Interest) for which the Administrator is liable; and
 - (iv) any fees and charges associated with opening and maintaining the Distribution Account.
- (f) For the purpose of clause 3(e), the Court will "finally decline" to make an order if any one of the following occurs:
- (i) the Court at first instance declines to make the order, and no application for leave to appeal or appeal from that decision is commenced within the period provided for an appeal from that decision;
 - (ii) the Court at first instance declines to make the order, and an application for leave to appeal or an appeal from that decision is commenced, and the ultimate outcome of that appeal (including any subsequent appeal or application for leave to appeal) is that the order is not made; or
 - (iii) the Court at first instance makes the order, and an application for leave to appeal or an appeal from that decision is commenced, and the ultimate outcome of that appeal (including any subsequent appeal or application for leave to appeal) is that the decision at first instance is set aside and the order is not made.

4 Administrator

4.1 Appointment

Pursuant to the Approval Orders made on [##] 2020, [##] is appointed Administrator of the Settlement Distribution Fund.

4.2 Resignation and Replacement

- (a) If the Administrator retires or is unable to act at a given time, the retiring Administrator must refer the matter of appointing a replacement Administrator to the Court pursuant to clause 14.1. Any replacement Administrator will be bound by the terms of this SDS.
- (b) A retiring Administrator must do all things necessary to promptly transfer legal title to:

- (i) all monies held in the Settlement Distribution Fund; and
 - (ii) any other property held on trust subject to the terms of this SDS,
- to the person or persons who are appointed as the replacement Administrator under this clause 4.2 and together with any continuing Administrator (where applicable).
- (c) This clause 4.2 is operative for the period commencing on the date of this document to the date that the Administrator's role ends in accordance with clause 13.2.

4.3 Duties, Obligations and Role of the Administrator

The Administrator:

- (a) is responsible for administering and distributing the monies in the Settlement Distribution Fund;
- (b) must act independently;
- (c) must perform its obligations conscientiously;
- (d) may engage third party service providers including, but not limited to, accountants, tax advisors, registry service providers and mailing houses;
- (e) may obtain advice in respect of tax matters arising from the administration of, and making payments from, the Settlement Distribution Fund and may seek a ruling from the Federal Commissioner of Taxation and any of the Commissioners of State Revenue if the Administrator determines that obtaining such a ruling would be in the best interests of the Settlement Group Members;
- (f) will determine the Settlement Entitlements; and
- (g) insofar as is consistent with this SDS, is authorised if (and from the date) clause 3(c)(ii) applies, to make decisions that, in the Administrator's sole discretion, ultimately benefit the body of Settlement Group Members as a whole.

4.4 Administrator to Correct

Notwithstanding anything elsewhere contained in this SDS, the Administrator may at any time correct any error, slip or omission occurring in the course of its administration of this SDS.

5 Registration and Administration Costs

5.1 Registration Costs

- (a) The Administrator may deduct the Registration Costs from the Settlement Distribution Fund.

5.2 Administration Costs

- (a) The Administrator may deduct some or all Administration Costs from the Settlement Distribution Fund.
- (b) The Administration Costs are a fixed sum to cover the costs to be incurred by the Administrator in connection with administration of this SDS including without limitation:
 - (i) fees charged by the Administrator and its staff to administer the SDS and to discharge its duties and obligations under this SDS;
 - (ii) payment of Distributions (including the costs of mailing any notices, issuing cheques, carrying out electronic funds transfers and communicating with Settlement Group Members and other interested parties); and

- (iii) any Tax and Accounting Costs.

5.3 Additional Administration Costs

If any costs additional to the Administration Costs are incurred by the Administrator, the Administrator may recoup or defray all or some of those additional costs from any Settlement Interest earned on the Settlement Distribution Fund and must report this to the Court pursuant to clause 13.1(c).

