



Supplementary Product Disclosure Statement

Preparation Date: **12 August 2022**

SCENIC TOURS LITIGATION FUNDING SCHEME

ARSN 649 659 094

For the purposes of undertaking the Class Action relating to the operation of river cruises by Scenic Tours on the Rhine-Moselle-Main-Danube river systems

Issued by Omni Bridgeway Investment Management Limited
ACN **642 086 593**, AFS Licence No. **524023**



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ABOUT THIS DOCUMENT

This is a Supplementary Product Disclosure Statement (**SPDS**) issued by Omni Bridgeway Investment Management Limited (ACN 642 086 593, AFS Licence No. 524023) (**OBIML**).

This SPDS supplements the Product Disclosure Statement for the Scenic Tours Litigation Funding Scheme (ARSN 649 659 094) (**Scheme**) that was prepared by OBIML and issued on 24 September 2021 (the **PDS**).

The purpose of this SPDS is to detail important changes to the PDS.

This SPDS should be read together with the PDS and any other SPDS that OBIML has issued or issues for the PDS from time to time. This is the first and only SPDS issued at this time.

The changes that are made to the PDS by this SPDS are to reflect that OBIML, the Funder, the representative party and the Lawyers have now determined that the funding or potential funding of a class action or multi-party litigation against Scenic Tours Pty Ltd (the **Class Action**) will be brought as an ‘open’ class action, rather than as a ‘closed’ class action. The effect of the Class Action being filed on an ‘open’ basis is that each person who falls within the class of claimants defined in the statement of claim that is filed against the Respondent in the proceedings will be included in the class covered by the Class Action unless they take steps to positively opt out of the proceedings.

Any person who is a member of the class of claimants defined in the Class Action will be a member of the Scheme and accordingly this means that members of the class who do not positively apply to become a member of this Scheme may still be treated as “passive members” of the Scheme.

This SPDS also updates you about recent developments in the law relating to the funding of class actions.

This SPDS was prepared on 12 August 2022.

IMPORTANT CHANGES TO THE PDS

Class Action now to be filed as an ‘open’ class action

As at the date of issuance of the PDS, it was proposed that the Class Action would be filed as a ‘closed’ class action, meaning that it was intended that the Class Action would only be brought on behalf of those claimants who had applied for funding and agreed to become a funded member under the Scheme before the proceedings were filed against the Respondent to commence the Class Action.

However, OBIML, the Funder, the representative party and the Lawyers have now determined that the Class Action will instead be brought on an ‘open’ basis. This means that each person that falls within the definition of the class of claimants in the statement of claim that is filed against the Respondent in the proceedings the subject of the Class Action will be included in the class covered by the Class Action unless they take steps to positively opt out of the proceedings (as explained below). The ‘class of claimants’ (commonly referred to as ‘group members’) the Class Action will be brought on behalf of, are passengers on certain river cruises operated by the Respondent from 1 June 2018 to 31 December 2018 on the Rhine-Moselle-Main-Danube river systems. The exact definition of ‘group members’, together with a list of river cruises operated by the Respondent in this period which are the subject of the proceedings, will be made available on our website once the statement of claim has been filed, at:

<https://portal.omnibridgeway.com/scenic>.

The effect of the Class Action being filed as an ‘open’ class action is that members of the class who do not positively apply to become a member of this Scheme will be treated as “passive members” of the Scheme. A **Passive Member**¹ is someone who is a member of the class of people who have a claim in the Class Action, and who has not positively opted out of the Class Action by giving a notice to the Court in the form it has approved for doing so, and the Court has agreed that all such people are covered by the decision to be made in the Class Action. A Passive Member’s share of the Resolution Sum will be deemed assigned to the Scheme, and allocated amongst the Lawyers, the Funder and the claimants in accordance with the Scheme’s constitution.

Accordingly, if you fall within the definition of the class of claimants in the statement of claim that is filed against the Respondent in the ‘open’ class action and you do not wish to participate in the Class Action, you will now have to take steps to positively opt out of the Class Action and the Scheme (and therefore the funding arrangements).

¹ Passive Members are “passive general members” as defined in the *ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787*.

Opting out of the Class Action

The representative party in an 'open' class action does not need to seek the consent of class members to commence a class action on their behalf or to identify them as a specific class member. However, class members can cease to be class members by 'opting out' of the class action. Usually, orders are made by the Court which prescribe the method by which potential group members in the class action are to be notified about the class action and what group members need to do to either remain a member of the class (which may entitle you to receive a share of any Court-ordered damages awarded in favour of the representative and group members or any settlement that might be agreed) or withdraw from the class action (which will exclude you from any entitlement to share in any Court award or settlement), referred to as 'opting out'. The Court will set a deadline by which any claimants who do not wish to participate in the class action must opt out. The form of Opt Out Notice is usually attached to the Court order.

Please contact us if you would like further information about the opt out process or require a form of Opt Out Notice. If we have your Application Form at the appropriate time, you will receive an update in respect of any Court ordered opt out process from our Client Liaison Team.

Until such time as you have opted out of the Class Action, you may continue to be treated as a Passive Member of the Scheme even though you may have exercised the cooling-off terms described in section 17 (*What if I apply to participate and then change my mind? The cooling-off terms*) of the PDS. This is because, unless you opt out of the Class Action using the relevant Opt Out Notice, you may continue to be a member of the class that is represented in the Class Action, and therefore entitled to a distribution from the Scheme (if distributions are paid to claimants) following the resolution of the Class Action.

OBIML encourages all Passive Members who do not wish to opt out of the Class Action to still complete an Application Form and provide a signed Retainer Agreement in the manner set out in section 10 (*I have a claim in the Class Action, how do I participate?*) of the PDS so that OBIML can include you as a known member of the Scheme and ensure that any distribution of the Resolution Sum to which you may be entitled is properly paid to you. You do not have to pay anything to be a Passive Member, or to change your Passive Membership to become a known claimant.

What happens if you withdraw from the Scheme?

If you withdraw your application and provide the relevant Opt Out Notice, you will have no continuing or further obligation to OBIML or the Scheme save for any obligations of confidence arising in respect of information received by you prior to withdrawal. If you withdraw your application during the cooling-off period and successfully opt out of the Class Action, the Funder will not fund any claim you may bring against the Respondent, you will not be treated as a general member of the Class Action funded by the Scheme and you will not be entitled to a share of any Resolution Sum that is awarded as a result of the Class Action.

If you apply to join this Scheme, and subsequently wish to opt out after the expiry of the cooling-off period (see section 17 of the PDS for details of the cooling-off terms), a share of your Resolution Sum will still be paid to the Scheme.

