



# TERMS OF ENGAGEMENT

## AGREEMENT

### 1 Interpretation

- 1.1 **Schedule A** defines what certain words and phrases mean when they appear in this Agreement.
- 1.2 In this Agreement, words in singular include the plural and vice versa.

### 2 Effect of this agreement

- 2.1 Upon accepting and signing this Agreement, you **will** become a client of Russell Legal and will instruct Russell Legal to act for you in the Proceeding against ANZ Bank New Zealand Limited (ANZ) and ASB Bank Limited (ASB)(together 'The Defendants').
- 2.2 It is anticipated that the Proceeding against ASB and ANZ will be advanced together by way of a similar representative action in connection with losses incurred by the plaintiffs arising from breaches by ASB and ANZ of the Credit Contracts and Consumer Finance Act 2003 by its failure to make required disclosures under that Act. Both will be funded by LPF.
- 2.3 It is acknowledged that advancing the Proceedings together will result in substantial efficiencies and reduced costs in relation to each Proceeding.

### 3 Precondition of entering this agreement.

- 3.1 The Proceeding is being brought as a class action to determine the claims of the Representatives and common issues in relation to the Class Members. The complexity and potential cost of such an action means that it is prudent to involve a litigation funder to fund the ongoing cost of the Proceeding rather than have the Representatives and Russell Legal clients do so. LPF Litigation Funding No.33 Limited ("LPF") and CASL Management PTY Limited ("CASL") have offered to provide litigation funding to support the Proceeding in exchange for a financial return if the Proceeding is successful.
- 3.2 The full terms of LPF's and CASL's offer are contained in the Deed for Provision of Services in Respect of Litigation ("Funding Agreement") and are also referred to in more detail below. After having received independent legal advice the Representatives have signed the Funding Agreement and agreed to its terms.
- 3.3 It is a condition of entering this Agreement with Russell Legal that you also enter into the Funding Agreement with LPF and CASL. Russell Legal does not agree to act for you unless you enter into the Funding Agreement.

### 4 Methods of offer and acceptance of Russell Legal's terms of engagement

- 4.1 The Representatives or Client may enter into this agreement by signing and dating the signature page or by signing the Participation Notice Agreement Regarding the Litigation Funding Arrangements ("Participation Notice").
- 4.2 A facsimile or email transmission or electronic signature of this Agreement or the



Participation Notice signed by any Party will be treated as an original signed by that Party.

- 4.3 Russell Legal may also offer this Agreement by means of an Electronic Offer, in which case the Parties agree that:
- (a) Making the Electronic Offer has the same effect, for all purposes, as Russell Legal signing the Agreement; and
  - (b) The Client may accept the offer by means of Electronic Acceptance, in which case Electronic Acceptance has the same effect, for all purposes, as the Client signing the Agreement.

## 5 Instructions

- 5.1 By entering this Agreement, you instruct Russell Legal to:
- (a) Bring the Proceeding on your behalf, and also on behalf of other persons who:
    - (i) Received consumer lending from the Defendants;
    - (ii) Varied the terms of the lending on or after 6 June 2015;
    - (iii) Did not receive variation disclosure in accordance with s 22 of the Credit Contracts and Consumer Finance Act 2003 (CCCFA); or
    - (iv) Are otherwise defined and described in the Proceeding by order of the Court;

(the "**Class Members**")
  - (b) Engage Counsel to conduct the litigation;
  - (c) Prosecute the Proceeding with the aim of recovering a monetary payment from the Defendants, whether as the result of a Court judgment or a settlement with the Defendants.
- 5.2 In carrying out these instructions, we will:
- (a) Take all necessary steps to prosecute the Proceeding in Court and pursue resolution of the Claims;
  - (b) Take steps to find and contact persons who are or may be eligible Class Members as well as pursuing an Opt-Out order from the Court;
  - (c) Deal with all media issues as Russell Legal may determine is in the best interests of the Class Members;
  - (d) Initiate, design, and promote any alternative dispute resolution options;
  - (e) Liaise with the Defendants, their lawyers and any other persons we consider advisable, in order to explore the possibility of settlement outside of the Court; and
  - (f) Complete any other work reasonably necessary to carry out the instructions above.