6 Settlement Group Member Database

6.1 Creation of a Settlement Group Member Database

As soon as practicable after the Approval Orders Date, the Administrator shall create and maintain a Settlement Group Member Database using the Existing Trade Data and any information relating to the Settlement Group Members provided to the Administrator by Corrs Chambers Westgarth or Settlement Group Members. At all times, the Administrator must use reasonable endeavours to ensure the accuracy of the Settlement Group Member Database, including, to the extent necessary, updating it for any amended or corrected Trade Data provided under clause 7.2(b), requesting further information or documents from a Settlement Group Member or requesting further information or documents from third parties.

7 Assessment of Claims and Notices of Estimated Distribution

7.1 Assessment of Claims

As soon as practicable after the completion of the Settlement Group Member Database as provided for in clause 6, the Administrator shall calculate the Settlement Entitlement for each Settlement Group Member by applying the Loss Assessment Formula to that Settlement Group Member's Trade Data.

7.2 Notice of Estimated Distribution

- (a) As soon as practicable after calculating the Settlement Entitlement for each Settlement Group Member, the Administrator shall send a Notice of Estimated Distribution to each Settlement Group Member notifying them of:
 - (i) the Summary Trade Data relating to that Settlement Group Member;
 - (ii) the Administrator's reasonable estimate of the Settlement Group Member's expected distribution under this SDS calculated in accordance with clause 7.1;
 - (iii) the terms of clause 7.2(d);
 - (iv) the availability and terms of the dispute resolution procedure in clause 12;
 - (v) the details of the website via which a Settlement Group Member may provide notice to the Administrator of the matters referred to in clause 7.2(b);
 - (vi) any other information required by the Administrator to assess the Settlement Group Member's Trade Data; and
 - (vii) any other information that the Administrator considers would assist Settlement Group Members in determining whether to raise a Dispute.
- (b) Each Settlement Group Member wishing to receive a distribution from the Settlement Distribution Fund must provide to the Administrator, within 21 days of the date of the Notice of Estimated Distribution, or such other time period as provided for in accordance with clause 14.2, confirmation:

- (i) of the accuracy of the Notice of Estimated Distribution; or
 - (ii) should the Settlement Group Member wish to:
 - (A) amend or correct their Summary Trade Data referred to in the Notice of Estimated Distribution; or
 - (B) otherwise raise a Dispute regarding their estimated distribution; such amended or corrected Trade Data, or other information, as is necessary to support the amendment or correction or the Dispute, along with a declaration that such information is true and correct;
 - (iii) the details of the bank account into which they wish their Distribution to be paid or otherwise a notification that the Distribution should be paid by cheque to the Settlement Group Member; and
 - (iv) such further information requested by the Administrator in the Notice of Estimated Distribution, including a Statutory Declaration verifying the accuracy of the Summary Trade Data and confirming that no other person has sought or will seek to receive a distribution on the basis of the same acquisitions of QRx ordinary shares as those listed in the Notice of Estimated Distribution.
- (c) If any Settlement Group Member:
- (i) does not provide confirmation to the Administrator in accordance with clause 7.2(b)(i);
 - (ii) does not provide a response to the Administrator in accordance with clause 7.2(b)(ii); and
 - (iii) is not required by the Administrator to produce further information in accordance with clause 7.2(b)(iv),
- the Notice of Estimated Distribution shall be deemed to have been confirmed as accurate by the Settlement Group Member.
- (d) If, within 21 days of the date of the Notice of Estimated Distribution, a Settlement Group Member notifies the Administrator of any error, slip or omission in the Notice of Estimated Distribution, the Administrator may, in its absolute discretion, correct the Settlement Group Member Database and issue to that Settlement Group Member, and any other person affected by the correction, an amended Notice of Estimated Distribution.
 - (e) Subject to clause 7.2(f), for the purpose of the administration of this SDS, Summary Trade Data confirmed by a Settlement Group Member may be relied upon as accurate by the Administrator, in its absolute discretion, when administering this SDS.
 - (f) Notwithstanding clause 7.2(e), if in the Administrator's opinion, any confirmation provided to the Administrator by a Settlement Group Member of any amendment or correction to that Settlement Group Member's Trade Data or Summary Trade Data:
 - (i) contains insufficient information to substantiate the claim made by the Settlement Group Member, the Administrator may in its absolute discretion by written notice require the Settlement Group Member to provide and verify by a Statutory Declaration such further information as the Administrator may require. If the Settlement Group Member does not provide the further information within 14 days of such a request being made, the Administrator may determine, in its absolute discretion, that the Settlement Group Member