Recent changes to the law relating to the funding of class actions

On 16 June 2022 the Full Court of the Federal Court of Australia delivered judgement in *LCM Funding Pty Ltd v Stanwell Corporation Limited* [2022] FCAFC 103. The Court decided that a litigation funding scheme is not a managed investment scheme.

OBIML is considering the impact of the judgment on this Scheme and will provide further updates to members and prospective members as the matter progresses. The Funder will continue to fund the Class Action consistently with the Claim Funding Terms and it is OBIML's view that you will not need to take any action as a result of the judgement.

OBIML does not anticipate that the judgement has a direct impact on the Class Action proceeding itself, nor scheme members' status as group members in the Class Action once commenced.

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Product Disclosure Statement

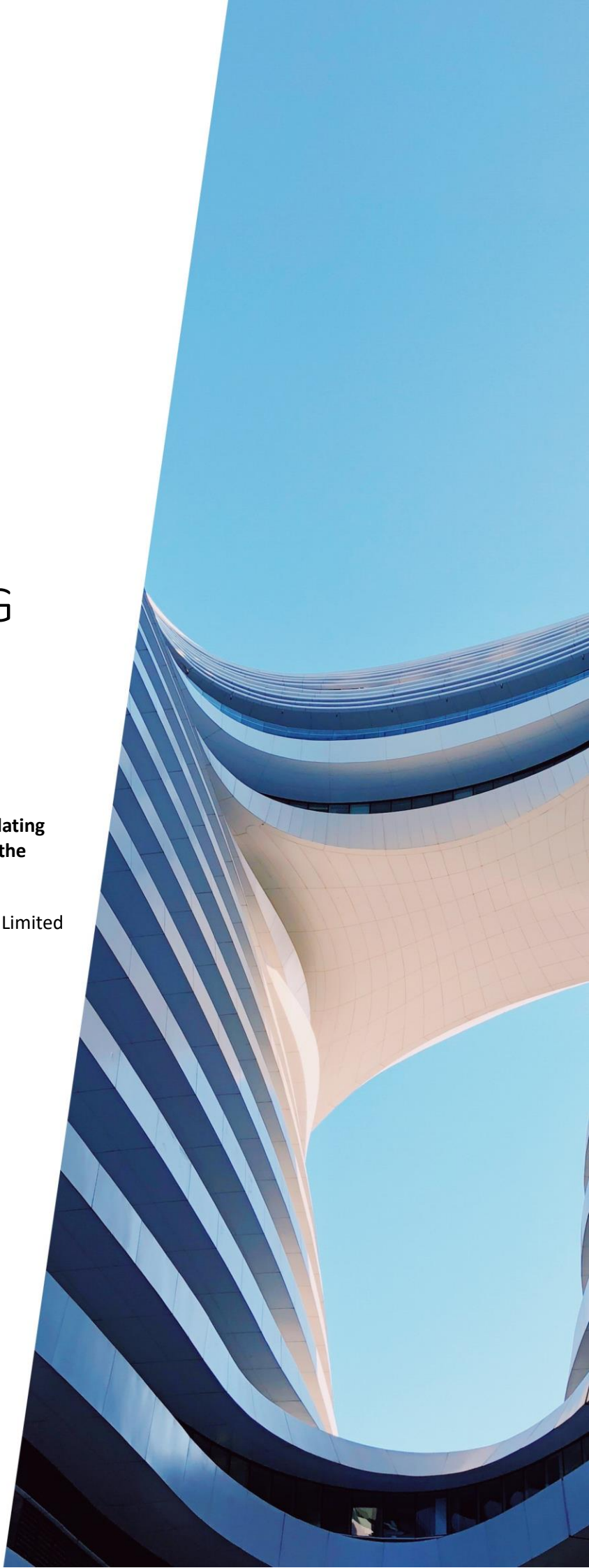
Issued **24 September 2021**

SCENIC TOURS LITIGATION FUNDING SCHEME

ARSN 649 659 094

For the purposes of undertaking the Class Action relating to the operation of river cruises by Scenic Tours on the Rhine-Moselle-Main-Danube river systems

Issued by Omni Bridgeway Investment Management Limited
ACN **642 086 593**, AFS Licence No. **524023**



Important Information (General Advice Warnings)

In this Product Disclosure Statement (**PDS**) “**Scheme**” means the Scenic Tours Litigation Funding Scheme (ARSN 649 659 094), a managed investment scheme that is registered with the Australian Securities and Investments Commission (**ASIC**).

The information in this PDS is general information only and does not take into account your personal financial situation or needs. You may wish to consult a licensed financial adviser to obtain financial advice that is tailored to suit your personal circumstances.

The information in this PDS is subject to change from time-to-time. Information that is not materially adverse information can be updated by us. Updated information can be obtained by going to our website, by calling us, or by contacting your licensed financial adviser. You may request a paper copy of any updated information at any time, free of charge.

This PDS does not constitute an offer or invitation in any place in which, or to any person to whom, it would not be lawful to make such an offer or invitation. The distribution of this PDS outside Australia may be restricted by law in the place it is received, and persons who come into possession of this PDS outside Australia should seek advice on and observe any such restrictions. Any failure to comply with such restrictions may constitute a violation of applicable laws.

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1. About this document

The purpose of this document is to explain your rights and entitlements if you choose to participate in the Class Action proposed to be funded by Omni Bridgeway (Fund 5) Australian Inv. Pty Ltd (ABN 91 635 083 984, Authorised Representative No. 1283704) (the **Funder**), which is an Authorised Representative of Omni Bridgeway Investment Management Limited (ACN 642 086 593, AFS Licence No. 524023) (**OBIML**), the issuer of this document. It is designed to help you make a decision about whether to participate in the Class Action and receive funding from the Funder to do so.

The Funder will use the litigation management services of Omni Bridgeway Limited (ABN 45 067 298 088, Authorised Representative No. 1283703) (**Omni Bridgeway**), an Authorised Representative of OBIML.

OBIML is confident that the Funder's team, their skills and the competitive funding packages they offer make them the best choice, but we encourage you to seek your own independent advice.

This document contains information that is relevant to claimants in the Class Action and further information that may be specific to the Funder or the Lawyers.

To help you with some of the terms used in this document, there is a *Dictionary* section at the back of this document which starts on page 59.

2. Omni Bridgeway Investment Management

OBIML is the responsible entity for the Scenic Tours Litigation Funding Scheme. As responsible entity, it is responsible for overseeing the operations of the Scheme.

OBIML is a wholly owned subsidiary of Omni Bridgeway.

As responsible entity of the Scheme, OBIML will be responsible for issuing interests in the Scheme.

