

Annexure A

**MUMFORD & ANOR**

**v**

**EML PAYMENTS LTD**

**(S ECI 2021 04738)**

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**SETTLEMENT DISTRIBUTION SCHEME**

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# SETTLEMENT DISTRIBUTION SCHEME

Mumford & Anor v EML Payments Ltd

Supreme Court of Victoria Proceeding S ECI 2021 04738

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## A. DEFINITIONS

**Abridged Notice of Proposed Settlement** means the abridged notice annexed as Schedule 2 to the orders made by the Honourable Justice Nichols on 29 July 2025.

**Account** means a Registered Group Member's holding of fully paid ordinary shares in EML as identified by a unique holding identifier in the Claims Database. For the avoidance of doubt:

- (a) an Account may be beneficially owned by multiple Registered Group Members; and
- (b) a Registered Group Member may beneficially own multiple Accounts.

**Act** means the *Supreme Court Act 1986* (Vic).

**Administration Costs** means a sum of up to \$385,000 (including GST) or any such other amount approved by the Court for the costs to be incurred in administering the settlement pursuant to this SDS and the Settlement Deed, such sum to be calculated on the basis that:

- (a) costs of work performed by staff of Shine Lawyers on behalf of the Administrator in administering the settlement are to be charged at the following rates (including GST):

Position	Fee rate per 6-minute unit	Fee rate per hour
National Special Counsel / Special Counsel / Practice Leader	\$109.56	\$1,095.60
Senior Associate	\$87.34	\$873.40
Associate	\$69.96	\$699.60
Senior Solicitor	\$69.96	\$699.60
Solicitor	\$44.55	\$445.50
Legal Consultant	\$36.85	\$368.50
Law Clerk	\$36.01	\$360.07
Paralegal / Senior Paralegal	\$31.04	\$310.41
Client Service Officer	\$19.25	\$192.50
Legal Technical Specialist	\$33.88	\$338.80

- (b) any disbursement incurred by the Administrator is to be charged at cost.

**Administrator** means Shine Lawyers, or such other person as appointed by the Court, as the Court appointed administrator responsible for implementing the SDS. Prior to appointment of the Administrator, Shine Lawyers will execute the functions of the Administrator under this SDS in accordance with this SDS and subject to Court approval.

**Appeal Period** means the period following the making of the Approval Orders:

- (a) within which an application for leave to appeal may be brought (unless the Court has fixed a later date by which an application for leave to appeal may be brought, in which case, that later date); and
- (b) where an application for leave to appeal is brought in respect of the Approval Orders, until the final determination of any appeal (including the period within which any application for special

leave may be brought, and where such application is brought, until the final determination of any appeal).

**Approval Orders** means any Court orders made approving the Proposed Settlement and giving effect to the Settlement Deed and the SDS.

**Banking Details Deadline** means the date 21 days after the date of the Distribution Notice, by which Registered Group Members are to provide their bank account details in order to receive their Distribution Amount.

**Business Day** means any day that is not a Saturday, Sunday or public holiday in Victoria.

**Claim Data** means:

- (a) the name, address, email address, telephone number, HIN or SRN of the Registered Group Member;
- (b) the number of Defendant securities held by each Registered Group Member as at close of trade on 18 December 2020;
- (c) for each acquisition, the date of acquisition, quantity of securities acquired and price per security regarding Defendant securities acquired during the Trading Data Relevant Period; and
- (d) for each sale, the date of sale, quantity of securities sold and price per security during the Trading Data Relevant Period.

**Claims Database** means a database constructed by or on behalf of Shine Lawyers to contain the Claim Data for each Registered Group Member.