shall not be entitled to receive a Distribution from the Settlement Distribution Fund and, save for notice of that determination, the Administrator shall not be required to provide to any such Settlement Group Member any further notices under this SDS; or

- (ii) contains sufficient information notwithstanding that some information may not be included, the Administrator may in its absolute discretion accept the amended or corrected Trade Data or Summary Trade Data as complete.

8 Payments from the Settlement Distribution Fund

8.1 Funder Payments

Within 7 days after the Approval Orders Date, the Administrator will make the Funder Payments from the Settlement Distribution Fund.

8.2 Applicant's Unpaid Legal Costs

- (a) Within 7 days after the Approval Orders Date, the Administrator will pay the Applicant's Unpaid Legal Costs from the Settlement Distribution Fund to the respective entitled parties.
- (b) Within 7 days after the Approval Orders Date, the Applicant's solicitors and counsel may issue any additional invoices to the Administrator in respect of reasonable costs incurred in obtaining the Approval Orders, anticipated to be in the amount of \$165,000.00 (GST inclusive) (the **Estimate**). The Administrator will pay all such costs reasonably incurred. If the costs exceed the Estimate, the Administrator must obtain the approval of the Court before making such payments, unless the Administrator elects to pay the costs pursuant to clause 10(b) below.

8.3 Contingent ATE Premium

Within 7 days after the Approval Orders Date, the Administrator will pay the Contingent ATE Premium to AmTrust Europe Limited.

8.4 Applicant Payment

- (a) Within 7 days after the Approval Orders Date, the Administrator will make the Applicant Payment to the Applicant from the Settlement Distribution Fund.
- (b) The Applicant Payment will not affect the entitlement of the Applicant to its Settlement Entitlement in accordance with the terms of this SDS and will be paid in addition to its Settlement Entitlement.

9 Distributions to Settlement Group Members

9.1 Distribution and Method of Payment

On the Distribution Date, the Administrator will pay each Settlement Group Member their Distribution from the Residual Settlement Sum and any Settlement Interest in the Settlement Distribution Fund. This payment will be made either by:

- (a) electronic funds transfer, where bank details have been provided by the Settlement Group Member; or
- (b) by cheque.

9.2 Distribution Statement

- (a) On or within 14 days of the Distribution Date, the Administrator will send a Distribution Statement to each Settlement Group Member.

- (b) Each Distribution Statement will include, without limitation, the following information:
- (i) the amount of the Settlement Group Member's Distribution;
 - (ii) the bank details of the Settlement Group Member's bank account into which the Distribution was deposited, or where no bank details were provided, a cheque containing the Settlement Group Member's Distribution.

10 Remaining Amounts

- (a) Subject to clause 10(b) and on the date being four (4) months after the Distribution Date, if any amount remains or is held in the Settlement Distribution Fund, such as any amounts referable to un-presented cheques (the **Remaining Amount**), the Remaining Amount will be distributed pro rata amongst the remaining Settlement Group Members who have previously complied with the requirements of clause 7 in accordance with their Settlement Entitlement and whose cheques have been presented.
- (b) Notwithstanding clause 10(a), where:
- (i) the Remaining Amount is less than \$40,000.00; or
 - (ii) where the Administrator determines that the costs associated with making the payment in accordance with clause 10(a) are excessive, inefficient or disproportionate to the additional per unit return achieved for the relevant Settlement Group Members by the payment in accordance with clause 10(a),
- the Administrator may elect, in its absolute discretion, to instead pay the Remaining Amount in the following order of priority:
- (iii) first, to the Applicant's solicitors and counsel in respect of reasonable costs incurred in obtaining the Approval Orders which exceed the Estimate;
 - (iv) then, to the Funder in respect of the Applicant's legal costs and disbursements (other than the Applicant's Paid Legal Costs) which the Funder has paid and which would otherwise not be reimbursed to the Funder under this SDS.