3. The Scheme and the Class Action

This Scheme relates to the funding or potential funding of a class action or multi-party litigation (the **Class Action**) against Scenic Tours Pty Ltd (**Respondent**).

The Class Action seeks compensation for loss, damage and/or costs on behalf of claimants who were passengers on river cruises operated by the Respondent from 1 June 2018 to 31 December 2018 on the Rhine-Moselle-Main-Danube river systems. It will be alleged that the river cruises, which were operated by the Respondent in severe drought conditions, did not meet the experience and level of service that the claimants had been promised and paid for.

It is expected that claims against the Respondent will be made for breaches of certain "consumer guarantees" set out in the *Australian Consumer Law (ACL)*. In particular, it will be alleged that by way of the operation of the river cruises, the Respondent breached its obligations under the ACL by failing to provide a service:

- that was fit for the purpose for which the services were acquired, the “*fit for purpose guarantee*”: s61(1), ACL; and/or
- that was of such a nature, and quality, state or condition, that they might reasonably be expected to achieve the result that the consumer wished, the “*result guarantee*”: s61(2), ACL;

and as a result of those alleged breaches, claimants are entitled to compensation from the Respondent for the reduction in value (s267(3), ACL) and damages for disappointment and distress (s267(4), ACL).

The claimants in the Class Action will be passengers on river cruises operated by the Respondent from 1 June 2018 to 31 December 2018 on the Rhine-Moselle-Main-Danube river systems.

It is intended that the Class Action will be brought only on behalf of those claimants who apply for funding and agree to become a funded member under the Scheme. This is commonly referred to as a ‘closed’ class action. It is currently proposed to file proceedings against the Respondent and commence the closed Class Action on or after 15 December 2021. Claimants who wish to participate in the Class Action with funding from the Funder must apply to become a member of the Scheme before the Class Action is commenced (which will not be until on or after 15 December 2021). Late applicants may be permitted to join the Class Action in limited circumstances and with permission of the Court. See section 10 below for more details.

The claims that are being made in the Class Action are **not** part of the Scheme. This is because the claims of claimants that are to be pursued through the Class Action are rights that belong to the claimants personally. They arise from damage or loss that a claimant has suffered and are not able to be transferred to anyone else. This means that those claims are incapable of assignment to the Scheme. The difference between an interest in the Scheme and a claim in the Class Action is further explained in section 11 below.

The costs of running the Class Action (the **Project Costs** – see the definition in the *Dictionary* section of this document) will be met by the Funder. In return, the Funder will be entitled to a share of any **Resolution Sum** (which is any amount awarded or paid by way of settlement in relation to the Class Action – see the definition in the *Dictionary* section at the back of this document). The proportion of each claimant’s Resolution Sum that may be paid to the Funder is explained in section 27 of this document.

The Funder will have an interest in the Scheme which is administered by OBIML. As a potential or actual claimant in the Class Action, if you elect to take advantage of the funding offered by the Funder you will need to be comfortable with the relationship between OBIML, Omni Bridgeway, the Funder and the Lawyers.

4. About Omni Bridgeway

Omni Bridgeway is a global leader in financing and managing legal risks, with expertise in civil and common law legal and recovery systems, and operations spanning Asia, Australia, Canada, Europe, the Middle East, the UK and the US. Omni Bridgeway offers dispute finance from case inception through to post-judgment enforcement and recovery. Since 1986 it has an established record of financing disputes and enforcement proceedings around the world.

Omni Bridgeway's dispute finance provides access to justice for groups who have suffered injustice and lack the resources to seek legal redress against their opponents.

Thank you for considering participating in a class action financed using the expertise of Omni Bridgeway. We are the leading dispute financier in Australia, with an established track record of recovering returns for claimants over many years. We are a formidable ally by your side.

If you decide to participate in the Class Action and receive funding from the Funder, we look forward to supporting you throughout your participation in the Class Action.

The Funder is a wholly owned subsidiary entity of Omni Bridgeway (Fund 5) LP, which is an exempted limited partnership incorporated under the laws of the Cayman Islands. Omni Bridgeway (Fund 5) LP (also referred to as "Fund 5") was launched in June 2019 with aggregate capital commitments of US\$400 million, which when combined with Omni Bridgeway's funding commitment of US\$100 million, amounted to US\$500 million for investment in dispute financing, including through the Funder. Further information in relation to Fund 5, including the current status of the deployment of its capital commitments for investments in dispute financing can be found in Omni Bridgeway's Investment Portfolio Quarterly Reports, available on its website:

<https://omnibridgeway.com/investors/annual-and-quarterly-reports/quarterly-reports>.

5. What is litigation funding? An overview.

Litigation can be one of the most effective means of resolving a dispute or obtaining a remedy for wrongdoing. Parties that choose to engage in litigation however assume considerable financial and other risks. Partnering with a group skilled in mitigating those risks by providing financial resources, strategic guidance and access to a global network of experts affords leverage and capacity to see disputes through to commercial outcomes.

Litigation funding is particularly relevant in the context of class actions or multi-party litigation. Often, it will not be economically viable for an individual claimant to bring an individual claim because the costs and risks of litigating an individual claim may outweigh the value of the claim itself. Generally, litigation funding in class actions and multi-party litigation allows the members of the class to be involved in one court proceeding with one set of lawyers.

As one of the most experienced dispute financiers in the world, Omni Bridgeway and its affiliates, including the Funder and funds managed by Omni Bridgeway, are able to extend financing and litigation expertise to assist claimants in cases globally.

The Funder's litigation funding is non-recourse – if you lose your case, you owe the Funder nothing.

The Funder's litigation funding can help pay your legal fees, assisting with the high cost of litigation and enabling you to afford leading lawyers and barristers, as well as providing protection from adverse costs exposure if your case is ultimately unsuccessful.

The Funder's litigation funding provides support against opponents seeking to outspend you.

6. How do class actions work?

A class action is a special type of court proceeding. Generally, in order for a class action to be commenced, all that is required is:

- at least 7 people with claims against the same person;
- the claims of those 7 or more people arise out of similar or related circumstances; and
- the claims of those 7 or more people give rise to substantial common issues of law or fact.

The key feature of a class action is the representative nature of the proceeding. In a class action, one or a small number of persons, known as “representative parties”, commence a court proceeding against one or more respondents. The proceeding is not an action by a class or group. It is a claim made by the representative party in which a class or group of non-parties can be bound. While the representative party advances their claim in the interests of all members of the class, the class usually plays a passive role, at least until the common issues are resolved. In a class action, the representative party’s claim is used to resolve as many factual and legal issues common to the class members as possible.