**Corporations Act** means *Corporations Act 2001* (Cth).

**Correction Deadline** means 4.00pm AEST on the date 21 days after the Trading Data Verification Form.

**Court** means the Supreme Court of Victoria.

**De Minimis Sum** means a Distribution Amount less than \$50.00.

**Deductions** means the following, subject to Court approval:

- (a) \$30,000 (being \$15,000 to each Plaintiff) to be paid to the Plaintiffs for the Plaintiffs' Reimbursement Payment;
- (b) 24.5% of the Settlement Sum to be paid to Shine Lawyers for the Plaintiffs' Costs, with such amount to:
  - (i) include GST; and
  - (ii) apply to any Interest which accrues on the Settlement Sum while held in the Settlement Fund prior to the Approval Orders being made; and
- (c) \$385,000 to be paid to Shine Lawyers in its capacity as Administrator, or otherwise to any Court appointed Administrator, for Administration Costs.

**Defendant** means EML Payments Limited (ACN 104 757 904).

**Distribution** means any and all of the Initial Distribution, Second Distribution and Final Distribution.

**Distribution Amount** means the Distribution to be made to each Registered Group Member in accordance with clause 24.

**Distribution Notice** means the notice to Registered Group Members whose Distribution Amount is greater than the De Minimis Sum, described in clause 28.

**EML** means the Defendant.

**Final Distribution** means Distribution made pursuant to clause 36.

**Final Settlement Approval** means the Approval Order after:

- (a) the Appeal Period has expired without appeal or application for leave to appeal being filed in the Court; or
- (b) all appeals in respect of the Approval Orders have been determined in such a manner that the first instance decision is upheld and/or orders consistent with the Approval Order.

**First Relevant Period** means the period from 19 December 2020 to 19 May 2021, specified in paragraph 1(a)(i) of the Further Amended Statement of Claim filed on 24 February 2025 by the Plaintiffs.

**Group Costs Order** means the following orders made by the Honourable Justice Delany on 6 December 2022:

- (1) *Pursuant to section 33ZDA of the Act:*
  - a. *The legal costs payable to the solicitors for the plaintiffs and group members, Shine Lawyers... be calculated as a percentage of the amount of any award or settlement that may be recovered in the proceeding, and that percentage be 24.5%;*
  - b. *liability for payment of the legal costs pursuant to paragraph 1(a) of this Order be shared among the plaintiffs and all group members; and*
  - c. *Shine Lawyers be liable to:*
    - i. *pay any costs payable to the defendant in this proceeding; and*
    - ii. *give any security for the costs of the defendant in the proceeding that the Court may order to be given.*

**Group Member** means all persons who:

- (a) acquired an interest in ordinary shares in the Defendant during the First Relevant Period and/or the Second Relevant Period (inclusive);
- (b) suffered loss or damage by reason of the conduct of the Defendant;
- (c) were not during either the First Relevant Period or the Second Relevant Period and/or during both Relevant Periods, and were not as at the date of the Further Amended Statement of Claim, any of the following:

- (i) related party (as defined by s 228 of the Corporations Act of the Defendant;
  - (ii) a related body corporate (as defined by s 50 of the Corporations Act) of the Defendant;
  - (iii) an associated entity (as defined by s 50AAA of the Corporations Act) of the Defendant;
  - (iv) an officer or a close associate (as defined by s 9 of the Corporations Act) of the Defendant;
  - (v) a Judge or the Chief Justice of the Court or a Justice or the Chief Justice of the High Court of Australia; and
- (d) did not opt out of the Proceeding pursuant to the Orders of the Honourable Justice Nichols made on 5 December 2024.

**GST** has the same meaning as that term is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Initial Distribution** means Distributions to Registered Group Members in accordance with clause 32.

**Interest** means interest earned on the monies held in the Settlement Fund, including any interest which accrues on the Settlement Sum while held in the Settlement Fund prior to the Approval Orders being made.

**Loss Assessment Formula** means the formula by which losses are calculated, annexed as Schedule A.

**Notice of Proposed Settlement** means the notice annexed as Schedule 1 to the orders made by the Honourable Justice Nichols on 29 July 2025.

**Notional Loss** means the value of a Registered Group Member's claim calculated in accordance with the Loss Assessment Formula.