11 Application of Settlement Interest, Determination of Trust Income and Accounts

11.1 Application of Settlement Interest

- (a) In deducting the Administration Costs from the Settlement Distribution Fund in accordance with clause 5, the Administrator may determine that the Administration Costs, or part of them, are to be applied against the Settlement Interest which forms part of the Settlement Distribution Fund.
- (b) If the Administrator does not make the determination in clause 11.1(a), the Administration Costs will be applied against the Settlement Distribution Fund as a whole.

11.2 Determination of Trust Income

- (a) The Administrator, in its capacity as trustee of the Settlement Distribution Fund, may determine the income of the Settlement Distribution Fund and, without limitation, may decide whether any item is to be treated as being on income or capital account.
- (b) If no determination is made by the Administrator in its capacity as trustee of the Settlement Distribution Fund in accordance with clause 11.1(a) prior to 7pm on the last day of the Settlement Distribution Fund's income year, the income of the Settlement Distribution Fund will be the distributable income determined in accordance with the accounting standards applicable to entities of this type in Australia.

11.3 Accounts

The Administrator must arrange for accounts for the Settlement Distribution Fund to be prepared by a suitably qualified accountant as at the Closing Date. This clause will not apply if the Administrator is required to pay the Settlement Sum to the Respondents in accordance with clause 3(e).

12 Dispute Resolution

- (a) This clause 12 applies to any Dispute.
- (b) The Administrator or a Settlement Group Member may issue a written notice that there is a Dispute:
 - (i) within 21 days of the date of the Notice of Estimated Distribution; or
 - (ii) if the Administrator requests further information in accordance with clause 7.2(f)(i), within 14 days of the date of that request being made,
 or such later date as the Administrator determines in its absolute discretion.
- (c) If there is a Dispute between the Administrator and any Settlement Group Member on any issue, the Administrator must, if satisfied the Dispute discloses an error, slip or omission by the Administrator, or any other administrative or clerical error, take all available and reasonable steps to correct the error and will, where appropriate, send an amended Estimated Notice of Distribution to that Settlement Group Member and/or arrange for a corrected Distribution, if any and if sufficient funds are available in the Settlement Distribution Fund, to be paid to the Settlement Group Member.
- (d) If clause 12(c) does not apply to a Dispute:
 - (i) the Administrator and the Settlement Group Member must first attempt to resolve the Dispute within 14 days from the date on which a notice under clause 12(b) was received by negotiating in good faith, including by the Settlement Group Member providing any documents to the Administrator that the Administrator requests and deems relevant;
 - (ii) if the Dispute is not resolved within 14 days, the Administrator and the Settlement Group Member must arrange to attend together within a further 7 days a negotiation conference for at least 1 hour to be held in person or by telephone or video conference to attempt to resolve the Dispute in good faith; and
 - (iii) if the negotiation conference referred to in preceding sub-clause does not resolve the Dispute, then the Administrator must refer the Dispute to Independent Counsel within a further 7 days.
- (e) Independent Counsel may, by written notice, direct the Settlement Group Member to submit such further documentation as the Independent Counsel may consider appropriate. Such documentation must be submitted within 14 days after the date of any such written notice, failing which the Dispute will be deemed to be resolved in the Administrator's favour.
- (f) Independent Counsel shall, within 14 days after either receiving the notice of the Dispute or the last date for receipt of documentation required pursuant to any direction given by Independent Counsel under clause 12(e) above, whichever is later, in writing, notify the Settlement Group Member and the Administrator of his or her determination of the Dispute.