If the claim is not otherwise resolved (for example, settled or withdrawn and/or discontinued), the Court will make a judgment about the common issues. There may be circumstances pertaining to individual members of the class that are different and not determined by the judgment of the Court relating to the class and individual actions may need to be pursued following resolution of the common issues.

Read about some of Omni Bridgeway’s recent class actions here: <https://portal.omnibridgeway.com/>.

7. The Lawyers

Somerville Legal Pty Ltd, a firm of lawyers which has experience in class action litigation (the **Lawyers**), has been or will be engaged in relation to the Class Action.

The Lawyers are appointed by the representative party. The Lawyers request that every claimant applying to become a member of this Scheme also enters into an engagement with them, so that each claimant is a client of the Lawyers. The Lawyers’ terms of engagement will be on terms that are consistent with the **Standard Lawyers’ Terms** that are attached to the Application Form (the terms of such engagement are referred to as the **Retainer Agreement**). The Standard Lawyers’ Terms are between the Lawyers and the Funder, to specify how and when their fees will be met by the Funder providing funding via the Scheme during the course of the proceedings.

As more fully set out in the Standard Lawyers’ Terms, the Scheme’s constitution and in the *Fees and Other Costs* section of this document, the Lawyers will charge for their legal work at an agreed percentage of their normal hourly rates. The unpaid amount (referred to as **At-Risk Fees**) will be used to calculate the Lawyers’ entitlement to a distribution by the Scheme out of the Resolution Sum along with an additional amount calculated as a percentage of the total quantum of the At-Risk Fees (referred to as the **Uplift**).

The payment of the At-Risk Fees and the Uplift is a contingent success fee and is payable only out of the Resolution Sum as a distribution by the Scheme. In addition to payment of the At-Risk Fees and the Uplift, the Lawyers shall also be entitled to a distribution by the Scheme out of the Resolution Sum in respect of a sum of costs incurred by the Lawyers in respect to legal proceedings concerning the same subject matter of the Class Action prior to the commencement of the Scheme (referred to as **Prior Costs**).

The payment of the At-Risk Fees, the Uplift and the Prior Costs is made in return for the Lawyers charging for their legal work at a percentage of their normal hourly rates and for risking this unpaid amount. The calculation of these amounts is set out in more detail in section 38 below.

The Lawyers are responsible for appointing barristers to provide opinions and/or argue the Class Action in Court. The Lawyers will instruct the barristers and pay their fees as a disbursement. The barristers' fees (passed on at 100% of the charged fees) are separate to the Lawyers' own fees. The barristers' fees will be met by the Funder as part of the Project Costs.

As the Lawyers will be entitled to receive distributions from the Scheme paid out of any Resolution Sum as part of their fee arrangements, they will be considered to be a member of the Scheme. The Lawyers will be required to confirm in writing that they agree to be bound by the Scheme's constitution, including the Claim Funding Terms (which form part of the Scheme's constitution).

If you would like more information about the Lawyers and arrangements with them, please contact your Client Liaison Team Member whose contact details are at the end of this document.

8. Summary of benefits, risks, commission/fees and costs/expenses

This section provides an overview of the benefits, risks and deductions for members participating in the Scheme. **This is a summary only and must be read subject to the balance of this document, and the Scheme’s constitution.**

General benefits of participating in a litigation funding scheme	Specific benefits relating to this Scheme
<ul style="list-style-type: none"> • Participation in a litigation funding scheme by a claimant allows an individual’s claim to be brought before the Court for determination without individual claimants having to incur any out-of-pocket expenses or take an active role in the litigation. • Allows the claims of multiple claimants to be pooled and run in a cost-effective manner. • Suspends any limitation period that applies to each claimant’s claim for the duration of the class action. • Removes claimants’, other than the representative party’s, exposure to the potential liability to pay the respondent’s costs if the claim is unsuccessful. 	<ul style="list-style-type: none"> • May allow the claimants to recover losses caused by the Respondent’s alleged breaches of the ACL. • For the Funder, participating in the Scheme may allow it to earn a profit on the amounts it spends funding the Class Action. • For the Lawyers, in return for providing their services on a partial conditional fee basis, with a percentage of At-Risk Fees, they will have the entitlement to be paid a distribution from the Scheme out of any Resolution Sum calculated with reference to the at-risk amount of their professional fees, a success-based uplift and an amount of prior costs, if the amount of the Resolution Sum is large enough.

General risks of participating in a litigation funding scheme	Specific risks relating to this Scheme
<ul style="list-style-type: none"> • That the Class Action is lost or resolves for less than the full value of the claim, including because the Lawyers are unable to obtain sufficient evidence to prove the case. • The litigation process, unknown evidentiary or expert issues, or the conduct of the Respondent substantially increase the Project Costs and the estimated time to resolution of the Class Action. • That the Respondent does not have the capacity to pay any settlement or judgment sum. An action to enforce and recover any settlement or judgment sum may be costly and, ultimately, unfruitful. • That the Funder is unable to meet its obligations and the Lawyers and the representative party are unwilling to proceed without funding. • That the Funder withdraws funding and/or the Lawyers and the representative party decide to discontinue the proceedings. • That the Lawyers manage the case poorly or the representative party or the Funder gives inappropriate instructions. • It is currently unknown how many claimants will apply to join the Scheme, which means it is not possible to determine at this stage how many claimants will be allocated a share of any Resolution Sum, or what the quantum of each claimant’s share of the Resolution Sum is likely to be. 	<ul style="list-style-type: none"> • By signing an Application Form, you agree to opt-out of any other class action against the Respondent. It may be that another class action generates a superior monetary outcome for the claimants. • The Respondent successfully establishes a defence to the proceedings filed against it, and is found not to be liable to make any payment to the claimants in the Class Action. • The Respondent successfully puts forward an argument to reduce the quantum that may otherwise be payable to claimants, which results in a reduced Resolution Sum. • That insufficient applications for interests in the Scheme are received from passengers of the relevant river cruises operated by the Respondent, such that the Funder decides that the Class Action is not commercially viable and/or its investment committee fails to recommend to it that it fund the Class Action. • For the Funder and the Lawyers, the Project Costs or the At-Risk Fees (together with any additional entitlements they are entitled to recover from any Resolution Sum, such as the Time-Weighted Amount, the Uplift and the Prior Costs) may not be recoverable if the Class Action is lost. Investment in litigation is inherently risky and uncertain. At the time of joining the Scheme, the Funder and the Lawyers cannot know with certainty whether the case will be won, and if it is, what the quantum of any Resolution Sum will be.

Further information about the risks associated with the Scheme is set out in section 42 of this document.