**Plaintiffs** mean Paul Leighton Mumford and Gayle Mumford.

**Plaintiffs' Costs** means the legal costs payable to the Shine Lawyers in connection with acting as the Plaintiffs' solicitors on the record in the Proceeding (and includes the costs of obtaining the Approval Orders) pursuant to the Group Costs Order or such other order made by the Court.

**Plaintiffs' Reimbursement Payment** means a payment from the Settlement Fund to the Plaintiffs of \$15,000 each, totalling \$30,000, or any such other amount, approved by the Court by way of compensation for time and expenditure reasonably incurred by the Plaintiffs in the interests of prosecuting the Proceeding on their own behalf and on behalf of all Group Members.

**Proceeding** means the representative proceeding, *Mumford & Anor v EML Payments Limited* (S ECI 2021 04738) filed in the Court.

**Prohibited Person** means a person who, or entity which, appears in the "Consolidated List" of designated persons or organisations published from time to time by the Australian Government pursuant to the *Autonomous Sanctions Act 2011* (Cth) or *Autonomous Sanctions Regulations 2011* (Cth) (**Australian Sanctions Laws**), with such list being described as identifying persons or entities that are subject to targeted financial sanctions pursuant to Australian Sanctions Laws.

**Proposed Settlement** means the terms upon which the Plaintiffs and Defendant have agreed to resolve the Proceeding, which are reflected in the Settlement Deed and subject to the Court's approval.

**Registered Group Member** means a person who:

- (a) satisfies the definition of Group Member (contained in the Further Amended Statement of Claim at paragraph 1, and adopted in this SDS); and
- (b) in accordance with the Registration Orders, including in conformity with their prescribed Registration Deadline, provided to Shine Lawyers the relevant Group Member's Claim Data; or
- (c) the Court has otherwise deems to be a Registered Group Member (for the avoidance of doubt, this includes Unregistered Group Members who have applied to the Court to be granted permission to participate in the Proposed Settlement, and have been deemed to be a Registered Group Member by the Court).

**Registration Orders** means Orders 11 – 15 of the orders of the Honourable Justice Nichols made 5 December 2024.

**Registration Deadline** means the deadline imposed by the Registration Orders, being 24 February 2025.

**Relevant Periods** means the First Relevant Period and the Second Relevant Period, collectively.

**Remittance** means, the notice, in a form to be determined by the Administrator, to be sent to each Registered Group Member who has received a Distribution, setting out the following information:

- (a) the component of a Registered Group Member's Distribution which, for Australian income taxation purposes, represents a Distribution from the Settlement Sum;
- (b) the component of a Registered Group Member's Distribution which, for Australian income taxation purposes, represents a Distribution from the Interest earned on the Settlement Sum; and
- (c) for Registered Group Members who are located outside of Australia, or who have provided banking details for a bank account located outside of Australia, details of any amounts withheld from the Interest component noted at (b) above.

**SDS** means the terms of this settlement distribution scheme as approved by the Court, including schedules.

**Second Distribution** means Distribution to Registered Group Members in accordance with clause 35.

**Second Relevant Period** means the period from 18 August 2021 to 25 July 2022 (inclusive), specified in paragraph 1(a)(ii) of the Further Amended Statement of Claim filed on 24 February 2025 by the Plaintiffs.

**Settlement Deed** means the deed executed by the Plaintiffs, Defendant and Shine Lawyers on 9 July 2025 which documents the terms of the settlement of the Proceeding and the payment by the Defendant of the Settlement Sum.

**Settlement Fund** means the amount of the Settlement Sum, together with any Interest, held in an interest-bearing account opened by Shine Lawyers.