## 6 Role of the Representatives

- 6.1 The Clients and Representatives agree that, in addition to giving instructions in relation to their individual claims, the Representatives will:



- (a) act as representatives of the Clients and Class Members in relation to the Common Issues in these Proceedings;
  - (b) give frank and honest instructions to Russell Legal on behalf of the Clients and Class Members; and
  - (c) maintain confidentiality and common interest privilege.
- 6.1 The Clients agrees that only the Representatives will interact directly with Russell Legal to give instructions on the Client's behalf in relation to the Common Issues and the conduct of the Proceeding.
- 6.2 Russell Legal will update the Clients as to progress of the Proceedings from time to time by way of group email update or by updating the website but will not take seek instructions from or interact with the Clients directly or on a day to day basis in relation to the conduct of the Proceedings. To do so would be logistically prohibitive and would significantly increase legal costs as there is in excess of one hundred thousand potential Clients in the Proceedings.
- 6.3 Clients who have questions or wish to raise issues in relation to the conduct of the Proceedings will be directed towards a website which will contain information about the Proceedings and a list of frequently asked questions. The website will also include a section within which Clients may raise issues and ask questions. These questions may be answered by Russell Legal from time to time by an update of the frequently asked questions section, or updating the information section on the website, or by way of direct email or group email updates to the Clients where appropriate.
- 7 Interests of the class take priority**
- 7.1 In instructing Russell Legal to act for you in the Proceeding, you acknowledge and accept that:
- (a) The Proceeding is brought as a class action with litigation funding support from LPF and CASL;
  - (b) Russell Legal act for other Clients who are also Class Members in the Proceeding and who have entered into a Funding Agreement with LPF and CASL;
  - (c) Aside from Russell Legal's paramount duty to the Court, Russell Legal's obligation in the Proceeding is to advance the best interests of Class Members generally; and
  - (d) Although Class Members' interests will generally be aligned with each other, in some circumstances Russell Legal's obligations to the Class Members as a whole may take priority over the interests of particular Class Members, including your interests.
- 7.2 If Russell Legal determines that there is an actual or potential conflict between the best interests of the Class Members as a whole and your individual interests:
- (a) We will inform you of the actual or potential conflict and how we propose to manage it;
  - (b) If no effective management of the actual or potential conflict seems reasonably available, we may terminate this Agreement with you; and
  - (c) Upon any such termination we may continue acting for other Class Members and the Representatives.



## **8 Our duties**

- 8.1 We have a fiduciary duty towards you, but not to any persons who are not our clients. Any advice given by us is solely for your benefit and may not be used or relied on by any other person without our express written agreement.

## **9 Provision of information, due diligence and AML/CFT**

- 9.1 We accept your instructions on the understanding that you have made full and frank disclosure of all relevant facts. You acknowledge that you have a continuing obligation to ensure we are kept fully informed throughout.
- 9.2 We are required to comply with all laws binding on us, including the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("**AMI/CFT**"), the Foreign Account Tax Compliance Act (US) ("**FATCA**") and the OECD's common reporting standards ("**CRS**").
- 9.3 We will perform client due diligence and account monitoring, keep records and report any unusual or suspicious transactions where required by AMI/CFT, FACTA, CRS or any other law. We may also be required to assist any bank to comply with its legal obligations.
- 9.4 For the purposes of AML/CFT, we may be required to obtain and verify certain information from you. If we are unable to obtain the required information from you, we may be unable to act for you. In the first instance, as we are purely acting on your behalf in a litigation context, and do not run a trust account and will not be holding any client money in relation to this proceeding, we will not need to complete AML/CFT on you prior to representing you in this litigation. We reserve the right to complete AML/CFT checks if they become necessary.

## **10 Persons responsible for the work**

- 10.1 The person who will have overall responsibility for the work under these Terms of Engagement will be Scott Russell although other solicitors may also carry out part of the work as Scott Russell may direct from time to time.