Commission / Fees	Costs / Expenses of the Scheme								
<p>Subject to any order of the Court to the contrary, the Resolution Sum will be allocated as follows (after such Resolution Sum has been first used to pay or reimburse the costs and expenses of the Scheme as described in the column to the right and in more detail in section 36 below):</p> <ol style="list-style-type: none"> 1. To the Funder: <ol style="list-style-type: none"> a. an amount equal to the claimants’ share of the Project Costs of the litigation (which includes all the amounts referred to as Project Costs in section 38 below); b. an amount on account of GST at 10% on any supply made by the Funder to a claimant; plus c. a percentage of the Resolution Sum (ignoring the deductions at (a) and (b) above) which shall be calculated on the basis of the period of time which elapsed since the Condition Precedent Date: <table border="1" data-bbox="300 1189 778 1720"> <thead> <tr> <th>Time to Resolution from the Condition Precedent Date</th> <th>Percentage of Resolution Sum</th> </tr> </thead> <tbody> <tr> <td>Resolution on or before 12 months</td> <td>20%</td> </tr> <tr> <td>Resolution after 12 months and on or before 24 months</td> <td>25%</td> </tr> <tr> <td>Resolution after 24 months</td> <td>30%</td> </tr> </tbody> </table> 2. To the Lawyers: the At-Risk Fees, the Uplift and the Prior Costs (see further detail of the Lawyers’ entitlements in section 38 below), <p>with the balance of the Resolution Sum to be distributed amongst the claimants (subject to</p>	Time to Resolution from the Condition Precedent Date	Percentage of Resolution Sum	Resolution on or before 12 months	20%	Resolution after 12 months and on or before 24 months	25%	Resolution after 24 months	30%	<p>The responsible entity is entitled to charge a fee of \$1,000 per annum (including GST) for its services in acting as trustee and responsible entity of the Scheme, accruing daily and payable in arrears upon receipt of the Resolution Sum. It is also entitled to be reimbursed for third party costs and other expenses of the Scheme such as establishment costs, audit fees, the fees of the Resolution Administrator, director’s fees and fees for any professional advice it may require. Examples of the type of expenses OBIML may incur are set out in the Scheme’s constitution.</p> <p>OBIML estimates the third party costs and other expenses of the Scheme to be:</p> <ul style="list-style-type: none"> • Responsible entity fees – \$1,000 per annum • Establishment costs – \$25,000 • Audit fees – \$30,000 per annum • Resolution Administrator’s fees – these fees are usually a lump sum and are set by the Court as part of the approval process. The amount which may be payable in Resolution Administrator fees depends on a number of different factors, including (but not limited to) the total number of claimants in the Class Action and the manner in which distribution amounts will be determined. These factors are unlikely to be known until the end of the proceedings. <p>These amounts will reduce the amount of the Resolution Sum available for distribution to the members of the Scheme.</p>
Time to Resolution from the Condition Precedent Date	Percentage of Resolution Sum								
Resolution on or before 12 months	20%								
Resolution after 12 months and on or before 24 months	25%								
Resolution after 24 months	30%								

other deductions noted to the right and the cap on fees detailed in section 38 below).

For worked examples of the calculation of the Funder's and the Lawyers' entitlements and distribution of the Resolution Sum based on various example scenarios, please refer to section 39.

Notes for Claimants

This section of the PDS contains information for people who have a claim as a member of the Class Action (or who have a claim as part of a multi-party litigation) and are considering participating in the Scheme and accepting the Funder's offer to fund the costs of bringing the Class Action.

In this section (Notes for Claimants), "you" means a claimant who is considering applying for an interest in the Scheme and participating in the Class Action as a general member of the class.

9. The Class Action

Broadly, the Class Action is alleging that the Respondents, in breach of the consumer guarantees contained in the ACL, operated river cruises between 1 June 2018 and 31 December 2018 on the Rhine-Moselle-Main-Danube river systems that did not meet the experience and level of service that the claimants had been promised and paid for.

More details about the Class Action are available on this website:

<https://portal.omnibridgeway.com/scenic>

If your application to become a member of the Scheme is accepted, you will receive updates from Omni Bridgeway via the nominated contact details in your completed Application Form. You will also be able to access the updates about the progress of the Class Action on the above website with unique log on details issued to you at the time you applied to become a member of the Scheme. Please ensure your contact details are kept up to date via the client portal so that our Client Liaison Team can keep you updated on the Class Action. The client portal can be accessed at: <https://portal.omnibridgeway.com/portal/login>.

This PDS is not legal advice about the Class Action or your claim. Omni Bridgeway, the Funder and OBIML are not making any statements in this PDS about the likelihood the Class Action could be successful, or the strength of your claim. You may have other causes of action against the Respondent in addition to, or apart from, the causes of action claimed under the Class Action. **You should seek legal advice about your individual circumstances.**

10. I have a claim in the Class Action, how do I participate?

If you have suffered a loss of the type that is being alleged in the Class Action, you should consider whether you wish to participate as a member of the class, with funding from the Funder. Please read this PDS and the Application Form that is attached at the back of this document carefully as they explain the terms on which the Funder will agree to fund the costs of bringing the Class Action and on which OBIML will operate the Scheme.

If you would like to participate as a funded member of the Class Action, you should complete the Application Form at the back of this PDS and return it to OBIML as soon as possible and, in any event, by no later than 15 December 2021. If we postpone this date, we will post the new date on the website: <https://portal.omnibridgeway.com/scenic>

You will also need to sign and return a copy of the Retainer Agreement with the Lawyers, which will be made available to applicants to sign as part of the online application process or sent to applicants to sign and return using the contact details provided in their completed Application Form.

OBIML will check your details and process your application, on the basis that you represent in the Application Form that you are eligible to be a funded member of the Class Action, and, if your application is accepted, record your name as a member of the Scheme. You are encouraged to return your completed Application Form and a signed Retainer Agreement **as soon as possible**.

Following receipt of your completed and signed Application Form, OBIML will confirm via email, or otherwise in writing, its acceptance of your application to participate in the Scheme. Subsequent to this acceptance, if you do not have a valid claim in the Class Action your interests in the Scheme will be cancelled and OBIML will remove your details from the register of members of the Scheme.

If your completed Application Form is received by OBIML after 15 December 2021 (or any extension to that date), then OBIML may still accept and process your application to be a member of the Scheme, however, it will only do so in circumstances where: (i) the proceedings have not yet been filed to commence the closed Class Action, or (ii) the Class Action has already commenced as a closed class, the plaintiff brings an application to include you in the proceedings the subject of the Class Action, and the Court exercises its discretion to include you. In respect of (ii), there is no guarantee that an application will be made to the Court or, if an application is so made to the Court, that the Court will exercise its discretion to include you in the proceedings. For this reason, if you would like to participate in the Class Action, we strongly encourage you to return your completed Application Form by no later than 15 December 2021.