**Settlement Sum** means the sum of \$37,356,125.

**Share Trading Data** means a sub-set of Claim Data comprising:

- (a) the number of Defendant securities held by each Registered Group Member as at close of trade on 18 December 2020;
- (b) for each acquisition, the date of acquisition, quantity of securities acquired and price per security regarding Defendant securities acquired during the Trading Data Relevant Period; and
- (c) for each sale, the date of sale, quantity of securities sold and price per security during the Trading Data Relevant Period.

**Shine Lawyers** means Shine Lawyers Pty Ltd (ACN 134 702 757) trading as Shine Lawyers, the Plaintiffs' solicitors in the Proceeding.

**Trading Data Relevant Period** means the period from 19 December 2020 to 25 July 2022 (inclusive), being from the start of the First Relevant Period to the end of the Second Relevant Period.

**Trading Data Verification Form** means the Claim Data sent to Registered Group Members to verify their Share Trading Data.

**Unregistered Group Member** means a Group Member who did not register their loss in accordance with the Registration Orders, including if the Group Member did not register their loss in accordance with the Registration Deadline, and who the Court has not otherwise deemed to be a Registered Group Member.

## **B. BACKGROUND**

1. On 25 June 2025, the Plaintiffs and the Defendant settled the Proceeding for the Settlement Sum, being \$37,356,125. The settlement is subject to the approval of the Court. The agreement to settle the Proceeding is documented in the Settlement Deed, executed by the Plaintiffs, Defendant and the Plaintiffs' solicitors, Shine Lawyers, on 9 July 2025.
2. This SDS establishes the procedure for the orderly and efficient distribution of the Settlement Sum, plus any Interest accrued, held in the Settlement Fund, once the settlement has been approved by the Court.
3. The SDS is operative from the date of the Court's orders approving the Proposed Settlement and giving effect to the Settlement Deed and this SDS (including with any amendment by the Court of the SDS).
4. Only Registered Group Members, the Plaintiffs and Shine Lawyers, or a person or entity so ordered by the Court or required for the Administrator to comply with its obligations under this SDS (including clause H), are eligible to receive a Distribution of money from the Settlement Fund under the SDS in accordance with the Approval Orders.



### C. PROPOSED TIMELINE OF SETTLEMENT ADMINISTRATION

5. Subject to clause 55, the proposed timeline of settlement administration is as follows:

Date	Event
4:00pm on 31 July 2025	Abridged Notice of Proposed Settlement distributed to Registered Group Members from this date.
By 4:00pm on 18 August 2025	Trading Data Verification Form distributed to Registered Group Members.
4:00pm on 29 August 2025	Deadline for Group Members to object to the Proposed Settlement
By 4:00pm on 8 September 2025 (21 days if sent on 18 August 2025)	Deadline for Registered Group Members to provide any response to Trading Data Verification Form, being the Correction Deadline.
10:30am on 30 October 2025	Settlement approval application hearing before the Honourable Justice Nichols.
<i>Timeframe and events if the Court approves the Proposed Settlement</i>	
	The Court makes orders Approval Orders.
Approval Orders + 4 weeks (being an estimate of as soon as practicable)	Registered Group Members receive Distribution Notices, stating the amount of compensation they will receive and requesting bank account details (if applicable).
Approval Orders + 7 weeks	Deadline by which Registered Group Members receiving compensation are asked to provide bank account details, being the Banking Details Deadline.
Approval Orders + 11 weeks	Initial Distribution to Registered Group Members commences.
Initial Distribution + 1 month	Administrator contacts Registered Group Members who did not comply with the Banking Details Deadline and Registered Group Members in respect of whom the Initial Distribution was not successful, requesting information necessary to facilitate successful payment.
Initial Distribution + 3 months	Second Distribution commences, to Registered Group Members who responded with the information requested by the Administrator.
By 4:00pm on 30 June 2026	Final Distribution, following which the Administrator is to deal with any remaining funds in the manner outlined in clause 36.