## **11 Engagement of Counsel and other persons**

- 11.1 We have engaged Davey Salmon and Ali van Ammers of Mills Lane Chambers as Counsel.
- 11.2 From time to time it may be necessary for us to engage other persons to provide specialist or expert advice, advocacy or other services on behalf of the Representatives and/or Class Members. If that happens, we will consult with the Representatives, advise them about the terms of such person's engagement, and seek instructions prior to engaging any third party. We will strive to find the most suitable person, taking into account any directions the Representatives give.

## **12 Our Fees**

- 12.1 We will charge two fees for our services which are "Project Costs" in the Funding Agreement:
- (a) A fee, calculated on an hourly rate basis, for the time that Russell Legal spends on the Proceeding from 1 June 2021 onwards, plus any disbursements incurred. This fee will be regularly invoiced to the Representatives and will be paid by the Funder:
- (b) In relation to the unpaid hours Russell Legal has invested in this case prior to 1 June 2021, these will remain unpaid and be classed as Deferred Costs which



shall only be payable to Russell Legal upon Success in the Proceedings or upon Russell Legal's engagement in these proceedings being terminated. These unpaid hours will be invoiced to the Funder on or around the commencement of the proceeding but remain unpaid as Deferred Costs.

12.2 For services provided by Russell Legal from 1 June 2021 onwards, we will invoice at the following hourly rates which are provided to the Representatives at lower than equivalent market rates (plus GST and any disbursements incurred):

- (a) Partner \$495
- (b) Senior Solicitor \$325
- (c) Solicitors \$200 to \$300 (depending on experience)
- (d) Paralegal \$180

12.3 If they become payable, the hourly rate for the Deferred Costs services which are currently provided on an unpaid basis by Russell Legal will be a market rate of \$650 plus an uplift of 50%. This is a reasonable uplift under the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 due to the time and labour expended, skill, specialist knowledge required, importance of the matter, degree of risk assumed by Russell Legal in undertaking the services, complexity of the matter, and to adjust for the fact that recovery of these fees is entirely at risk.

12.4 Counsel will charge their own fees (plus GST and disbursements), the details of which are set out in their respective Terms of Engagement.

### **13 Billing arrangements**

13.1 We will invoice the Representatives on a monthly basis and such invoices will be paid by LPF and CASL in accordance with the terms of the Funding Agreement.

13.2 For the avoidance of doubt:

- (a) Any fees charged by Russell Legal and Counsel:
  - (i) Will only become payable by the Representatives (or the Client) in the event of Success; and
  - (ii) If they do become so payable, will only be payable out of the Resolution Sum. The Representatives (and the Client) will not have to pay any fees that are not paid out of the Resolution Sum.
- (b) No debt or liability owed by the Representatives (or the Client) to Russell Legal, Counsel or LPF will exceed (individually or in combination) the amount of any Resolution Sum received.

13.3 At the conclusion of the Proceeding, Russell Legal will provide the Representatives and each Client with a statement of account showing all sums received in the Proceeding and all fees and costs deducted from any Resolution Sum, in accordance with Rule 9.11 of the Conduct and Client Care Rules 2008.

13.4 The Representatives and Clients agree to share costs for both Proceedings against ANZ and ASB on the terms set out in the Funding Agreement as cost efficiencies will benefit all parties.