If you would like to be excluded from this funding arrangement (for example so that you may pursue a cause of action against the Respondent on your own), you may either do nothing or, if you have already submitted an Application Form to become a member of the Scheme, take steps to withdraw your application (and, subject to any applicable Court order or rules, opt out of the Class Action). Please see sections 15, 17, 18 and 19 below in relation to withdrawing from the Scheme, opting out and cooling-off terms.

11. What is the Scheme?

The Scheme is a litigation funding scheme, constituted as a registered managed investment scheme, which is created by some or all of the class members agreeing with the Funder to pursue the Class Action. The Funder and the Lawyers are also members of the Scheme. The responsible entity for the Scheme will ensure that the Funder and the Lawyers are paid their share of any Resolution Sum. The Scheme is treated as a managed investment scheme under the *Corporations Act 2001* because claimants are regarded as giving up something valuable (i.e. their future entitlement to a share of any Resolution Sum paid as a result of the Class Action) in return for the funding and the services provided by the Funder and the Lawyers.

The Scheme is different from the Class Action. The Scheme is created by the pooling of the Funder's promises to pay the Project Costs to fund the conduct of the Class Action, the Lawyers' promises to conduct the Class Action with a portion of their fees at risk, together with the claimants' assignment to the Scheme of their share of the Resolution Sum in order that it can be divided up between the Lawyers, the Funder and the claimants. The performance of these mutual promises is monitored and administered by OBIML. As a claimant, your claim in the Class Action remains your own personal property, which cannot be assigned because it is personal to you and particular to your own circumstances. It is only your share of any Resolution Sum that results from a successful claim that you assign to the Scheme.

12. By applying for an interest in the Scheme as a claimant, what am I agreeing to?

You are agreeing to accept an interest in the Scheme (but you won't pay any money for that interest). When you apply to the Scheme you agree to assign your future interest in any Resolution Sum to the Scheme so that OBIML can allocate it between the Funder, the Lawyers and you, and you agree to give instructions to the Lawyers when called upon. Further detail on what instructions may be required is set out in section 21 of this PDS. **After the cooling-off period expires (see section 17 for details of the cooling-off terms), you won't be able to undo this assignment, even if you withdraw from the Scheme.**

13. What will participating cost me?

All the Project Costs of running the Class Action will be met by the Funder. The Funder will pay the Lawyers' fees (less the At-Risk Fees), the costs of any barristers, any expert witnesses or other consultants, and the incidental costs necessary to bring the claim. The Funder will also post security for costs, or finance the Lawyers to post security for costs, if that is required. You will not have to pay any of these costs. You will not have to pay anything to acquire your interest in the Scheme.

In return:

- you agree to appoint the Lawyers who will prosecute the Class Action (who require each member applying for an interest in the Scheme to sign their Retainer Agreement to become their client);
- if you are the representative party, you agree to act as such and appoint the Lawyers and give instructions to the Lawyers when requested; and

- you assign to the Scheme any money or property that may be awarded to you by the Court or agreed with the Respondent(s) in settlement that is approved by the Court as being fair and reasonable. This is referred to as the **Resolution Sum**. The Funder aims to recoup the Project Costs and be paid its percentage share from the Resolution Sum. This is what the Funder receives in return for funding the Project Costs of the Class Action. More information about how much this share may be is in section 27, and the *Fees and Other Costs* section of this document. The Lawyers will also be paid the conditional portion of their fees (the **At-Risk Fees**, the **Uplift** and the **Prior Costs** as detailed in section 38). After those payments have been met, the remaining balance of the Resolution Sum will be shared between all the claimants (the **Claimants' share of the Resolution Sum**). How your share is determined is discussed in section 14 below.

14. What happens at the end of the Class Action?

If the Class Action is unsuccessful, you will not pay anything and you will not receive anything. The Funder will pay the Lawyers' fees and may be liable to pay the Respondent's costs.

A Class Action can be successfully resolved in one of two ways:

- Firstly, where the Court decides the various factual and legal issues made in the proceedings in favour of the representative party. In this scenario the Court will usually award the representative party an amount of money representing the loss and damage they have suffered plus interest on that amount, and an amount for their legal costs (which usually equates to an award of around 60% of the applicant's 'out of pocket' expenditure).
- Secondly, where the Respondent agrees to settle all claims that constitute the Class Action out of Court. Sometimes the Respondent will settle for an amount representing some or all of the loss and damage claimed in the proceedings plus interest and costs, and sometimes it is for a lump sum, inclusive of interest and costs. Where the parties have agreed to settle a claim, the settlement can only proceed if the Court gives its approval. The Court's role is protective in nature, and it will only approve a settlement if it is convinced that the settlement is fair, reasonable and in the interests of the claimant group as a whole.
- The Court will also make orders as to how monies from the Court award or settlement are to be distributed amongst the representative and claimants, and it will make orders authorising the amounts of any deductions from the award or settlement sum, for example the reimbursement of the Funder's and Lawyers' entitlements to receive certain amounts from the Resolution Sum under the Scheme's constitution (please refer to section 38 for further information on these entitlements).
- A distribution scheme is typically established to distribute the Resolution Sum as required by the Court order. The **Resolution Administrator** of the distribution scheme is appointed by the Court to oversee the distributions to claimant and is usually the main Lawyer acting for the representative party, but may be an entity related to Omni Bridgeway.

The Funder and the Lawyers are paid their shares of the Resolution Sum as set out in the Scheme's constitution, subject to: (i) any adjustments the Court may require, and (ii) the cap on the Funder's and Lawyers' return set out in the Scheme's constitution. The Scheme's constitution imposes a cap on the Funder's and Lawyers' return at 50% of the Resolution Sum meaning that the total amounts to which the Funder and the Lawyers are entitled to be paid from any Resolution Sum cannot exceed 50% of the Resolution Sum.

The remainder of the Resolution Sum will be distributed amongst the claimants. Each claimant's share of this sum will depend on the value of the claimant's own claims in the Class Action. The proportion of the claimants' share of the Resolution Sum to which you may be entitled will depend on the relative quantum of your claim as a proportion of the quantum of all claims on the Resolution Sum. This proportion will be determined by either the Court (which may require you to give evidence) or by the Resolution Administrator. OBIML and the Funder are not responsible for determining the value of your share of the Resolution Sum (if any).

Your share of the Resolution Sum will be paid directly to you by the Resolution Administrator. OBIML, in its capacity as responsible entity for the Scheme, will direct the Resolution Administrator to pay the Funder and the Lawyers their respective shares of the Resolution Sum. These distributions to you, the Funder and the Lawyers will be treated as distributions by the Scheme.