### D. SETTLEMENT ADMINISTRATOR

6. The SDS shall be administered and applied by the Administrator.
7. Prior to the appointment of the Administrator, Shine Lawyers shall execute the functions of the Administrator under this SDS in accordance with this SDS and subject to Court approval.
8. The Administrator shall, subject to and in accordance with the SDS:
- (a) hold the Settlement Fund on trust for the Defendant until Final Settlement Approval; and
  - (b) thereafter hold the Settlement Fund on trust for the Plaintiffs, Registered Group Members and the parties to whom Distribution is to be made pursuant to clause G below until Final Distribution; and

- (c) make all Distributions in accordance with clause G.
- 9. The Administrator, in discharging any function or exercising any discretion conferred by the SDS, shall administer the SDS fairly, according to its terms, as a duty owed to the Court in priority to any obligation owed to the Plaintiffs and any individual Registered Group Member.
- 10. Notwithstanding anything elsewhere contained in this SDS, the Administrator may at any time and in their sole discretion correct any error, slip or omission occurring during their administration of the SDS.
- 11. Where a Registered Group Member's claim was registered by a trustee, investment manager, custodian, responsible entity or agent acting on their behalf prior to 24 February 2025 and in accordance with the Registration Orders (or is otherwise deemed by the Court to have registered), Shine Lawyers and/or the Administrator may rely on any information, instruction or declaration provided by that trustee, investment manager, custodian, responsible entity or agent as if it had been provided by the Registered Group Member themselves.

#### **E. COMMUNICATIONS WITH GROUP MEMBERS**

- 12. On 31 July 2025, Shine Lawyers sent a copy of the Abridged Notice of Proposed Settlement, in the form approved by the Court on 29 July 2025 to all Registered Group Members.
- 13. By 4pm on 18 August 2025, Shine Lawyers will send to each Registered Group Member a Trading Data Verification Form setting out their Share Trading Data, provided in respect of the Registered Group Member in the course of their registration.

##### *Notice of Proposed Settlement*

- 14. The Notice of Proposed Settlement provided Group Members with information about the Proposed Settlement, their right to object to the Proposed Settlement and the steps required to take to raise an objection. The Notice of Proposed Settlement outlined:
  - (a) the payments that are to be made out of the Settlement Fund, as described below in clause 23;
  - (b) that the Settlement Sum would be distributed in accordance with the proposed SDS, which document was available on request, and that the Court would determine whether the proposed Distribution from the Settlement Sum under the SDS is fair and reasonable; and
  - (c) that Unregistered Group Members are ineligible to receive compensation paid out of the Settlement Fund and their claims in this Proceeding are finally determined under the Settlement Deed; though, Unregistered Group Members could seek leave of the Court to participate in the Proposed Settlement.

##### *Trading Data Verification Form*

- 15. The Trading Data Verification Form provides Registered Group Members with a record of their Share Trading Data, being a subset of the information provided to Shine Lawyers by the Registered Group Member during registration.

### *Correcting Trading Data*

16. The Trading Data Verification Form specifies that if Registered Group Members considers their Share Trading Data contains any error, they should amend the Share Trading Data in the Trading Data Verification Form prior to the Correction Deadline.
17. Where in respect of a Registered Group Member and before the Correction Deadline, there is, prior to the Correction Deadline:
  - (a) amendments to Share Trading Data provided;
  - (b) any documentation required to support the updated Share Trading Data provided; and
  - (c) that documentation verifies the accuracy of the updated Share Trading Data via the Trading Data Verification Form,the updated Share Trading Data is deemed to form part of the Registered Group Member's Share Trading Data.