### **14 How a Resolution Sum will be dealt with**



- 14.1 Any Resolution Sum received will be held by a third party in a trust account on behalf of you and any other Class Members and, subject to any order of the Court, be dealt with in accordance with the Funding Agreement.
- 14.2 In view of the role assumed by the Representatives as plaintiffs for the benefit of other Class Members, Russell Legal has agreed that, in the event that a Resolution Sum is received from the Defendants, we will apply to the Court on the Representatives' behalf for a discretionary allowance to be paid to the Representatives out of the Resolution Sum to recognise the Representatives' role and to compensate them for time, effort and expenses incurred by them on behalf of the Class Members. This will be done regardless of whether the Representatives still remain as the lead plaintiffs when the time comes to make payments out of the Resolution Sum, provided that the Representatives have not separately settled their claim against the Defendants.
- 14.3 By entering into this Agreement, you agree that Russell Legal may apply to the Court for a discretionary allowance as described in cl 14.2 above, and agree that in the event the Court grants an allowance, it will be paid to the Representatives out of the Resolution Sum.
- 14.4 You irrevocably authorise us to receive and deal with any Resolution Sum, or part of a Resolution Sum, in accordance with the above clauses.
- 14.5 Subject to Court approval, once all payments have been made in accordance with the above clauses, the remaining funds will be paid to Class Members on a pro rata basis, based on the percentage of the Resolution Sum that is attributable to their claim as ordered by the Court or to be determined under the mechanisms of the Funding Agreement.
- 15 Court costs and indemnity**
- 15.1 The Court has the power to order that one party must pay all or part of another party's costs. This is called a Costs Order (as defined in Schedule A).
- 15.2 If the Court makes a Costs Order requiring the Defendants to pay money to the Representatives or the Client, you agree that any money received from the Defendants as a result of the Costs Order, or any costs paid by the Defendants as a term of any settlement, will be paid into a third party trust account and become part of the Resolution Sum, and will be dealt with as described in the Funding Agreement.
- 15.3 In some circumstances, including if the Proceeding is unsuccessful, the Defendants may seek a Costs Order against the Representatives and/or a Client. Under the Funding Agreement, if the Court makes a Costs Order requiring the Representatives or a Client to pay the Defendants or another party's costs, LPF will meet any liability arising under that Costs Order. Unless the Funding Agreement is terminated, in no circumstances will the Representatives or a Client be required to pay the costs of any other party to the proceedings.
- 15.4 If the Funding Agreement is terminated, the Representatives will endeavour to secure a replacement litigation funder. If the Representatives cannot secure a replacement litigation funder on terms that are acceptable to them, they reserve the right to discontinue the Proceedings with leave of the Court.
- 15.5 Subject to the terms of the Funding Agreement, the Funder will also meet any liability arising under an order for Security for Costs.



15.6 Hearing fees or other court fees may be payable by the Representatives for hearings or other events. Such fees will be charged as a disbursement in Russell Legal's invoice for the relevant period during which the fee is paid and will be payable to Russell Legal by the Funder under the Funding Agreement.

15.7 Save as is expressly recorded above, neither Russell Legal nor Counsel will pay or indemnify you against any costs award, or provide security for costs, or pay hearing fees, on your behalf. These are items that the Funder will pay or indemnify you for under the terms of the Funding Agreement.

## **16 Offers of Settlement**

16.1 If the Defendants make an offer to settle the Proceedings, Russell Legal and Counsel will advise the Representatives as to the merits of the offer and recommend whether the Representatives should accept the offer, reject it, make a counter-offer or take any other action under the terms of the Funding Agreement.

16.2 If the Defendants, their officers, employees, lawyers or agents contact you in relation to the Proceedings, in accordance with the Funding Agreement, you must not communicate with them directly. You should let them know that all communication must be through Russell Legal and you should immediately contact Russell Legal to let us know that you have received an approach.

16.3 Russell Legal will inform you generally from time to time about any settlement negotiations, recognising however that Russell Legal may be unable to disclose the details of settlement negotiations immediately due to confidentiality.

16.4 Under the Funding Agreement you acknowledge that the Funder has a legitimate interest in any settlement and that Russell Legal must keep the Funder regularly informed of any material developments in the Proceeding and of settlement offers. By entering into these Terms of Engagement you authorise and direct Russell Legal to keep LPF and CASL regularly informed of any material developments in the Proceeding and of any settlement offers or negotiations. In the event of disagreement between the Funder, the Representatives or any Client about the merits of any settlement offer, the terms of the Funding Agreement will apply.

16.5 In the event that the Representatives decline to accept an offer of settlement or compromise against the advice of Russell Legal, the dispute resolution mechanism in the Funding Agreement will apply.

## **17 Alternatives to this Conditional Fee Agreement**

17.1 This Agreement is a conditional fee agreement, meaning that Russell Legal and the Representatives/Client agree that some of Russell Legal's fees will become payable in the event of Success (the Deferred Costs).