- (g) A determination made by Independent Counsel is final and binding, save that prior to the expiry of 7 days after notice is given of the Dispute determination, the Settlement Group Member and the Administrator have liberty to apply to the Court on a question of law arising from the Dispute determination.
- (h) The Settlement Group Member raising any Dispute shall pay the costs of the Independent Counsel determination calculated at \$800.00 exclusive of GST for the first 2 hours' attendance by Independent Counsel (or any part thereof) and \$450 per hour exclusive of GST for each subsequent hour (or any part thereof).
- (i) If any costs of the Independent Counsel have not been paid by a Settlement Group Member before any distribution to that Settlement Group Member, the Administrator shall deduct those costs from any sum which otherwise would be distributed to the Settlement Group Member in priority to all other entitlements. That Settlement Group Member shall remain liable for any costs not recovered by a deduction pursuant to this clause.
- (j) The Administrator, in administering the SDS, may apply to the Court for an order requiring any Settlement Group Member to pay such of the costs of Independent Counsel as may at any time remain unpaid.

13 Finalisation of Administration

13.1 Distribution Report

Within 21 days following the date on which the final distribution from the Settlement Distribution Fund is made, the Administrator shall provide a brief report to the Court on:

- (a) the total of all Distributions paid to Settlement Group Members;
- (b) the number of Settlement Group Members who have received Distributions;
- (c) whether any costs additional to the Administration Costs have been incurred by the Administrator in excess of the Administration Costs cap and have been recouped or defrayed from the Settlement Interest and, if so, what amount.

13.2 End of Administration

On the Closing Date, the Administrator will cease to be Administrator.

14 General Matters

14.1 Supervision by the Court

The Administrator may refer any issues relating to the SDS to the Court for direction or determination.

14.2 Time

The time for doing any act or thing under the SDS after the Approval Orders Date may be extended by agreement between the Administrator and the Applicant or by order of the Court.

14.3 Notice

- (a) Any notice to be given pursuant to the SDS will be deemed given and received for all purposes associated with this SDS if it is:
 - (i) addressed to the person to whom it is to be given; and
 - (ii) either

- (A) delivered, or sent by pre-paid mail, to that person's postal address (being, in respect of any Settlement Group Member, the current postal address recorded in the records maintained by Corrs Chambers Westgarth or obtained directly from the Settlement Group Member); or
 - (B) sent by email to that person's email address (being, in respect of any Settlement Group Member, the current email address recorded in the records maintained by Corrs Chambers Westgarth or obtained directly from the Settlement Group Member).
- (b) A notice that complies with this clause 14.3 will be deemed to have been given and received:
- (i) if it was sent by mail to an addressee in Australia, two clear Business Days after being sent;
 - (ii) if it is sent by mail to an addressee overseas, five clear Business Days after being sent; and
 - (iii) if it is sent by email, at the time it is sent unless the sender is notified by his, her or its email system of a failure to deliver the email.
- (c) The Administrator's address and email address will be as set out below unless and until the Administrator notifies the sender otherwise:
- [Name of Administrator], Attention: [##]
- Email: [##]
- Post: [##]

14.4 Immunity of Administrator and Independent Counsel

The Administrator and Independent Counsel are each immune from any demand, claim or suit, at law or in equity, made by any Settlement Group Member in respect of any loss or damage arising as a result of their participation in this SDS, including any payment (or lack thereof) made by the Administrator in accordance with the terms of this SDS including, without limitation, any payment made by the Administrator in accordance with clauses 8, 9, and 10.

14.5 Settlement Group Member personal Taxation Issues

- (a) Each Settlement Group Member is responsible for obtaining his, her or its own taxation advice in respect of any Distribution received pursuant to this SDS.
- (b) The Administrator will not, and is not required to, provide or obtain any taxation advice or taxation rulings (class, public or private) concerning any Tax potentially payable by Settlement Group Members in respect of Distributions they receive.

SCHEDULE A – CONFIDENTIAL LOSS ASSESSMENT FORMULA



