



15 January 2020

Westpac Life Insurance Class Action

Litigation Funding and Conflicts Disclosure Statement

CONFIDENTIAL

JustKapital Litigation Pty Limited ACN 168 872 606 (**JKL**) is funding a class action, the Westpac Life Insurance Class Action, against Westpac Banking Corporation and Westpac Life Insurance Services Limited (**Westpac**) in the Federal Court of Australia being *Lenthall & Ors v Westpac Banking Corporation & Anor* (NSD 1812/2017) (**class action**).

The class action is being conducted by Shine Lawyers, who act for the Representative Applicants and the Group Members in the class action. More information on the class action can be found on Shine Lawyer's website at <https://www.shine.com.au/service/class-actions/westpac-class-action>.

JKL is a wholly-owned subsidiary of LawFinance Limited ACN 088 749 008 (**LawFinance**), an ASX-listed public company which provides funding to law firms in Australia and the United States (ASX:LAW). The Chief Executive Officer of LawFinance, Ms Diane Jones, has extensive experience in litigation funding and law firm financing. Prior to her current position, Ms Jones was the Chief Operating Officer and Chief Financial Officer of IMF Bentham Limited, Australia's largest listed litigation funder.

For more information on LawFinance, please see its website at www.lawfinance.com.au or www.justkapital.com.au.

Purpose of this document

This **confidential** document is to assist you with understanding some of the key terms of the Westpac Life Insurance Class Action Funding Agreement (**Funding Agreement**) under which JKL provides funding for the class action, why you should enter into a Funding Agreement, how those terms in the Funding Agreement will affect you if you do enter into it and how any potential conflicts between your interests and those of Shine Lawyers and JKL will be managed in the class action.

The Westpac Life Insurance Class Action – why is it being funded?

The class action was commenced in October 2017. The class action is brought by four Representative Applicants, Mr and Mrs Lenthall and Mr and Mrs Lye, on behalf of themselves and all Group Members. The claims of the Representative Applicants will be resolved first by the Court, following which (if the Representative Applicants' claims are successful) the individual claims by Group Members will be resolved.

Neither the Representative Applicants nor Shine Lawyers were prepared to bring the class action, or continue to prosecute it, without funding from JKL. The costs of the class action are very substantial. In addition, if the class action is unsuccessful, the Representative



Applicants are likely to be ordered to pay a substantial portion of Westpac's costs (**Adverse Costs Order**).

The Representative Applicants have each signed a funding agreement with JKL. JKL's funding covers 80% of Shine Lawyers' legal fees (with Shine Lawyers being prepared to receive the balance, plus an uplift fee, out of any successful recoveries), 100% of disbursements (such as counsels' and experts' fees) and any Adverse Costs Order. JKL may also elect to fund any appeal and any individual claims brought by Group Members if any Representative Applicant's claims are upheld.

In return for JKL's funding, the Funding Agreement provides that in the event of a successful outcome to the class action (whether by settlement, judgment or under a compensation scheme), JKL will receive a share of any amounts recovered, as explained below. If the class action is unsuccessful or the claims are lost, JKL will forfeit its investment in the case and will be liable to pay any Adverse Costs Order (subject to insurance obtained by JKL).

JKL's share of any recoveries is to compensate JKL for the costs and risks it incurs in funding the class action.

Why sign a Litigation Funding Agreement?

JKL is only prepared to fund the class action if it can be assured that, in the event the class action is successfully resolved, it will receive a sufficient return on the sums it has paid to fund the class action and the risks it has undertaken.

The Representative Applicants had obtained a 'common fund order' from the Court which provided that all Group Members, whether they had signed a Funding Agreement with JKL or not, would contribute to a Court-approved payment to JKL if the class action was successfully resolved. This avoided the need for Group Members to sign Funding Agreements. However, the common fund order was overturned by the High Court in late 2019.

JKL will only continue to fund the class action if sufficient Group Members, such as yourself, enter into Funding Agreements with JKL. Without sufficient signed Funding Agreements, the class action is not viable for JKL to continue to fund. JKL will advise all funded Group Members as soon as sufficient Funding Agreements have been signed.

The Litigation Funding Agreement

This document briefly refers to some of the key terms of the Funding Agreement. You should read the full terms of the Funding Agreement carefully before entering into it. JKL also recommends that you should obtain legal advice on the meaning and effect of the terms. To the extent there is any inconsistency between the terms of this document and the Funding Agreement, the Funding Agreement prevails. Terms used in this document have the same meaning as in the Funding Agreement.

You can enter into the Funding Agreement by signing and returning a signed copy to JKL or, if you are a company or other entity, by executing the Funding Agreement in accordance with the legal requirements applying to you and returning an executed copy of the Funding Agreement to JKL. Alternatively, you can enter into the Funding Agreement electronically by



following the directions on Shine Lawyers' website (click on link: <https://www.shine.com.au/service/class-actions/westpac-class-action#form>).

You have **21 days** from the date on which you enter into the Funding Agreement to withdraw from it if you change your mind. You may withdraw during that time by giving written notice to JKL. If you withdraw you will have no ongoing obligations under the Funding Agreement, other than to maintain the confidentiality of any information Shine Lawyers or JKL has shared with you about the class action and its funding.

The Funding Agreement commences on **22 September 2017** which is the date on which JKL's funding of the class action began. It is important that the Representative Applicants and all funded Group Members share in the costs of bringing the class action from the outset, as all will benefit from the costs incurred in bringing the class action if it is successfully resolved.

Benefits to funded Group Members

It is not necessary for you to sign a Funding Agreement to be a Group Member in the class action (the class action has been brought on an 'open' basis). However, as noted above, if sufficient Group Members do not sign Funding Agreements, JKL will not be able to continue to fund the class action. The class action is the only means currently available for Group Members to bring their claims and seek compensation from Westpac.

If you sign a Funding Agreement and Retainer with Shine Lawyers, you will receive regular updates on the class action, will have your claims evaluated by Shine Lawyers and an independent expert, your claims will be taken into account in any mediation or other settlement initiatives and your interests will be represented by Shine Lawyers, one of Australia's most experienced class action law firms. All communications are confidential and may be subject to legal privilege.

Benefits to JKL

If the class action is successful, then under the Funding Agreement JKL is entitled to be reimbursed for all amounts it has paid in funding the class action. You will be required to pay the "Applicant's Share" of those costs out of your share of any amounts recovered from Westpac. Your share will be your pro rata share of the costs calculated as the proportion your Claims represent of the total claims (of you, the Representative Applicants and any Group Members) covered by the settlement or judgment concerned. This proportion and the value of the claims will be determined by an independent expert.

JKL is also entitled to be paid 30% of any amounts recovered (whether by way of a settlement, compensation scheme, damages, costs or interest). If there is an appeal, then JKL is entitled to an additional 5% of recoveries (making JKL's return 35% in total).

If there is a settlement of the class action, any amounts paid to JKL or Shine Lawyers will be subject to the Court's approval. The Court will only approve the settlement if it is satisfied it is reasonable and in the interests of all Group Members.

Benefits to Shine Lawyers

If the class action is successful, then Shine Lawyers will be entitled to be paid out of any recoveries the “Remaining Speculative Costs.” These costs are the 20% of Shine Lawyers’ legal fees incurred in the class action which JKL has not funded, plus a 25% uplift in accordance with the terms of Shine Lawyers’ Retainer. They also include Shine Lawyers’ costs for the Preliminary Work they carried out (being investigative work carried out before the Proceedings were commenced) in accordance with their Retainer. Again, you will be required to pay the “Applicant’s Share” of the “Remaining Speculative Costs” out of any amount recover from Westpac.

Any payments to JKL and Shine Lawyers will be made out of (but cannot exceed) any Outcome Sum or Settlement Sum (as those terms are defined in the Funding Agreement) and in priority to any payments to the Group Members.