17.2 Under the Lawyers: Conduct and Client Care Rules 2008, we are required to inform you of any other appropriate arrangements that may be available. These include:

(a) Other lawyers may be willing to act for you on a normal fee basis whereby you pay the lawyer's fees as you go, or on a different conditional fee basis with or without litigation funder; and

(b) Legal Aid – Russell Legal does not undertake work on legal aid but other lawyers may.

17.3 By entering into this Agreement, you agree to instruct us on the basis that:



- (a) Some of our work has been carried out under a conditional fee agreement;
- (b) The conditional fee agreement applies an uplift on the unpaid hours Russell Legal have incurred prior to this time which have been classed as Deferred Costs and will be payable out of the Resolution Sum in the event of Success in the Proceedings, or immediately in the event Russell Legal's engagement is terminated;
- (c) The ongoing costs of the Proceeding will be funded by the litigation funders (LPF and CASL); and
- (d) In exchange for funding the Proceeding, the Funder will be remunerated from any Resolution Sum (in accordance with the Funding Agreement) in the event of Success.

## **18 Cooling off period**

- 18.1 You may terminate this agreement without cost by giving written notice to Russell Legal within 21 days of signing this Agreement (time being of the essence).

## **19 Termination of this Agreement**

### Termination by the Representatives

- 19.1 The Representatives may terminate this Agreement if Russell Legal commits a serious breach of its terms or of our duties to the Representatives as lawyers, and does not rectify that breach within 30 days of receiving written notice from the Representatives or under the terms of the Funding Agreement.
- 19.2 In that event, we are entitled to payment for the work completed on the Proceeding to the date of termination and immediate payment of the Deferred Costs from the Funder as payment for prior unpaid services provided to allow the Proceedings to be initiated. You will not be liable for any future costs.

### Termination by a Client

- 19.3 An individual Client may terminate this Agreement if Russell Legal commits a serious breach of its terms or of our duties to you as lawyers, and does not rectify that breach within 30 days of receiving written notice from you. A Client may also terminate this Agreement if they decide to opt out of the Proceedings.
- 19.4 If an individual terminates this Agreement in accordance with cl 19.3, Russell Legal will remain as lawyer on record for this claim and will continue to be entitled to payment for all work completed on the Proceeding to the date of termination by the Funder.
- 19.5 You agree that if you terminate our instructions or we terminate this Agreement with you, we may continue to act for other clients in this Proceeding.

### Termination by Russell Legal

- 19.6 We may terminate this Agreement if:
- (a) We perceive we have lost your confidence;
  - (b) A conflict of interest arises;
  - (c) The Funding Agreement is terminated;



(d) We determine in our absolute discretion that it is not economic for the Class Members and/or Russell Legal to continue with the Proceeding; or

(e) Termination is otherwise required for lawful reason;

or, if you:

(f) Fail to provide adequate instructions;

(g) Withhold material or information relevant to our instructions;

(h) Decline to accept our advice; or

(i) Otherwise breach this agreement;

19.7 If we terminate this Agreement, we are entitled to be paid (subject to clauses 12 and 13 above) for all work to the date of termination.

## **20 Trust account**

20.1 We do not operate a trust account and will not hold any funds on your behalf. We will not take any funds from you to pay our fees while this claim is funded by LPF and CASL as the Funders will be paying our fee.

20.2 Any money received from the Defendants by way of settlement or Resolution Sum will be held on trust by a third party and dealt with under the Funding Agreement or as ordered by the Court.

20.3 If a third party is holding significant funds they may lodge those funds on interest bearing deposit with a bank. If necessary, before doing so, may require you to sign individual or entity self-certification forms required by the bank pursuant to its legal obligations. We will forward these to you and as soon as you have signed them and returned them to us, we will place the funds on deposit. We may charge an administration fee to do so.

## **21 Retention of Files and Documents**

21.1 We retain files for a period of six years from the date of the final bill. After that time, files may be destroyed unless you direct otherwise. Documents held in our deeds system will be held at your direction.