### *Reliance by the Administrator*

18. Unless a Registered Group Member amended the Share Trading Data by the relevant Correction Deadline, the Registered Group Member will be deemed to have confirmed that the Share Trading Data outlined in the Trading Data Verification Form provided is correct.
19. Where a Registered Group Member provides updated Share Trading Data in accordance with clause 17 or is deemed to have accepted their Share Trading Data under clause 18, the Administrator may rely on that information as true and correct for the purposes of the SDS.
20. Notwithstanding any other clause in the SDS if, in the opinion of the Administrator, at any stage a Registered Group Member's Claim Data, including its Share Trading Data,
  - (a) cannot be verified;
  - (b) contains insufficient information; and/or
  - (c) does not otherwise substantiate a Registered Group Member's claim,the Administrator may, by written notice, require the Registered Group Member to provide and verify by a statutory declaration or other means that the Administrator determines appropriate and within a time determined by the Administrator, such further information as the Administrator may require in its sole discretion.
21. Where a Registered Group Member is required by the Administrator to verify their claim under clause 20 and the Registered Group Member fails to do so within the time determined by the Administrator, the Administrator may determine that the Registered Group Member's assessed entitlement to a Distribution under clause F of this SDS be reduced in whole or in part, as is appropriate taking into account the part of the claim that remains to be verified.
22. After the Correction Deadline, no amendments to a Registered Group Member's Claim Data may be made unless:

- (a) necessary as a result of:
  - (i) an error, slip or omission on the part of the Administrator;
  - (ii) the Approval Orders; or
- (b) the Administrator in its absolute discretion chooses to accept an amendment before issuing Distribution Notices.

## **F. DISTRIBUTION**

23. From the Settlement Fund, the following payments shall be made in the order of priority set out below, in accordance with Court orders approving such payments pursuant to section 33V of the Act:
  - (a) an amount to the Plaintiffs for the Plaintiffs' Reimbursement Payment;
  - (b) an amount to Shine Lawyers for the Plaintiffs' Costs;
  - (c) an amount to Shine Lawyers in its capacity as Administrator, or otherwise to any Court appointed Administrator, for the Administration Costs, for which, for the avoidance of doubt, payment will be made following the:
    - (i) Initial Distribution;
    - (ii) Second Distribution; and
    - (iii) Final Distribution; and
  - (d) Distributions to Registered Group Members, as provided by clauses 24 to 27 below.
24. A payment from the Settlement Fund in respect of Administration Costs shall be made first from the Interest income earned in the Settlement Fund, except to the extent that the Administrator in its absolute discretion determines that it is to be made from the capital of the Settlement Fund.
25. Distributions shall be made to individual Registered Group Members in the proportion that each Registered Group Member's Notional Loss, calculated in accordance with the Registered Group Member's Share Trading Data and the Loss Assessment Formula, bears to the aggregate Notional Loss of all Registered Group Members and pro-rated according to the amount available in the Settlement Fund, after the payments made in clause 23(a) to (c). Each individual Registered Group Member's Distribution calculated in accordance with this clause constitutes the Registered Group Member's Distribution Amount.
26. Any Distribution Amount less than the De Minimis Sum will not be distributed because the administrative time and expense is disproportionate to the return to Registered Group Members.
27. No Distribution will be made to any Registered Group Member identified by Shine Lawyers, to be a Prohibited Person, subject to any contrary Court order.
28. As soon as practicable after the Court makes the Approval Orders, the Administrator shall write to each Registered Group Member with a Distribution Notice that:

- (a) specifies the Registered Group Member's estimated Distribution Amount (if any);
  - (b) explains that to receive their Distribution Amount the Registered Group Member must provide details required for the electronic transfer of the Distribution into the Registered Group Member's nominated bank account; and
  - (c) requires the Registered Group Member to provide those bank account details by the Banking Details Deadline.
29. The Distributions made to Registered Group Members shall be made by electronic funds transfer.
30. Any Distribution which incurs an international transaction fee associated with payment into a bank account outside of Australia shall have \$5 deducted from the relevant Registered Group Member's Distribution Amount. This information shall be contained in all Distribution Notices.
31. Registered Group Members whose Distribution Amounts are below the De Minimis Sum will receive a Notice informing them of this fact and will not receive a Distribution Notice.
32. Within four weeks of the Banking Details Deadline, the Administrator will begin the Initial Distribution to Registered Group Members who complied with the Banking Details Deadline .
33. After the distribution of a Distribution Amount and/or a Final Distribution to a Registered Group Member, the Administrator shall cause to be sent to each Registered Group Member in respect of that Distribution a Remittance, setting out the following information:
- (a) the component of a Registered Group Member's Distribution which, for Australian income taxation purposes, represents a distribution from the Settlement Sum; and
  - (b) the component of a Registered Group Member's Distribution which, for Australian income taxation purposes, represents a distribution from the Interest earned on the Settlement Sum; and
  - (c) for Registered Group Members who are located outside of Australia, or who have provided banking details for a bank account located outside of Australia, details of any amounts withheld from the Interest component noted at (b) above.
34. Within one month of the Initial Distribution the Administrator shall attempt to contact any Registered Group Member by email, telephone and post (to the extent those details are available to the Administrator in the Claims Database):
- (a) to whom payment under the Initial Distribution was unsuccessful; or
  - (b) who failed to comply with the Banking Details Deadline,
- for the purpose of obtaining banking details to facilitate payment of any Distribution Amount. Those communications shall explain to the relevant Registered Group Members that failure to provide adequate banking details for effective payment within 30 days of the date of the communication to the Registered Group Member will make them ineligible to receive any disbursement pursuant to this SDS.

35. Within three months after the Initial Distribution the Administrator will effect a Second Distribution using the details obtained pursuant to clause 34 above.
36. Any amount that remains in, or returns to, the Settlement Fund at the end of one month after the Second Distribution (and no later than 1 June 2026), will be distributed in a Final Distribution by 30 June 2026:
- (a) If the remaining amount, pro-rated between the Registered Group Members for whom the Administrator possesses banking details that facilitated an effective distribution payment (either in the Initial Distribution or the Second Distribution), results in payment to all such Registered Group Members an amount greater than \$50, a Final Distribution in that manner shall be made;
  - (b) If the remaining amount pro-rated between Registered Group Members described in clause 36(a) above would result in some Distribution payments being less than \$50, the aggregate sum of all the payments below \$50 will be pro-rated among the Registered Group Members who are described in clause 36(a) and eligible for a Distribution greater than \$50, and a Final Distribution in that manner shall be made to those Registered Group Members;
  - (c) If the remaining amount pro-rated between Registered Group Members described in clause 36(a) results in payment to all such Registered Group Members an amount less than \$50, the Final Distribution will not be made to any Registered Group Members. Instead, the amount remaining in the Settlement Fund shall be paid as a charitable donation to the Smith Family (ABN 28 000 030 179).
37. Any remaining amount in the Settlement Fund for any reason after the Final Distribution shall be paid as a charitable donation to the Smith Family (ABN 28 000 030 179).

#### **G. INTEREST**

38. Interest on the Settlement Sum will form part of the Settlement Fund and be available for distribution to Registered Group Members or otherwise be treated in accordance with clause F above.
39. The Administrator may at any time convert the Settlement Fund to a non-interest earning account if:
- (a) it determines that the cost of administering the taxation implications of further Interest being earned on the Settlement Fund will be disproportionate to the further Interest expected to be earned; or
  - (b) in its discretion, determines that doing so is necessary for the purpose of calculating any Final Distribution, in which case it may continue to hold the Settlement Fund in the non-interest earning account until the Final Distribution is made.

## **H. TAXATION**

40. The Administrator is required to comply with the taxation obligations of any trust created for the benefit of Registered Group Members or other person to receive a payment from the Settlement Fund in the course of the administration of the SDS and may seek expert advice to enable this. Any tax that the Administrator may be required to pay in respect of an individual Registered Group Member may be deducted from that Registered Group Member's entitlement to the Settlement Fund. Any taxation liability of any trust(s) created by the establishment of the SDS shall be indemnified out of the Settlement Fund in accordance with clause I.