Detriments to funded Group Members

As noted, if you sign a Funding Agreement, you will be obliged to pay a share of any amount you may recover to JKL and Shine Lawyers. However, in the event of a settlement, any payments will be subject to Court scrutiny and approval. You will also be required to follow all reasonable advice given by Shine Lawyers and observe the other obligations in clause 6 of the Funding Agreement.

JKL may terminate its funding of the class action, in its sole discretion, by giving 14 days written notice. JKL is likely to terminate its funding if insufficient Group Members sign Funding Agreements or if the advice of Shine Lawyers or counsel is that the class action no longer has good prospects of success. In the event funding is terminated, JKL remains liable to pay all outstanding costs and any Adverse Costs Order or security for costs incurred to the date the termination becomes effective.

JKL or LawFinance may become insolvent or be unable to continue to pay the costs or any Adverse Costs Order. If this occurs, the class action may come to an end or may be disrupted until another funder takes over JKL’s funding obligations. Note that JKL has obtained insurance in respect of an Adverse Costs Order and that in the event the class action ends, Group Members (other than the Representative Applicants) will not be required to pay any costs or any adverse costs.

Group Members will be provided by the Court with an opportunity to ‘opt out’ of the class action, and may pursue their individual claims separately should they wish. In such a case, JKL may elect whether to terminate the Funding Agreement with the Group Member concerned. If the Funding Agreement is not terminated, the Group Member will be required to pay JKL its entitlements if the Group Member later successfully resolves his, her or its claim.



Disclosure of pre-existing relationships

Relationships between JKL and Shine Lawyers and counsel

JKL is currently funding other litigation being conducted by Shine Lawyers (or its subsidiary, ACA Lawyers) and counsel retained in the class action. However, JKL is unlikely to fund any further litigation in the future with either Shine Lawyers or counsel as JKL is exiting litigation funding in Australia to allow LawFinance to concentrate on its other law firm financing business in Australia and the United States.

Neither Shine Lawyers nor counsel act for, or are retained by, JKL. Shine Lawyers and counsel owe their professional and ethical duties solely to the Representative Applicants and the Group Members and each Group Member is required to enter into a Retainer with Shine Lawyers to ensure a solicitor/client relationship exists between them.

JKL and Shine Lawyers have entered into an agreement, the Terms of Engagement, which is Schedule 1 to the Funding Agreement. This provides for JKL to fund Shine Lawyers' fees and disbursements in accordance with the Funding Agreement and also regulates the relationship between JKL and Shine Lawyers. JKL and Shine Lawyers entered into this agreement as independent parties acting in their own self-interest.

Relationships between JKL and funded claimants

As JKL is currently funding other class action litigation, it is possible that JKL is currently funding other claims brought by Group Members in the class action. Some of these Group Members may have entered into other funding agreements with JKL. All funding agreements are entered into on an arms length basis and in providing funding, JKL is acting in its own interests only. JKL is not an agent, joint venturer or fiduciary of or towards any funded claimant.

Conduct of the class action

Under the Funding Agreement, JKL is authorised to give day-to-day instructions to Shine Lawyers in relation to the conduct of the class action. However, JKL's instructions can be overridden by those of the Representative Applicants or, where a Group Member's individual claims are being prosecuted, the individual Group Member.

Note that Group Members are bound by decisions made by JKL or the Representative Applicants in the conduct of the class action.

Resolution of the class action

The class action may be resolved by a settlement or by judgment of the Court. A settlement may resolve all of the claims of the Representative Applicants and Group Members. A judgment will only resolve the claims of the Representative Applicants; Group Member's individual claims will be resolved separately in the light of finding made by the Court in its judgment. You may or may not agree with any proposed or approved settlement. Procedures exist to ensure that any settlement is fair and reasonable.



Opting Out

As noted above, Group Members will be given the opportunity by the Court of opting out of the class action before any trial if they wish.

Settlement

The Funding Agreement provides that if there is a disagreement between the Representative Applicants and JKL over the terms on which the class action or any claims should be settled, the dispute is to be resolved by the most senior counsel retained for the applicants in the class action. Senior counsel's opinion as to whether the proposed settlement is fair and reasonable in all the circumstances is binding on the Representative Applicants and JKL. JKL will fund the costs of obtaining counsel's opinion as part of the costs funded by JKL.

As noted, any settlement of the class action must be approved by the Court, which will only do so if the settlement is fair and reasonable and in the interests of all Group Members.

Compensation Scheme

Westpac may seek to by-pass the class action and settle the claims directly with funded Group Members. If this occurs, the Funding Agreement's terms will apply to any such settlement.

Under the Funding Agreement, no funded Group Member may settle directly with Westpac without JKL's agreement. This is to ensure that any proposed settlement is the subject of legal advice from Shine Lawyers and counsel, is consistent with the overall strategy of the class action and is in the interests of all Group Members concerned.

Appeals

As noted, JKL may agree to fund any appeals from any final judgment in the class action. JKL has already funded an appeal to the Full Court of the Federal Court and the High Court of Australia in respect of the common fund order granted by the Court. These appeals do not affect JKL's percentage share of any recoveries.

Providing information and documents to JKL and Shine Lawyers

You will be requested to provide information on your Claims to Shine Lawyers and may be asked to provide documents relating to the Claims by Shine Lawyers or JKL. You are not likely to have to give a witness statement or evidence in court in the class action. JKL is entitled to communicate directly with Shine Lawyers and counsel and does so in order to give instructions as provided in the Funding Agreement.



Termination of the Litigation Funding Agreement

The Funding Agreement may be terminated in three ways.

First, as noted, JKL may terminate any Funding Agreement in its sole discretion by providing 14 days' written notice to the funded claimant concerned.

Second, JKL may terminate any Funding Agreement in its sole discretion by providing 7 days' written notice to any funded claimant who informs JKL or Shine Lawyers of their intention to opt out of the class action.

Third, you are entitled to terminate your Funding Agreement if JKL commits a material breach of it and does not remedy the breach within 30 days of receiving a written notice from you requiring it to do so.

In each case, JKL must meet its 'accrued obligations', that is payment of any outstanding costs JKL is obliged to pay under the Funding Agreement that were incurred up to the date of termination, and any Adverse Costs Order or security for costs in respect of Westpac's costs up to the date of termination.

Conflicts Management Policy

LawFinance has a detailed policy for the management of conflicts in litigation funded by JKL, which can be accessed at www.justkapital.com.au/investor-centre/governance. JKL will promptly inform you of any material breach of its policy or the conflicts regulations and of the course it proposes to take to rectify any breach.

Dispute resolution

If a dispute arises between you, a Representative Applicant, Shine Lawyers or JKL under the Funding Agreement, then written notice must be given to each party of the dispute. If the dispute cannot be resolved by negotiation within 14 days of the notice, the dispute will be referred to an arbitrator agreed by the parties or nominated by the President of the New South Wales Bar Association, who has 21 Business Days (or other agreed period) to issue a binding determination of the dispute. Each party to a dispute is required to meet their own costs in respect of the dispute.

WESTPAC LIFE INSURANCE CLASS ACTION FUNDING AGREEMENT

1. APPLICANT'S DETAILS

PLEASE PRINT IN CAPITAL LETTERS

Full Name of Applicant:

If Applicant is a company insert ABN/ACN

Street Address:

Suburb/Town:

State: Postcode:

2. CONTACT DETAILS

Contact Name:
(TITLE) (FIRST NAME) (SURNAME)

Street Address:

Suburb/Town:

State: Postcode:

Contact Email:

Contact Phone:

3. SIGNING THE FUNDING AGREEMENT

Signing below operates as the Applicant's agreement to enter this Agreement.