## **22 Information to Clients and Conflicts of Interest**

22.1 We attach information about the Law Society's *Rules of Conduct and Client Care for lawyers* as **Schedule B**. We have procedures in place to identify and respond to conflicts of interest. If a conflict of interest arises between you and any other Class Member(s), or between you and LPF, we will inform you as soon as we become aware of the conflict and we will follow the requirements and procedures set out in the Law Society's *Rules of Conduct and Client Care for lawyers*.

## **23 Privacy Act**

23.1 You agree that we may obtain information about you and you consent to any person providing us with such information.

23.2 You must notify us of any change in circumstances that may affect the accuracy of information provided by you to us.



**24 Limitation of liability**

24.1 Russell Legal's liability is limited to a total across all and any claims of \$1.5 million in relation to this matter.

**25 Dispute Resolution**

25.1 In the event of a dispute between Russell Legal and the Representatives or the Client in relation to any matter arising under or in connection with this Agreement or the conduct of the Proceeding, other than a dispute as to the terms for Settlement of the Proceeding, the Parties agree that the following provisions shall apply.

25.2 The Parties must seek to negotiate, in good faith, a resolution of the dispute with the assistance (if available) of the most senior counsel briefed in the Proceeding.

25.3 If the Parties are unable to resolve the dispute under clause 25.2 within 7 days of the dispute arising (or such longer period as the Parties agree), the dispute will be referred to mediation. The mediator will be such suitably qualified person as the Parties agree or, failing agreement, as nominated by the President of the Arbitrators and Mediators Institute of New Zealand. The costs of the nomination and the mediation shall be borne equally by the Parties.

25.4 If, at the conclusion of the mediation referred to in clause 25.3, the Parties have still not resolved their dispute, the Parties agree that the dispute will be referred to Independent Counsel for the purpose of making an expert determination. In making an expert determination, the Independent Counsel may proceed as he or she sees fit to inform himself or herself before making the determination, and the Parties agree that the determination of the Independent Counsel will be final and binding on them. The costs of obtaining Independent Counsel's expert determination shall be borne equally by the Parties.

**26 General**

26.1 The written terms of this Agreement constitute the entire agreement between the Parties.

26.2 There shall be no variation or amendment to the terms of this Agreement unless recorded in writing.

26.3 This Agreement is governed by New Zealand law.

26.4 The Parties submit to the exclusive jurisdiction of the New Zealand courts.

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

26.6 The Representatives/ Client and Russell Legal will each promptly execute all documents and do all things that either of them from time to time reasonably requires of the other to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by it.



## Schedule A

In this Agreement, unless the contrary intention appears:

|                                |   |
|--------------------------------|---|
| <b>"Acceptance"</b>            | means acceptance of this Agreement by the Client and includes Electronic Acceptance and "Accepted" shall be construed accordingly.  |
| <b>"Agreement"</b>             | means Russell Legal's terms of engagement i.e. this Agreement.  |
| <b>"Class Member"</b>          | means a person represented in the Proceedings by the Representatives in accordance with the terms of a representation order made by the Court under High Court Rule 4.24 who has not opted out of the proceedings, including any amended order.                               |
| <b>"Client"</b>                | means the person who enters this Terms of Engagement Agreement with Russell Legal by signing and dating the signature page or by signing the Participation Notice Agreement Regarding Litigation Funding Arrangements.  |
| <b>"Costs Order"</b>           | means an order made by the Court in the Proceeding requiring one or more parties to the Proceeding to pay all or part of the costs incurred by another party or parties to the Proceeding.  |
| <b>"Common Issues"</b>         | Means the issues set out in the Proceedings that are defined as Common Issues and may be updated from time to time.   |
| <b>"Counsel"</b>               | means senior or junior counsel retained by Russell Legal in the Proceeding.   |
| <b>"Court"</b>                 | means the court in which the Proceeding is commenced and/or prosecuted from time to time.   |
| <b>"Deferred Costs"</b>        | means the amount of any unpaid legal costs which become immediately payable to Russell Legal upon Resolution or upon Russell Legal's engagement in these proceedings being terminated.  |
| <b>"Electronic Acceptance"</b> | means an electronic indication of the Claimant's identity and the Claimant's intention to accept this Agreement on, and in accordance with instructions provided on, a website administered by, or on behalf of, Russell Legal or the Funder.                                 |
| <b>"Electronic Offer"</b>      | means the publication of this Agreement on a website administered by, or on behalf of, Russell Legal or the Funder for the purpose of offering this Agreement to Class Members.   |
| <b>"Funded Costs"</b>          | means the legal fees of Russell Legal and Counsel (including any GST on such amounts) and 100% of the disbursements reasonably incurred in connection with the preparation and prosecution of the Proceeding on an hourly basis during the term of the Funding Agreement and. |