In certain circumstances the Respondent may meet its obligations with assets rather than cash. We will contact you if that happens.

Once the administration of the distribution scheme has been completed and all funds have been paid to all the recipients, the responsible entity will arrange to wind up the Scheme.

15. What if I want to sue the Respondent by myself, without funding?

You may opt out of the Class Action and the Scheme (and therefore the funding arrangements) and bring a claim by yourself, but you will need to meet your legal costs yourself. If you apply to join this Scheme, and subsequently wish to opt out after the expiry of the cooling-off period (see section 17 for details of the cooling-off terms), a share of your Resolution Sum will still be paid to the Scheme. Please also see section 19 for important information about withdrawing from the Scheme.

16. Can I get funding from a different funder?

Other litigation funders may have made arrangements with claimants to bring a class action about the same subject matter as this Class Action. You may choose to participate with a different funder instead of the Funder and OBIML (but you may not apply for funding through more than one scheme). The Court may make orders that combine these different class actions and order that the Resolution Sum is shared between all the claimants and funders. You may like to consider if there are other funding options in the marketplace before making any decision about your claim.

17. What if I apply to participate and then change my mind? The cooling-off terms.

You have a 21 day cooling-off period¹ to determine whether participation in the Scheme and the funding arrangements with the Funder meets your needs. If, during the 21 day cooling-off period, you decide that the funding does not meet your needs, you may withdraw your application by notifying us in writing at: scenictours@omnibridgeway.com.

If you decide to exercise your cooling-off right and withdraw your application and, at such time, you have already been named as a claimant in the proceedings against the Respondent the subject of the Class Action, you must also take any steps necessary to positively opt out of the Class Action that is being funded by the Funder using the relevant Opt Out Notice. Please contact us if you require a form of Opt Out Notice.

Once you have withdrawn your application and provided the relevant Opt Out Notice (if applicable), you will have no continuing or further obligation to OBIML or the Scheme save for any obligations of confidence arising in respect of information received by you prior to withdrawal. If you withdraw your application during the cooling-off period and successfully opt out of the Class Action, the Funder will not fund any claim you may bring against the Respondent, you will not be treated as a general member of the Class Action funded by the Scheme and you will not be entitled to a share of any Resolution Sum that is awarded as a result of that Class Action.

The 21 day cooling-off period commences on the day you send us your Application Form. Any cooling-off period ends automatically if the Court makes an order that stipulates an end date for opting out of the Class Action. You will not be able to exercise any cooling-off rights or withdraw from the Scheme after the date so stipulated. OBIML may agree in writing with any claimant who has applied for an interest in the Scheme to waive the cooling-off period.

OBIML will hold your application to become a member of the Scheme when you send it to us, and only process it once the cooling-off period has expired unexercised or been waived.

¹ These cooling-off rights are offered under clause 3.15 of the Scheme's constitution and are not cooling-off rights as provided in section 1019B of the Corporations Act 2001. That section does not apply to this Scheme. Note that you may not exercise any cooling-off rights or opt-out of the Class Action after the end of any Court-ordered opt-out period.

18. I was a passenger on the relevant river cruises operated by Scenic Tours Pty Ltd during the relevant period, but I haven't sent you an Application Form.

As set out in sections 3 and 10 above, it is intended to bring the Class Action only on behalf of those claimants who wish to be a member of the Scheme and have returned an Application Form. Accordingly, if you do not wish to participate, you may do nothing. However, if you do wish to participate, you must send us your completed Application Form in the manner described in section 10 above.

19. What happens if I want to stop participating in the litigation and want to terminate the funding relationship with the Funder?
How to withdraw from the Scheme.

Subject to the relevant Court rules, you can opt out of the Class Action at any time before the last date for opt out set by the Court, by giving notice in writing to the Court using the relevant Opt Out Notice. The Court must set an opt out deadline which expires prior to the commencement of the trial, but often sets a deadline much earlier in the proceeding. You can only terminate the funding arrangement with the Funder and withdraw from the Scheme after the cooling-off period if you also opt out of the Class Action at the same time (subject to the terms of any applicable Court rules). When you withdraw from the Scheme, you will not be paid anything. If you decide to withdraw from the Scheme and opt out after the expiry of the cooling off period (as described in section 17), you cannot take back the portion of any Resolution Sum that you have assigned to the Scheme in respect of any claim you may have in the proceedings. The Funder will remain entitled to a share of your Resolution Sum as set out in section 27 and you will not be paid anything in the event of a successful outcome in the Class Action.

If you need information about how to withdraw from the Scheme and opt out of the Class Action, please contact your Client Liaison Team Member whose contact details are at the end of this document and also available from our website: <https://portal.omnibridgeway.com/contact-us>.

You might also have your interest in the Scheme cancelled if your claims in the proceedings are denied by the Court, OBIML reasonably determines that you do not actually have a valid claim, or after the point a Resolution Sum has been determined, the Court or the Resolution Administrator determine that your claims are not valid, or you are unable to be contacted or do not come forward to claim your entitlements before the expiry of the period for distributing the Resolution Sum as mandated by any Court-ordered distribution scheme. In these cases, the responsible entity will treat your interest in the Scheme as cancelled or your entitlement to a share of the Resolution Sum as \$0. You will not have to pay anything.

20. Can the Funder stop funding?

Yes. The Funder must consult the Lawyers and each representative party first, but after that it may decide to stop funding any or all of the claims that make up the Class Action. This is most likely to occur because the Funder considers that the chances of the proceedings succeeding are slim and the cost of funding outweighs the likely benefit. Any liability to pay the Lawyers' fees up to that point and the Respondent's costs will fall on the Funder. The claimants will not have to pay anything.

Any claimant may decide to continue with the proceedings without funding (or with the support of a different funder) but the most likely outcome is that the proceedings will be discontinued.

21. Do I have to appear in Court?

Historically, it is extremely rare for participants in a Class Action to be required to appear in Court.

If you are the representative party, you will need to provide instructions to the Lawyers, and you will need to attend Court from time to time. It is likely that you will also have to provide evidence in the form of an affidavit or witness statement, and you may need to appear at the trial or another hearing in the matter to give evidence in the witness box.

In some class actions, in addition to the representative party, a small number of "sample claimants" will also be required to provide evidence. It is possible that you will be asked to be a sample claimant and to provide evidence (in the form of an affidavit and/or witness statement, and by appearing at the trial or other hearing to give evidence in the witness box).

At the conclusion of the trial of the representative party's claim and the common issues, if the Court is unable to fully resolve the claims of all Class Action participants, it may be necessary for those participants to commence individual proceedings to finalise their claims.