Sign below and return to:
JUSTKAPITAL LITIGATION PTY LIMITED
Suite 2, Level 16,
56 Pitt Street, Sydney NSW 2000

SIGNED by, or on behalf of and with the authority of, the Applicant (as specified above)

.....
SIGNATURE

.....
SIGNATURE

.....
PRINT NAME

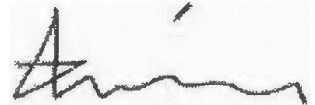
.....
PRINT NAME

DATE: / /

SIGNED on behalf of JUSTKAPITAL LITIGATION PTY LIMITED (A.C.N: 168 872 606) pursuant to section 127 of the Corporations Act 2001 (Cth)



.....
DIANE JONES



.....
TIM STOREY

DATE: 15 / 01 / 2020

DATE: 15 / 01 / 2020

BACKGROUND

- A. The Applicant has a Claim against the Respondent, is a Group Member and wishes to enter into this Agreement.
- B. Proceedings have been commenced against the Respondent in respect of the claims of the Representative Applicants as well as common questions relating to the claims of the Group Members.
- C. The Applicant has requested JKL to manage the Proceedings, pay the Costs of the Proceedings and provide necessary funding and support for the Proceedings.
- D. JKL is prepared to manage the Proceedings, pay the Costs of the Proceedings and provide the necessary funding and support for the Proceedings on the terms of this Agreement.
- E. JKL can elect, at its sole discretion, whether or not to continue to fund the Applicant's Claim after a Liability Judgment by the Court.
- F. The Applicant is prepared, in return, to assign to JKL a share of the Outcome Sum or the Settlement Sum (if any) on the terms of this Agreement.
- G. The Applicant is aware that JKL will also provide funding to other Group Members and may fund other actions against the Respondent unrelated to the Proceedings.
- H. The Applicant is aware that, in the Proceedings, his, her or its Claim may be pursued in common with claims of other Group Members and that Group Members may include persons and companies who have not entered into a funding agreement with JKL.
- I. The Applicant is aware that JKL has entered into an agreement with the Lawyers for the provision of legal services in respect of the Proceedings. A

copy of the agreement between JKL and the Lawyers is attached as Schedule 1 to this Agreement.

- J. The Applicant is aware that the Representative Applicants have entered into a Retainer with the Lawyers and is prepared to enter into a Retainer with the Lawyers.

AGREEMENT

1. Definitions

- 1.1. In this Agreement, unless the context requires otherwise:

“**Adverse Costs Order**” means any costs order made in favour of the Respondent against the Representative Applicant and/or JKL in the Proceedings in respect of costs of the Respondent incurred during the term of this Agreement.

“**Agreement**” or “**Litigation Funding Agreement**” means this agreement entered into between JKL and the Applicant.

“**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.

“**Applicant**” or “**Applicants**” means the company or individual that has entered into this Agreement and the successors or assigns of that company or individual.

“**Applicant’s Share**” means the proportion that the value of the Applicant’s Claim against the Respondent has to the value of all claims against the Respondent in the Proceedings or in any Settlement or Outcome, as the case may be.

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

“**Claim**” means the claim or claims the Applicant has or may have against the Respondent for loss and damage caused to the Applicant by the conduct of the Respondent which claim is the same as or similar to the claims the subject matter of the Proceedings.

“**Common Fund Order**” means an order of the Court that each Group Member pay a portion of the Group Member’s share in any Outcome Sum or Settlement Sum to JKL as compensation and consideration for JKL paying the Costs of the Proceedings, irrespective of whether the Group Member has entered into a funding agreement with JKL.

“**Conflicts Management Policy**” means JKL’s policy, as amended from time to time, for managing conflicts.

“Costs of the Proceedings” means those costs and expenses incurred at any time from the Date of Commencement up to the conclusion of this Agreement comprising:

- (a) 80% of the reasonable legal fees of the Lawyers incurred for the purpose of preparing for, investigating, prosecuting and resolving the Proceedings;
- (b) 100% of the reasonable disbursements incurred by the Lawyers for the purpose of preparing for, investigating, prosecuting and resolving the Proceedings;
- (c) 100% of the fees of any barristers or experts retained to perform work in relation to the Proceedings;
- (d) the management, and funding, of the Proceedings, including the individual Claims of the Applicant after any Liability Judgment which JKL elects to fund in accordance with clause 11;
- (e) the costs of any adverse costs order insurance obtained by JKL or the Representative Applicants or the Applicant, including any costs associated with obtaining such insurance;
- (f) any security for costs paid or provided by JKL including any costs associated with providing such security;
- (g) any Adverse Costs Order paid by JKL;
- (h) the costs incurred by JKL in quantifying any Adverse Costs Order;
- (i) any costs paid by JKL pursuant to clauses 9, 10, 11, 12, 13, 14, 17 and 18;
- (j) all of JKL's out of pocket costs and expenses paid or incurred in relation to the Proceedings, including in relation to any consultants and experts engaged by JKL (other than those costs and expenses already referred to in this definition); and
- (k) any GST payable as a result of the above costs or expenses being incurred.

“Costs Order” means an order made by a Court requiring the Representative Applicants and/or JKL to pay the costs incurred by another party to the Proceedings.

“Court” means the Federal Court of Australia or the High Court of Australia.

“Date of Commencement” means 22 September 2017.

“Group Member” means any person or entity that matches the definition of Group Member as stated in the Statement of Claim as amended from time to time and includes the Representative Applicants and the Applicant.

“JKL” means JustKapital Litigation Pty Limited (A.C.N: 168 872 606).

“JKL Representative” means any Director(s), Officer(s), Employee(s), Independent Contractor(s), Agent(s), Consultant(s), Advisor(s) or any other person, body corporate or organisation appointed to conduct the affairs (or held out as having been appointed to conduct the affairs) of JKL.

“Judgment” means any judgment of the Court against the Respondent in respect of any Claim, any Group Member claim or the Proceedings as a whole.

“Lawyers” means Shine Lawyers or any other solicitors appointed in their place by the Representative Applicants with JKL’s consent.

“Liability Judgment” means a judgment or decision of the Court which means that the Respondent is liable to all or any of the Representative Applicants for any contraventions of the various statutes, or general law, as pleaded in the Statement of Claim from time to time.

“Originating Application” means the Originating Application to be filed in the Federal Court of Australia to commence the Proceedings, and which may be amended from time to time during the conduct of the Proceedings.

“Opt Out Notice” means a written notice approved by the Court (in the form to be provided during the Proceedings) to the Court stating the Applicant’s intention to opt out of the Proceedings.

“Other Funded Parties” means:

- (a) where the Court has made a Common Fund Order, all Group Members; or
- (b) in any case, any person who has entered, or enters, into a Westpac Life Insurance Class Action Litigation Funding Agreement which has not been terminated.

“Outcome” means when all or any part of the Outcome Sum is received.

“Outcome Sum” means any money or financial benefit, other than a Settlement Sum, which any Respondent pays or makes available to the Applicant or any other Group Member in relation to the claims the subject of the Proceedings and includes: (a) an award of damages on a Judgment by the Court in the Proceedings or any amount awarded or agreed as part of a claims resolution process, interest (including interest earned on money held in a trust account) and any costs recovered from the Respondent pursuant to a Costs Order or by agreement, and (b) any compensation, remediation payment, lump sum amount or ex gratia payment, whether as a result of an out-of-court settlement or a compensation or remediation scheme established by the Respondent or otherwise, and (c) any other form of cash payment or financial benefit whatsoever.

“Proceedings” means the proceeding brought in the Federal Court of Australia pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) against the Respondent as pleaded in the Statement of Claim in relation to the pricing of insurance products issued by Westpac Life Insurance Services Limited ABN 31 003 149 157, and includes all related, replacement and ancillary proceedings, any Alternative Dispute Resolution Process and any

proceedings or process to prosecute and/or resolve the Applicant's individual Claims after any Liability Judgment which JKL elects to fund in accordance with clause 11.