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|                              | payable to Russell Legal and Counsel in accordance with this Agreement and Counsel's terms of engagement, respectively  |
| <b>"Funded Person"</b>       | means any person who has entered into a Funding Agreement and "Funded Persons" shall be construed accordingly. Except where the context otherwise indicates, Funded Persons include the Client.                                       |
| <b>"Funder" or "Funders"</b> | Funders means LPF Litigation Funding No.33 Limited and CASL Management Pty Limited  |
| <b>"Funding Agreement"</b>   | means the Deed for Provision of Services in Respect of Litigation signed by the Representatives and, if amended, that agreement as amended.   |
| <b>"Russell Legal"</b>       | means Russell Legal Limited, of Auckland, NZ.   |
| <b>"Independent Counsel"</b> | means Bruce Grey QC. If Bruce Grey QC cannot act, LPF will appoint another senior independent QC to act as Independent Counsel.   |
| <b>"Party"</b>               | means a party to this Agreement.  |
| <b>"Proceedings"</b>         | means the proceedings filed in the High Court of New Zealand in relation to this matter, including any appeals therefrom, and including any alternative dispute resolution process approved by the Funder.                            |
| <b>"Representatives"</b>     | means the Funded Person(s) who are the Representatives appointed under the Funding Agreement in the Proceeding, including any representative of a subclass (if any).  |
| <b>"Resolution"</b>          | means when all or any part of the Resolution Sum is received and where the Resolution Sum is received in parts, a "Resolution" occurs each time a part is received.   |
| <b>"Resolution Sum"</b>      | means the total amount or amounts for which the Proceeding is settled, or for which judgment is given, including any interest, the value of any goods or services, and any costs recovered pursuant to a Costs Order or by agreement. |

|                         |   |
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| <b>"Senior Counsel"</b> | means Davey Salmon and/or any other Senior Counsel briefed in the Proceeding by the Lawyers with the prior written approval of the Funder.  |
| <b>"Settlement"</b>     | means any settlement, compromise, discontinuance or waiver of the Proceeding, any part of the Proceeding, or any Class Member's claim against the Defendants, and "settles" shall be construed accordingly.   |
| <b>"The Defendants"</b> | means ANZ Bank New Zealand Limited and ASB Bank Limited (carrying on business as banks providing a range of financial services including retail, business and rural banking and lending, having their registered offices at Ground Floor, Anz Centre, 23-29 Albert Street, Auckland, 1010 , New Zealand and Level 2, Asb North Wharf, 12 Jellicoe Street, Auckland, 1010 , New Zealand, respectively. |
| <b>"Success"</b>        | means recovery of a Resolution Sum from either of the Defendants, whether by means of a court judgment, pursuant to a settlement agreement or through any other means.  |
| <b>"Termination"</b>    | means: <ul style="list-style-type: none"> <li>(a) a termination in accordance with clause 19 of this Agreement;</li> <li>(b) any exercise of a right of withdrawal under the cooling-off period provided in clause 18 of this Agreement; and</li> <li>(a) any completion, failure, avoidance, rescission, annulment or other cessation of effect of this Agreement.</li> </ul>                        |
| <b>"us or we"</b>       | means Russell Legal   |
| <b>"you"</b>            | means the Client  |

## SCHEDULE B

Set out below is the information required by the *Rules of Conduct and Client Care for Lawyers* of the New Zealand Law Society ("Law Society").