## **I. LIMITATION OF LIABILITY AND INDEMNITY**

41. The completion of Distributions made pursuant to the SDS shall satisfy any and all rights, claims or entitlements of all Group Members in or arising out of the Proceeding.
42. The Administrator or any other person exercising a function under the SDS, will have no liability to any Group Member who does not receive a Distribution or receives a Distribution in an incorrect amount arising from:
- (a) the provision of incorrect or otherwise insufficient Claim Data by the Registered Group Member or persons acting on their behalf prior to the Correction Deadline;
  - (b) a failure of the Registered Group Member, or persons acting on their behalf, to correct their Claim Data recorded on the Claims Database prior to the Correction Deadline;
  - (c) incorrect or otherwise insufficient bank account information being provided by a Registered Group Member or persons acting on their behalf;
  - (d) the fraudulent conduct of a party other than the Administrator;
  - (e) an electronic funds transfer using the bank account information provided by the Registered Group Member or persons acting on their behalf; or
  - (f) any Registered Group Member's failure to receive communications described in this SDS or who failure, for any other reason, to submit documentation to the Administrator or the Court within a time limit set under this SDS.
43. Any person exercising a function under the SDS (including, without limitation, the Administrator), in discharging any function or exercising any power or discretion conferred by the SDS, shall not be liable for any loss to Group Members, other than loss arising as a result of fraud or intentional misconduct.
44. Any person exercising a function under the SDS (including, without limitation, the Administrator) shall be indemnified from the Settlement Fund in respect of taxation or other liability attaching to the sums standing from time to time in any account or otherwise from or attaching to the exercise of the function by the person (other than as arising as a result of fraud or intentional misconduct).

**J. SUPERVISION BY COURT**

- 45. The Administrator may refer any issues relating to this SDS to the Court for direction or determination.
- 46. On the application of the Administrator, the Court may vary or amend the terms of the SDS.
- 47. Any costs reasonably incurred by the Administrator in relation to any application to the Court in connection with the SDS shall be deemed to be Administration Costs unless the Court otherwise orders.
- 48. Within 30 days after the completion of the Final Distribution from the Settlement Fund, the Administrator will, on behalf of the Plaintiffs, inform the Court and request the Court make the orders dismissing the Proceeding with no order as to costs as between the parties.

**K. NOTICES**

- 49. Any notice or communication to be given pursuant to the SDS shall be deemed given and received for all purposes associated with this SDS if it is:
  - (a) addressed to the person to whom it is given; and
  - (b) either:
    - (i) sent by email to that person's email address as nominated by or on behalf of the Registered Group Member and recorded on the Claims Database and no email "undelivered" reply is received by the sender; or
    - (ii) sent by pre-paid mail, to that person's postal address as nominated by or on behalf of the Registered Group Member and recorded on the Claims Database and the notice is not returned to sender.
- 50. Any notice or communication that complies with this clause will be deemed to be given and received:
  - (a) if it was sent by email, at the time it was sent;
  - (b) if it was sent by mail to an addressee in Australia, three clear business days after being sent; or
  - (c) if it was sent by mail to an addressee overseas, five clear business days after being sent.
- 51. Where a Group Member is not a natural person and one person has been nominated as the designated contact in respect of multiple Group Members, it is sufficient for the purpose of giving notice or communications that any of the provisions of clauses 49 and 50 are complied with in relation to that nominated person.
- 52. The Administrator is required to accept changes to address details provided by and in respect of Registered Group Members.



53. The Administrator's contact details are as follows:

EML Payments Shareholder Class Action

Shine Lawyers

Level 6, 299 Elizabeth Street

Sydney NSW 2000

emlclassaction@shine.com.au

**L. TIME**

54. The Administrator will use its best endeavours to comply with all deadlines provided in the SDS.
55. The time for doing any act or thing under the SDS may be extended by:
- (a) the Administrator in its sole discretion by up to 10 Business Days; and/or
  - (b) order of the Court, as may be sought by the Administrator.