"Regulations" means the following provisions of the Corporations Regulations 2001 (Cth), in their application to a litigation funding scheme or litigation funding agreement as defined in those provisions, and as amended from time to time:

- (a) Regulation 5C.11.01;
- (b) Regulation 7.6.01(1)(x) and (y); and
- (c) Regulation 7.6.01AB.

"Remaining Speculative Costs" means the costs incurred by the Lawyers and payable upon Outcome or Settlement pursuant to the Retainer (including any uplift charged with respect to those costs), and which JKL is not obliged to pay pursuant to this Agreement, and for the purposes of this Agreement includes the Preliminary Work performed by the Lawyers as defined in the Retainer.

"Representative Applicants" means the Group Members who have consented to be named as the lead applicants in the Statement of Claim and Originating Application for the Proceedings from time to time.

"Respondent" means, jointly and severally, Westpac Banking Corporation ABN 33 007 457 141 and/or any of its subsidiaries or related entities joined to the Proceedings as a respondent, and includes Westpac Life Insurance Services Limited ABN 31 003 149 157.

"Retainer" means the costs agreement initially entered into between the Representative Applicants and the Lawyers in respect of the Proceedings and to be entered into with the Applicant, as amended from time to time.

"Settlement" means written agreement being reached in respect of the Proceedings for the payment of a Settlement Sum, and approved by the Court, which compromises or resolves the Claims and/or any other Group Member claims and/or the Proceedings related to the Claims.

"Settlement Sum" means any money or financial benefit received by the Applicant or any other Group Member from any Respondent to settle, compromise or otherwise resolve the Claims and/or any other Group Member claims and/or the Proceedings relating to the Claims and includes any cash payment, lump sum amount scheme payment or ex gratia payment, whether inclusive of costs or otherwise, and includes any interest (including interest earned on money held in a trust account).

"Statement of Claim" means the statement of claim filed in the Proceedings, as amended from time to time.

"Terms of Engagement" means the agreement entered into by the Lawyers and JKL for the provision of legal services in respect of the Proceedings, a copy of which is attached as Schedule 1 to this Agreement. The Terms of Engagement may be amended, as agreed by JKL and the Lawyers, from time to time. The Applicant will be informed of any amendment.

2. **General**

- 2.1 The written terms of this Agreement constitute the entire agreement between the Applicant and JKL.
- 2.2 This Agreement is entered into on an arms' length basis. Neither the Applicant nor JKL are or shall be agents, partners, joint venturers or fiduciaries of or towards one another.
- 2.3 There will be no variation or amendment to the terms of this Agreement except in writing signed by each of the Applicant and JKL, save that JKL may reasonably amend the terms of this Agreement from time to time and will provide 21 days' notice of any such amendment to the Applicant before the amendment takes effect. The Applicant will be presumed to agree to the amendment unless the Applicant notifies an objection to JKL, in accordance with clause 26, before the date the amendment takes effect.
- 2.4 If any term of this Agreement, or its application to any person or circumstances, is invalid or unenforceable, the remaining provisions are not affected and each remaining provision is valid and enforceable to the full extent permitted by law.
- 2.5 The Applicant and JKL will promptly sign all documents and do all things that either of them from time to time reasonably requires of the other to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by it.
- 2.6 The singular includes the plural in this Agreement and vice versa.
- 2.7 All references to clauses, sub-clauses and paragraphs are references to clauses, sub-clauses and paragraphs in this Agreement, unless otherwise specified.
- 2.8 A reference in this Agreement to any legislation or legislative provision includes any statutory modification, amendment or re-enactment of that legislation or legislative provision, and includes any subordinate legislation or regulations issued under that legislation or legislative provision.

3. **Entering into this Agreement and Cooling Off Period**

- 3.1. The Applicant may enter into this Agreement by:
- (a) signing a copy of this Agreement and sending the signed copy, by email, fax or post (see clause 26), to JKL; or
 - (b) if the Applicant is a company or other non-natural entity, by executing a copy of this Agreement in accordance with the relevant law and sending the executed copy, by email, fax or post (see clause 26), to JKL; or
 - (c) by clicking on the link "Register Now" on the "Westpac Life Insurance Class Action" page of the Shine Lawyers website and following the directions to enter into the Funding Agreement (including making the Agreement Declaration) set out there.

- 3.2. The Applicant may withdraw from this Agreement, by written notice given to JKL within 21 days after entering into this Agreement.
- 3.3. If the Applicant withdraws in accordance with sub-clause 3.2, neither the Applicant nor JKL shall have any continuing or further obligation to each other save for any obligations of confidence arising in respect of information received by the Applicant, JKL or the Lawyers prior to withdrawal.
- 3.4. A facsimile or email copy of this Agreement signed by any party to it or acceptance of the Agreement Declaration Terms as set out on the “Westpac Life Insurance Class Action” website, will be treated as an original signed by that party.

4. Case Investigations

- 4.1. The Applicant consents to JKL investigating all matters that JKL determines are relevant to the Proceedings, including (without limitation) investigating the evidentiary basis for the Claims of the Applicant and investigating the preparedness of the Respondent to settle the Claims and/or the Proceedings, and having access to and copies of all relevant documents and information deemed by JKL necessary to manage the conduct of the Proceedings.
- 4.2. The Applicant will provide, or procure the provision of, all information, documents and assistance as JKL may reasonably request for the Claims and/or Proceedings on the basis that the information and documentation is confidential, provided for the purpose of resolving the Claims and/or Proceedings, remains the exclusive property of the Applicant and will be returned by JKL at the conclusion of the Proceedings at the Applicant’s request.
- 4.3. The Applicant agrees that any information or documents provided to JKL may be used by JKL in the Proceedings and may be disclosed by JKL for the purposes of the Proceedings.
- 4.4. Without derogating from anything else in this clause 4, JKL may use the information and documentation:
 - (a) to assist JKL in the preparation, management and resolution of the Proceedings; and
 - (b) to review whether it provides or continues to provide funding in respect of the Claims and the Proceedings.
- 4.5. JKL may retain and use the information and documentation obtained pursuant to sub-clauses 4.1, 4.2 and 4.3 notwithstanding any termination of this Agreement.

5 Proceedings

- 5.1 The Applicant agrees that:
 - 5.1.1 Subject to clause 5.1.2, JKL will give day-to-day instructions to the Lawyers on all matters concerning the Claims and the Proceedings.
 - 5.1.2 JKL’s instructions to the Lawyers will be overridden by:

- 5.1.2.1 the Representative Applicant's instructions to the Lawyers in relation to the Proceedings or the Representative Applicant's particular Claim; and
- 5.1.2.2 the Applicant's instructions to the Lawyers in relation to the Applicant's particular claim;
- 5.1.3 no Respondent will be joined to the Proceedings without JKL's consent; and
- 5.1.4 an independent expert appointed by JKL, in conjunction with the Lawyers and counsel, and in accordance with a valuation methodology agreed between JKL, the expert and the Lawyers, may determine the amount of the Claims and the Applicant's Share.