### A. Fees:

The basis on which fees will be charged is set out in clause 12 of these Terms of Engagement.

In accordance with the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, Russell Legal's fees will be charged on the basis of a consideration of "reasonable fee factors". Russell Legal's fees will be reasonable taking into account all the following factors:

- (a) the time and labour expended:
- (b) the skill, specialised knowledge, and responsibility required to perform the services properly:
- (c) the importance of the matter to the client and the results achieved:
- (d) the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by the client:
- (e) the degree of risk assumed by the lawyer in undertaking the services, including the amount or value of any property involved:
- (f) the complexity of the matter and the difficulty or novelty of the questions involved:
- (g) the experience, reputation, and ability of the lawyer:
- (h) the possibility that the acceptance of the particular retainer will preclude engagement of the lawyer by other clients:
- (i) whether the fee is fixed or conditional (whether in litigation or otherwise):
- (j) any quote or estimate of fees given by the lawyer:
- (k) any fee agreement (including a conditional fee agreement) entered into between the lawyer and client:
- (l) the reasonable costs of running a practice:
- (m) the fee customarily charged in the market and locality for similar legal services.

### B. Professional Indemnity Insurance:

We hold professional indemnity insurance that meets or exceeds the minimum standards specified by the Law Society. We will provide you with particulars upon request.

### C. Lawyers' Fidelity Fund:

The Law Society maintains the Lawyers' Fidelity Fund for the purpose of providing clients of lawyers with protection against pecuniary loss arising from theft by lawyers. The maximum amount payable by the Fidelity Fund by way of compensation to an individual claimant is limited to \$100,000. Except in certain circumstances specified in the Lawyers and Conveyancers Act 2006, the Fidelity Fund does not cover a client for any loss relating to money that a lawyer is instructed to invest on behalf of the client.

### D. Complaints:

We maintain a procedure for handling any complaints by clients, designed to ensure that a complaint is dealt with promptly and fairly.

If you have a complaint about our services or charges, you may refer your complaint to the person in our firm who has overall responsibility for your work.

If you do not wish to refer your complaint to that person, or you are not satisfied with that person's response to your complaint, you may refer your complaint to any partner of the firm.

Partners may be contacted as follows:

- by letter;
- by email at [Scott.Russell@RussellLegal.co.nz](mailto:Scott.Russell@RussellLegal.co.nz)
- by telephoning 02040969751.

The Law Society operates the Lawyers Complaints Service and you are able to make a complaint to

that service. To do so, phone **0800 261 801** and you will be connected to the nearest Complaints Service Office, which can provide information and advice about making a complaint.

**E. Persons Responsible for the Work:**

The names and status of the person or persons who will have overall responsibility for the services we provide for you are set out in clause 10 of these Terms of Engagement.

**F. Client Care and Service:**

The Law Society client care and service information is set out below.

Whatever legal services your lawyer is providing, he or she must:

- *Act competently, in a timely way, and in accordance with instructions received and arrangements made.*
- *Protect and promote your interests and act for you free from compromising influences or loyalties.*
- *Discuss with you your objectives and how they should best be achieved.*
- *Provide you with information about the work to be done, who will do it and the way the services will be provided.*
- *Charge you a fee that is fair and reasonable and let you know how and when you will be billed.*
- *Give you clear information and advice.*
- *Protect your privacy and ensure appropriate confidentiality.*
- *Treat you fairly, respectfully and without discrimination.*
- *Keep you informed about the work being done and advise you when it is completed.*
- *Let you know how to make a complaint and deal with any complaint promptly and fairly.*

The obligations lawyers owe to clients are described in the *Rules of Conduct and Client Care for Lawyers*.

Those obligations are subject to other overriding duties, including duties to the courts and to the justice system.

If you have any questions, please visit [www.lawsociety.org.nz](http://www.lawsociety.org.nz) or call **0800 261 801**.

**G. Limitations on extent of our Obligations or Liability**

Any limitations on the extent of our obligations to you or any limitation or exclusion of liability are set out at clauses 15.7 and 24 of these Terms of Engagement.