6 The Applicant's Obligations

- 6.1 For the duration of this Agreement, the Applicant must:
 - 6.1.1 follow all reasonable legal advice given by the Lawyers and by counsel retained by the Lawyers in relation to the Proceedings and the Claims;
 - 6.1.2 follow all reasonable valuation advice of the expert appointed by JKL pursuant to clause 5.1.4, in conjunction with the Lawyers and counsel;
 - 6.1.3 promptly provide full, frank and honest instructions to the Lawyers and counsel and provide the Lawyers with all documents in the Applicant's possession, custody or power that are relevant to the Claims or the Proceedings;
 - 6.1.4 promptly provide a signed affidavit to the Lawyers at their request for use in the Proceedings, attend Court to give evidence in person if required by the Lawyers to do so and actively participate in any Alternative Dispute Resolution Process;
 - 6.1.5 opt out of or discontinue any other proceeding conducted against the Respondent, if the Claims pursued in the other proceeding overlap with the Claims in the Proceedings funded by JKL;
 - 6.1.6 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;
 - 6.1.7 immediately inform the Lawyers and JKL of any settlement offer received from the Respondent and any information, circumstance or change in circumstances likely to affect the Claims, any issue in any Proceedings or the recoverability of any Outcome Sum or Settlement Sum;
 - 6.1.8 promptly take all appropriate actions, at JKL's expense and with JKL's written agreement, to tax or assess any costs claimed by the Respondent in an Adverse Costs Order; and

- 6.1.9 give the Lawyers and JKL at least seven (7) days' notice of his, her or its intention to file an Opt Out Notice;
- 6.2 For the duration of this Agreement, the Applicant must not, without the prior written consent of JKL:
 - 6.2.1 discontinue, abandon, withdraw or settle the Proceedings or the Claims against the Respondent or make any admission in relation to the Claims;
 - 6.2.2 respond to any settlement offer made by the Respondent;
 - 6.2.3 reject any offer made by the Respondent to engage in any form of Alternative Dispute Resolution Process;
 - 6.2.4 commence any other legal claim, proceeding or action against the Respondent arising out of the same, or similar circumstances as the subject matter of the Proceedings;
 - 6.2.5 enter into any funding agreement with any other party in respect of the Proceedings or the Claims;
 - 6.2.6 terminate the retainer of the Lawyers or retain any other solicitors in place of the Lawyers;
 - 6.2.7 communicate with the Respondent in relation to the Proceedings or the Claims unless authorised by the Lawyers in writing to do so; and
 - 6.2.8 in this sub-clause 6.2 and in sub-clause 6.1, "settle" and "settlement offer" include any Settlement or Settlement Sum and any settlement proposal, offer or agreement coming within paragraph (b) of the definition of Outcome Sum.
- 6.3 For the duration of this Agreement, JKL will:
 - 6.3.1 by implementing the Conflicts Management Policy, comply with the requirements of the Regulations; and
 - 6.3.2 provide timely and clear disclosure to the Applicant of any material breach of the Regulations by JKL in relation to the subject matter of this Agreement.

7 Confidential Information

- 7.1 The Applicant agrees that all information, communications or documents provided to the Applicant at any time by the Lawyers or any JKL Representative, in relation to the Proceedings is or may be treated as, confidential information within the meaning of equity and "confidential communications " or "confidential documents " within the meaning of Part 3 .10 of the *Evidence Act 1995* (Cth) and may be subject to joint or common interest privilege that the Applicant is not at liberty to waive.
- 7.2 Due to the special nature of representative proceedings, namely, that all claims of all Group Members will be affected by the future progress of the Proceedings, the Applicant and the Lawyers agree that strict compliance with

clause 7.1 is required to maintain the confidentiality of information provided to the Applicant about the Proceedings.

- 7.3 The obligation in clause 7.1 above is a continuing obligation and survives any Termination of the Retainer and/or this Agreement. The Applicant agrees not to attempt to adduce evidence of any such information, communications or documents without the express written authority of the Lawyers.

8 Case Management

- 8.1 JKL will provide the following case management services in respect of the Proceedings during the term of this Agreement:

8.1.1 considering the advice of the Lawyers and counsel and the evidence of experts and providing day-to-day instructions to the Lawyers (subject to clauses 18.3 and 5.1);

8.1.2 database and document management, claims assessment, and financial management and oversight; and

8.1.3 facilitating any Alternative Dispute Resolution Process.

9 Costs

- 9.1 JKL will pay the Costs of the Proceedings on the terms of this Agreement.

- 9.2 JKL will pay any Adverse Costs Order.

- 9.3 If the Court orders any security for the costs of the Respondent to be paid then JKL will provide the security for costs in the Proceedings, in such form that JKL determines and the Respondent or the Court accept.

- 9.4 JKL agrees that it will not seek payment from the Applicant of any Costs of the Proceedings, any Adverse Costs Order or any security for costs, but is entitled to share in the Settlement Sum or Outcome Sum in accordance with the terms of clauses 13 and 15 of this Agreement.

- 9.5 If the Respondent makes any payment by way of costs during the course of the Proceedings then the payment may be utilised by JKL in paying or reimbursing any Costs of the Proceedings. The Lawyers will pay such monies in accordance with this Agreement as directed by JKL from time to time.

- 9.6 The Representative Applicants or the Applicant will pay any Remaining Speculative Costs in accordance with the terms of the Retainer and clauses 13.1 or 15.1. The Applicant agrees that the Lawyers will be paid for the Remaining Speculative Costs from any Outcome Sum or Settlement Sum prior to any distribution to the Applicant or Group Members.

10 Adverse costs insurance

- 10.1 The Applicant acknowledges and agrees that:

- 10.1.1 JKL may, at its sole discretion, obtain, and pay for insurance providing the Representative Applicants with an indemnity against any Adverse Cost Order on terms agreeable to JKL;
- 10.1.2 any insurance against any Adverse Cost Order obtained by JKL under clause 10.1.1 is for the sole benefit of JKL in its capacity as funder under this Agreement; and
- 10.1.3 the Applicant will do all things reasonable to assist JKL with any application for insurance against an Adverse Costs Order.

11 Election by JKL to continue to fund Claims after liability resolved

11.1 Following any Liability Judgment, or agreement between the parties to the Proceedings to the effect that any Representative Applicant's case on liability is successful, JKL may elect, at its own discretion, whether or not to continue to fund the Applicant's Claim in accordance with the terms of this Agreement.

11.2 In the event that JKL, in accordance with clause 11.1 above, elects not to continue to fund the Applicant's Claim, and the Applicant:

11.2.1 decides not to continue to pursue his, her or its Claim; or

11.2.2 pursues his, her or its Claim but is unsuccessful in obtaining a Settlement Sum or an Outcome Sum;

this Agreement will come to an end and JKL agrees that it will not seek payment from the Applicant of any Costs of the Proceedings, any Adverse Costs Order or any security for costs.

11.3 In the event that:

11.3.1 JKL, in accordance with clause 11.1 above, elects not to continue to fund the Applicant's Claim; and

11.3.2 the Applicant pursues his, her or its Claim and is successful in obtaining a Settlement Sum or an Outcome Sum,

the Applicant agrees to pay JKL 30% of the Outcome Sum or the Applicant's Share of the Settlement Sum as consideration for the management and financing of the Proceedings and performance by JKL of its obligations under this Agreement to the date of the judgment, or agreement, as to liability.

11.4 In the event that:

11.4.1 JKL, in accordance with clause 11.1 above, elects to continue to fund the Applicant's Claim; and

11.4.2 the Applicant obtains an Settlement Sum or Outcome Sum;

then JKL is entitled to share in the Settlement Sum or Outcome Sum in accordance with the terms of clause 13 or clause 15 of this Agreement, as appropriate.

12 Receipt of a Settlement Sum

- 12.1 The Applicant and JKL agree that the Lawyers are irrevocably instructed to:
- 12.1.1 receive any Settlement Sum on behalf of the Applicant and/or the Group Members and JKL; and
 - 12.1.2 immediately pay any Settlement Sum into a trust account.
- 12.2 The Applicant and JKL irrevocably direct the Lawyers to hold the Settlement Sum representing:
- 12.2.1 JKL's share on trust for JKL; and
 - 12.2.2 the Applicant's share, on trust for the Applicant.
- 12.3 Subject to any Court order, if a Settlement Sum is received by the Applicant then, after deducting any amount required to be paid to JKL and the Lawyers under clause 13 of this Agreement, the Applicant and JKL hereby irrevocably authorise the Lawyers to distribute the balance of the Settlement Sum (if any) to the Applicant on a pro rata basis by reference to the amount of the Applicant's Share of the Settlement Sum, such amount of the Applicant's Share to be determined in each case by an expert valuer appointed by JKL, in conjunction with the Lawyers and counsel, and in accordance with a valuation methodology agreed between JKL, the expert valuer and the Lawyers, or as directed or ordered by the Court.

13 Payments to JKL and Lawyers out of the Settlement Sum

- 13.1 Subject to any Court order, the Applicant agrees that, upon Settlement, the Lawyers are to pay the following amounts from any Settlement Sum in the following order and prior to any distribution (if any) to Group Members:
- 13.1.1 *First*, the Applicant's Share of the Costs of the Proceedings paid by JKL are to be paid to JKL;
 - 13.1.2 *Second*, and subject to sub-clause 17.3, a further amount, being equivalent to 30% of the Settlement Sum (plus GST if any) is to be paid to JKL as consideration for the management and financing of the Proceedings and performance by JKL of its obligations under this Agreement; and
 - 13.1.3 *Third*, the Applicant's Share of the Remaining Speculative Costs are to be paid to the Lawyers in respect of the Representative Applicants' or the Applicant's liability to pay those costs pursuant to the Retainer.
- 13.2 The Applicant and JKL agree that the sum of JKL's total entitlement to a share of any Settlement Sum and the Lawyers' total entitlement to the Remaining Speculative Costs cannot exceed the Settlement Sum.

14 Receipt of the Outcome Sum

- 14.1 The Applicant and JKL agree that the Lawyers are irrevocably instructed to:
- 14.1.1 receive any Outcome Sum on behalf of the Applicant and JKL; and

- 14.1.2 immediately pay any Outcome Sum into a trust account.
- 14.2 The Applicant and JKL irrevocably direct the Lawyers to hold the Outcome Sum representing:
- 14.2.1 JKL's share, on trust for JKL; and
- 14.2.2 the Applicant's share, on trust for the Applicant.
- 14.3 Subject to any Court order, if an Outcome Sum is received by the Applicant then, after deducting any amount required to be paid pursuant to JKL and the Lawyers under clause 15 of this Agreement, the Applicant and JKL hereby irrevocably authorise the Lawyers to distribute the balance of the Outcome Sum (if any) to the Applicant on a pro rata basis by reference to the amount of the Applicant's Share of the Outcome Sum. The Applicant's Share is to be determined in each case by an expert valuer appointed by JKL, in conjunction with the Lawyers and counsel, and in accordance with a valuation methodology agreed between JKL, the expert valuer and the Lawyers, or as directed or ordered by the Court.

15 Payments to JKL and Lawyers out of the Outcome Sum

- 15.1 Subject to any Court order, the Applicant and JKL irrevocably authorise and direct that, upon an Outcome the following amounts are to be paid from any Outcome Sum in the following order and prior to any distribution (if any) to Group Members:
- 15.1.1 *First*, the Applicant's Share of the Costs of the Proceedings paid by JKL are to be paid to JKL;
- 15.1.2 *Second*, and subject to clause 17.3, a further amount, being equivalent to 30% of the Outcome Sum (plus GST if any) is to be paid to JKL as consideration for the management and financing of the Proceedings and performance by JKL of its obligations under this Agreement; and
- 15.1.3 *Third*, the Applicant's Share of the Remaining Speculative Costs are to be paid to the Lawyers in respect of the Representative Applicants' or the Applicant's liability to pay those costs pursuant to the Retainer.
- 15.2 The Applicant and JKL agree that the sum of JKL's total entitlement to a share of any Outcome Sum and the Lawyers' total entitlement to the Remaining Speculative Costs cannot exceed the Outcome Sum.

16 Common fund application

- 16.1 The Applicant irrevocably agrees that the Representative Applicants and JKL may, at their discretion, apply to the Court for a Common Fund Order.
- 16.2 The Applicant and JKL agree that, subject to the Court making a Common Fund Order and the terms of any such order, the Lawyers are to:

- 16.2.1 receive any Outcome Sum or Settlement Sum on behalf of each Group Member and JKL;
- 16.2.2 immediately pay any Outcome Sum or Settlement Sum into a trust account; and
- 16.2.3 hold any Outcome Sum or Settlement Sum representing:
 - 16.2.3.1 JKL's share, on trust for JKL; and
 - 16.2.3.2 the Group Members' share, on trust for the Group Members.

17 Appeals

- 17.1 If there is a final judgment in the Proceedings which is not in favour of any Representative Applicant or the Applicant and JKL has notified the Representative Applicant or the Applicant and the Lawyers in writing that it is prepared, in its discretion, to fund an appeal, or any further appeal or any remittance of any aspect of the Proceedings following any appeal, JKL will instruct the Lawyers to file and conduct the appeal. JKL will pay the legal costs and disbursements of the appeal and will pay any Adverse Costs Order if the appeal is unsuccessful as part of the Costs of the Proceedings.
- 17.2 If there is a final judgment in the Proceedings in favour of any Representative Applicant or the Applicant and the Respondent appeals, then JK may elect to fund the reasonable legal costs and disbursements of the defence of the appeal. JKL will pay the reasonable legal costs and disbursements of the appeal and any Adverse Costs Order if the defence of the appeal is unsuccessful as part of the Costs of the Proceedings.
- 17.3 In the event that either of clauses 17.1 or 17.2 are applicable, JKL will be entitled to be paid in accordance with the terms of clause 13 or clause 15 as appropriate save that, as consideration for the management and financing of the appeal and performance by JKL of its obligations under this Agreement, JKL will be entitled (as the second priority payment) to be paid an amount equivalent to 35% of the Outcome Sum or the Settlement Sum (plus GST if any).

18 The Lawyers' Retainer and Settlement

- 18.1 The Applicant acknowledges and accepts that the Lawyers and JKL have entered into the Terms of Engagement.
- 18.2 The Applicant further acknowledges that the Representative Applicants have entered into the Retainer and the Applicant will enter into the Retainer.
- 18.3 Except in relation to settlement, which is dealt with below, if the Lawyers notify JKL 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 JKL and those they owe to the Applicant, the Applicant and JKL agree that, in order to resolve that conflict, the Lawyers may:

- 18.3.1 seek instructions from the Applicant, whose instructions will override those that may be given by JKL;
 - 18.3.2 give advice to the Applicant and take instructions from the Applicant, even though that advice is, and those instructions are, or may be, contrary to JKL's interests; and
 - 18.3.3 refrain from giving JKL advice and from acting on JKL's instructions, where that advice is, or those instructions are, or may be, contrary to the Applicant's interests.
- 18.4 Nothing in sub-clause 18.3 entitles the Applicant to breach, or authorises the breach, of any terms of this Agreement.
- 18.5 The Applicant acknowledges that he, she or it will be bound by an order of the Court made in the Proceedings in which the Applicant is a Group Member (unless the Applicant has opted out of the Proceedings).
- 18.6 Subject to clauses 3.2, 5.1, 18.3, 18.8, 22 and 24, for so long as the Agreement remains in place the Applicant authorises the appointment of a JKL Representative to do all things desirable or necessary as the Applicant's representative in the Proceedings. Nothing in this clause affects, limits or reduces the Applicant's obligations to comply with this Agreement.
- 18.7 The Applicant hereby undertakes to abide by any decision made by the JKL Representative in the Proceedings.
- 18.8 In recognition of the fact that JKL has an interest in the Settlement Sum or Outcome Sum, if the Representative Applicants or, in the case of the Applicant's individual Claims only, the Applicant:
- 18.8.1 wants to settle the Proceedings and/or Claims for less than JKL considers appropriate; or
 - 18.8.2 does not want to settle the Proceedings and/or the Claims when JKL considers it appropriate to do so,
- then the Representative Applicants or the Applicant (as applicable) agree that JKL and the Representative Applicants or Applicant, must seek to resolve their difference of opinion with JKL by referring it to counsel for advice on whether, in counsel's opinion, settlement of the Proceedings and/or the Claims on the terms and in the circumstances identified by either JKL, or the Representative Applicants (or the Applicant) or both, is fair and reasonable in all of the circumstances. For the avoidance of doubt, either JKL or the Representative Applicants (or the Applicant) or both may seek counsel's opinion for these purposes.
- 18.9 For the purposes of sub-clause 18.8, counsel will be the most senior counsel of those retained by the Lawyers in the Proceedings.
- 18.10 If counsel's opinion is that the proposed settlement is fair and reasonable in all the circumstances, then the Representative Applicants and, where applicable, the Applicant and JKL agree that the Lawyers are instructed to do all that is necessary to settle the Proceedings and/or Claims consistently with

the terms of the settlement advised by counsel, provided that the approval of the Court to the settlement is sought and obtained.

- 18.11 JKL will pay the costs of counsel in providing the opinion referred to in sub-clause 18.8 as part of the Costs of the Proceedings.
- 18.12 The Applicant and JKL agree that any determination by counsel as to whether the settlement is fair and reasonable in all the circumstances will be final and binding upon each of them, provided that the determination does not become binding until the Court has approved the terms of the settlement.
- 18.13 In sub-clauses 18.3 and 18.8 to 18.12 inclusive, the terms “settle” and “settlement” include any Settlement, any Settlement Sum and any settlement proposal, offer or agreement falling within paragraph (b) of the definition of Outcome Sum.

19 Disclosure of Information

- 19.1 The Applicant warrants that, to the best of the Applicant’s knowledge, at the date of signing this Agreement there is no information in the Applicant’s custody, possession or control that is materially relevant to the Claims or the Proceedings or the potential for any Outcome Sum to be recovered in respect of the Claims, which has not been disclosed to JKL.
- 19.2 If, after the date of signing this Agreement, 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 Outcome Sum to be recovered, the Applicant will immediately inform JKL of that information.

20 Duration of this Agreement

- 20.1 Unless earlier terminated, this Agreement commences on the Date of Commencement and continues in operation until:
- 20.1.1 the Proceedings, and any appeals funded by JKL, have concluded;
- 20.1.2 JKL has complied with all of its obligations under this Agreement;
- 20.1.3 the Applicant has complied with all of his, her or its obligations under this Agreement; and
- 20.1.4 the total Outcome Sum or Settlement Sum (if any) has been disbursed in accordance with this Agreement and all other applicable Westpac Life Insurance Class Action Litigation Funding Agreements.

21 Termination by JKL

- 21.1 JKL is entitled, in its sole discretion, to terminate its obligations under this Agreement, other than its accrued obligations, by giving 14 days’ written notice to the Applicant (or, in the event that the Applicant advises their intention to file an opt out notice, 7 days’ notice) that this Agreement and JKL’s obligations under it are terminated.

- 21.2 All obligations of JKL under this Agreement cease on the date JKL's termination becomes effective, save for obligations accrued to that date.
- 21.3 The accrued obligations of JKL referred to in sub-clause 21.2 comprise:
- 21.3.1 payment of any outstanding Costs of the Proceedings incurred up to the date the notice of termination takes effect; and
 - 21.3.2 payment of any Adverse Costs Order or security for costs against the Representative Applicant in the Proceedings in respect of costs which arise in, or are attributed to, the period beginning on the date of commencement of the Proceedings and ending on the date JKL's termination becomes effective.

22 Termination by the Applicant

- 22.1 If JKL commits a material breach of this Agreement and does not remedy the breach within 30 days after receiving written notice from the Applicant, the Applicant may terminate this Agreement forthwith by written notice to JKL.
- 22.2 If this Agreement is terminated by the Applicant pursuant to sub-clause 22.1 then JKL remains liable for the obligations referred to in sub-clause 21.3.

23 Governing Law

- 23.1 This Agreement is entered into in New South Wales and is to be construed in accordance with, and is governed by, the laws of New South Wales.
- 23.2 The Applicant and JKL submit to the exclusive jurisdiction of the Supreme Court of New South Wales or the Federal Court of Australia, as relevant.

24 Dispute Resolution

- 24.1 Other than for a dispute arising in the circumstances covered by sub-clause 18.8:
- 24.1.1 in the event of any dispute arising between the Applicant, Representative Applicant, Lawyers or JKL in relation to any matter arising out of or in connection with this Agreement, written notice of the dispute must be given to JKL and circulated to the other parties to the dispute;
 - 24.1.2 if the dispute is not resolved within 14 days of such written notice being given the dispute must be referred to an independent third party (the Arbitrator) agreed to by the parties to the dispute or failing agreement, by a person nominated by the President of the New South Wales Bar Association; and
 - 24.1.3 the matters the subject of the dispute must be referred to the Arbitrator by written submission which must include all correspondence and documents relating to the dispute, an extract of this clause and the relevant provisions of this Agreement relating to the dispute. The Arbitrator must be instructed to furnish his or her determination no later than 21 Business Days after his or her appointment (or another period agreed by the parties).

- 24.2 The parties must promptly supply the Arbitrator with any information, assistance and co-operation requested in writing by the Arbitrator. All correspondence between the Arbitrator and a party must be copied to the other parties to the dispute.
- 24.3 The decision of the Arbitrator will be final and binding on the parties to the dispute.
- 24.4 The parties to a dispute shall each bear their own costs in respect of any dispute within clause 24.1.

25 Acknowledgement

By entering into this Agreement the Applicant acknowledges that JKL has recommended to the Applicant that the Applicant first obtain legal advice as to this Agreement's meaning and effect.

26 Notices

- 26.1 A notice or other communication under this Agreement (**Notice**) must be in writing and delivered by hand or sent by pre-paid post, fax or email, to the other party at the address or fax number or email address specified below for that party (or as otherwise specified by a party by Notice).
- 26.2 A Notice sent by post sent within Australia is regarded as given and received on the second Business Day following the date of postage.
- 26.3 A fax is regarded as given and received on production of a transmission report by the machine from which the fax was sent in its entirety to the recipient's fax number, unless the recipient informs the sender that the Notice is illegible or incomplete within two Business Days of it being transmitted.
- 26.4 An email is regarded as given and received on the day it is sent provided the sender does not receive any report from the sender's email system indicating that the email was not transmitted or was not received by the recipient.
- 26.5 The time at which Notices are deemed to be given and received is the recipient's time. A Notice delivered or received other than on a Business Day or after 4.00pm (recipient's time) on a Business Day is regarded as received at 9.00am on the following Business Day. A Notice delivered or received before 9.00am (recipient's time) on a Business Day, is regarded as received at 9.00am.
- 26.6 The address for service of a Notice on JKL is:
- Post: Suite 2, Level 16, 56 Pitt Street, Sydney NSW 2000
- Fax: (02) 9252 3430
- Email: diane.jones@lawfinance.com.au

26.7 The address for service of a Notice on the Applicant is as given under Applicant's Details and Contact Details on the first page of this Agreement.

- (c) Lawyers' estimate of the Costs of the Proceedings, including any material change in any earlier estimate.

4. REPORTING

- (a) The Lawyers will keep JKL and the Representative Applicants or, where the individual Claims of the Applicant are concerned, the Applicant fully informed of all matters concerning the Claims and the Proceedings, including (without limitation) any Alternative Dispute Resolution Process.
- (b) The Lawyers will promptly provide to JKL any document or information requested by JKL. The Lawyers will ensure that the Representative Applicants and, where relevant, the Applicant and JKL are given all necessary information in order to facilitate their informed instructions.
- (c) Without Limiting Term 4(a), if after the date of these Terms, the Lawyers become aware of any information which has or may have a material impact on the Claims, the Proceedings, or the potential Settlement Sum or Outcome Sum, the Lawyers will immediately inform JKL and the Representative Applicants (or the Applicant where the Applicant's individual claims are being prosecuted) of the information.

5. COSTS AND DISBURSEMENTS

- (a) The Lawyers will charge for the Legal Work by reference to the time reasonably and properly spent at the hourly rates as outlined in Term 8 (**Lawyers' Professional Fees**). The Lawyers' hourly rates will be charged on the basis of one tenth of the hourly rate for each six (6) minute unit or part of a unit that the Lawyers spend on the Work. Detailed time records must be kept by the Lawyers to facilitate time details being provided in accordance with these Terms.
- (b) JKL will pay:
 - (i) 80% of the Lawyers' Professional Fees; and
 - (ii) 100% of the fees of any barristers or experts notified to, and approved by, JKL pursuant to Term 3 or those briefed with JKL's consent.
- (b) JKL will reimburse the Lawyers for all disbursements that are reasonably incurred (and approved by JKL) by the Lawyers in performing the Legal Work, including:
 - (i) external photocopying and scanning (at cost);
 - (i) local, STD and ISD facsimiles at cost;
 - (ii) travel and accommodation (where necessary);
 - (iii) any fees of barristers or experts approved by JKL pursuant to Term 3 that have been paid by the Lawyers; and

- (iv) other reasonable expenditures supported by invoices.

6. INVOICES

- (a) The Lawyers will render invoices for the Lawyers’ Professional Fees and disbursements to JKL by the 20th day of each month, or some other time as agreed between the Lawyers and JKL (**Invoice**).
- (b) Each Invoice will be accompanied by:
 - (i) itemised details of all professional work undertaken by event; and
 - (ii) itemised invoices from barristers and experts and for any disbursement in excess of \$500
- (c) Each Invoice will outline, at the hourly rate notified to, and approved by, JKL under Term 8, the Lawyers’ Professional Fees incurred by the Lawyers since the preceding Invoice.
- (d) JKL will pay the Invoice by the end of the month following its receipt.
- (e) For the avoidance of doubt, the Lawyers can only seek to recover their Lawyers’ Professional Fees and disbursements from JKL in accordance with these Terms. The Lawyers can only recover their Lawyers’ Professional Fees and disbursements (including Remaining Speculative Costs) from the Representative Applicants or an Applicant to the extent (if any) permitted by the Retainer.

7. SUBCONTRACT

The Lawyers may sub-contract their obligations under these Terms with the prior consent of JKL and at such rates as are agreed.

8. HOURLY RATES

- (a) The hourly rates (exclusive of GST) of the Lawyers/Caseworker in these Terms are as follows:

Title	Full Hourly Rate (\$AU)
Partner/National Special Counsel/Special Counsel	\$750.00
Senior Lawyer	\$560.00
Junior Lawyer	\$425.00
Paralegal	\$320.00
Law Clerk	\$240.00

- (b) Once per financial year, the Lawyers are entitled to adjust the hourly rates to accord with any increase in the consumer price index. Such adjustment takes effect on 30 days’ written notice to JKL.

9. CONFLICT MANAGEMENT

- (a) The Lawyers must disclose to the Applicant the sources of all fees or other income they may receive in relation to the litigation being funded by JKL, including providing a budget for all estimated costs and expenses up to the conclusion of a trial in any funded proceedings.
- (b) The Lawyers must inform JKL, in writing and as soon as they become aware of any of the information in (i) and (ii) below, namely whether:
 - (i) the Lawyers or any director, partner or senior employee (or any spouse or child of any director, partner or senior employee) of the Lawyers beneficially owns at least 1% of LawFinance Limited's issued share capital; and
 - (ii) any barrister or expert witness retained or briefed by the Lawyers in relation to the Proceedings (or any spouse or child of any such barrister or witness) beneficially owns at least 1% of LawFinance Limited's issued share capital.
- (c) The Lawyers must make all reasonable enquiries, at the commencement of these Terms or when initially retaining all barristers and expert witnesses, in order to determine whether Term 9(b)(i) or (ii) apply and for the duration of the Proceedings use their best endeavours to ensure that all directors, partners, senior employees, barristers and expert witnesses immediately inform the representative for the Lawyers of any material change in the information referred to in Term 9(b)(i) or (ii) that has previously been disclosed to JKL.
- (d) The Lawyers must ensure that the partner with responsibility for the Proceedings immediately inform JKL of any information received pursuant to Terms 9(b) and 9(c).

10. TERMINATION OF APPOINTMENT

- (a) The Lawyers may terminate their appointment to provide the Legal Work on 30 days' written notice to JKL and the Representative Applicant or the Applicant (if the Legal Work concerns the prosecution of the Applicant's individual Claims). The Lawyers may terminate their appointment in the following circumstances:
 - (i) if JKL fails to pay any agreed invoice for Lawyers' Professional Fees in accordance with the terms of the LFA or these Terms after JKL has been given 30 days written notice to do so;
 - (ii) if the LFA is terminated; or
 - (iii) if the Lawyers terminate the Retainer in accordance with their rights to do so.

- (b) JKL may terminate the appointment of the Lawyers to provide the Legal Work:
 - (i) by written notice to the Lawyers in the event of professional misconduct or negligence by the Lawyers that, in the opinion of JKL, has caused, or is reasonably likely to cause, material loss to the Representative Applicants, the Applicant, Group Members or JKL; or
 - (ii) upon 30 days' written notice to the Lawyers.
- (c) If the Lawyers' appointment to provide Legal Work is terminated pursuant to either Term 10(a) or Term 10(b):
 - (i) the Lawyers remain liable for any obligations under these Terms accrued up to the date of termination of their appointment (**accrued obligations**);
 - (ii) the Lawyers remain entitled under Term 5 to receive payments from JKL in respect of Lawyers' Professional Fees or disbursements accrued prior to termination and as a result of performing any accrued obligations;
 - (iii) all other obligations and entitlements of the Lawyers cease upon termination in so far as they concern JKL; and
 - (iv) the Lawyers will immediately transfer their file to new lawyers nominated by JKL at the direction of JKL, subject to JKL paying any outstanding Lawyers' Professional Fees or disbursements to which the Lawyers are entitled under Term 5 and which accrued prior to termination or as a result of performing any accrued obligations.

11. DISPUTE RESOLUTION

- (a) If a dispute arises between the Lawyers and JKL in relation to any matter arising out of or in connection with these Terms which the Lawyers and JKL are unable to resolve, the dispute must be referred to an independent third party ("**Arbitrator**") agreed to by the JKL and the Lawyers or, failing agreement, by a person nominated by the President of the New South Wales Bar Association.
- (b) The matters the subject of the dispute must be referred to the Arbitrator by written submission which must include all correspondence and documents relating to the dispute, an extract of this clause and the relevant provisions of the these Terms, the LFA or the Retainer relating to the dispute. The Arbitrator must be instructed to furnish his or her determination no later than 21 Business Days after his or her appointment (or another period agreed by the JKL and the Lawyers).

- (c) JKL and the Lawyers must promptly supply the Arbitrator with any information, assistance and co-operation requested in writing by the Arbitrator. All correspondence between the Arbitrator and a party must be copied to the other parties to the dispute.
- (d) The decision of the Arbitrator will be final and binding on JKL and the Lawyers
- (e) JKL will pay the costs of the Arbitrator as part of the Costs of the Proceedings.

12. ADDRESS FOR SERVICE

- (a) JKL's address for service is Level 16, 56 Pitt Street, Sydney, NSW 2000
Email: diane.jones@lawfinance.com.au
- (b) The Lawyers' address for service is: Level 13, 160 Ann Street, Brisbane, QLD 4000
Email: jsaddler@shine.com.au

13. VARIATION

These Terms may only be varied in writing and executed by the Lawyers and JKL.

14. ACKNOWLEDGMENT

Neither JKL nor the Lawyers intend to be partners or joint ventures with each other.

15. GOVERNING THE LAW

- (a) This Agreement is entered into in New South Wales and is to be construed in accordance with, and is governed by, the laws of New South Wales.
- (b) The Lawyers and JKL submit to the exclusive jurisdiction of the Supreme Court of New South Wales or the Federal Court of Australia, as relevant.