22. What if I am a representative party in the Class Action?

A representative party is named in the Class Action proceedings and carries on the litigation in their own name (which may be with other claimants). Each representative party has the right and obligation to give instructions to the Lawyers who are conducting the litigation. More detail about this is set out in the Claim Funding Terms, which form part of the Scheme's constitution, which can be obtained by contacting your Client Liaison Team Member whose contact details are at the end of this document and also available from our website: <https://portal.omnibridgeway.com>.

The representative party or parties will be designated as such at or prior to the commencement of proceedings. All other claimants are not the representative party.

If you are a representative party, Omni Bridgeway as manager of the Funder and the Lawyers will give you assistance in dealing with the formalities of the Class Action and you most likely will have an active role to play in the proceedings. If you are a representative party, please pay particular attention to the Risks section of this PDS (section 42).

All other claimants rely on the decisions made by the representative party and are bound by the instructions given by them to the Lawyers, as if they had given those instructions to the Lawyers themselves. From a practical point of view, it is not possible for all claimants to give instructions to the Lawyers in respect of the conduct of the Class Action, which is why each representative party is given the right to give instructions to the Lawyers on significant matters pursuant to the Claim Funding Terms and the Retainer Agreement. If you are not a representative party, the extent of the instructions you may be called upon to give to the Lawyers may be limited to instructing them to include you as a participant in the Class Action and the extent of the losses that you claim to have suffered as result of the conduct of the Respondent in the Class Action.

23. Is Omni Bridgeway my lawyer?

No. None of Omni Bridgeway, as manager of the Funder, the Funder, or OBIML, as responsible entity, are giving you legal advice. As a condition of joining the Scheme and obtaining the benefit of funding, you must instruct the Lawyers to act for you in relation to the Class Action. Information about the Retainer Agreement for the Lawyers is found in section 7 of this document.

If you are unsure whether you should participate in the Class Action we urge you to get your own legal advice or such other professional advice that you may require in order to assess the merits of participating in the Class Action.

Under the Claim Funding Terms in the Scheme's constitution and the Standard Lawyers' Terms, the Lawyers are instructed that they can accept day to day instructions from the Funder in the management of the Class Action (subject to certain exceptions), but the Funder is doing that on its own behalf, with the aim of obtaining a positive outcome for itself, by way of a Resolution Sum in relation to the Class Action that is as large as they assess they can achieve, and at the optimal balance of risk and cost to the Funder. They are not acting as lawyers.

24. Do I get a say in whether the Class Action settles and for how much?

A lot of thought and analysis goes into whether a class action settles and, if so, on what basis and for what amount (if any).

Any settlement must be agreed between the representative party on the one hand and the Respondent(s) on the other hand. In recognition of the Funder's involvement in the Class Action, any settlement must also be on terms that the Funder considers appropriate. If there is a difference of opinion between the representative party and the Funder regarding any potential settlement, the difference of opinion will be resolved by the most senior barrister of those retained by the Lawyers in respect of the Class Action.

If you are a claimant, but not a representative party, you are not entitled to participate in any settlement discussions, but you will be entitled to lodge an objection (at your own cost) at a settlement approval Court hearing to let the Court know that you disagree with the settlement. It is the Court that ultimately decides whether a settlement is fair and reasonable and should be approved.

25. What happens if I disagree with the way Omni Bridgeway is managing the Scheme or the Lawyers are managing the case?

If you are unhappy with the way the Scheme is operated by OBIML or the litigation is being managed by the Funder, you can raise a complaint. You do that by giving written notice to OBIML. You can do this by email. The notice must set out what you wish to complain of and details of any other remedy you would like. More detail about how you can raise a complaint is set out in section 45 of this document.

Further and more detailed information about complaints and disputes is available here: https://omnibridgeway.com/docs/default-source/investors/corporate-governance/8-complaints-handling-policy.pdf?sfvrsn=11d60828_8.

If you are unhappy with the way the Lawyers are managing the Class Action, you can raise a complaint directly with the Lawyers. Your Client Liaison Team Member can assist you, but complaints and disputes with the Lawyers in relation to their professional services do not fall under the Omni Bridgeway complaints policy.

26. Will I have to pay tax?

The summary taxation information contained within this document is a general guide in relation to the Australian taxation implications applicable to the Scheme for Australian resident claimants only.

The summary reflects the income tax legislation in force, and the interpretation of the Australian Taxation Office and the Courts, as at the date of issue of this document. Further, as the Australian tax laws are subject to continual change, the summary should not be relied upon as a complete statement of all the potential tax considerations which may arise upon entering the Scheme.

Claimants may be subject to tax on their share of the Resolution Sum in proportion to each claimant's entitlement and Statement of Claim.

The tax treatment of your share of the Resolution Sum you receive should be taxed in the same way it would have been taxed, should you have undertaken the litigation in your own right. Your right to seek compensation is a capital asset and therefore any Resolution Sum received in respect of your asset will be a capital receipt.

OBIML does not expect that the Scheme will be subject to Australian income tax (including CGT) in relation to the receipt of the Resolution Sum.

OBIML expects that any income earned by the Scheme on assets within the Scheme (including income earned on the Resolution Sum after it is been received) will be subject to Australian income tax (including CGT).

Broadly, where your Resolution Sum relates to a personal wrong, it should not be a taxable capital gain. Where your Resolution Sum does not relate to a personal wrong, it will be a taxable capital gain and you, the claimant will be taxable on the net Resolution Sum you receive or you will be required to make an adjustment to the tax cost base of your asset.

OBIML is in the process of seeking confirmation from the Australian Taxation Office in respect of the tax treatment for Scheme participants by way of a Ruling. A copy of this Ruling will be made available to participants.

The issue of your interest in the Scheme should not be subject to GST or stamp duty.

We recommend claimants seek independent tax advice.

27. What will the Funder get paid on success?

By applying for a claimant's interest in the Scheme, and having their application accepted by the responsible entity, each claimant assigns to the responsible entity to hold on trust the claimant's entitlement to any Resolution Sum. The Funder will be paid an amount out of the Resolution Sum. The payments to the Funder will be:

- (a) an amount equal to the claimant's share of the Project Costs of the litigation (which includes all the amounts referred to as Project Costs in section 38 below);
- (b) an amount on account of GST at 10% on any supply made by the Funder to a claimant; plus
- (c) an amount equal to a percentage of the Resolution Sum (gross of the deductions above) calculated as set out in the Scheme's constitution. This is the Funder's amount that it earns for taking the risk of funding the litigation and to recover Project Costs. Details of how this is calculated are set out in the *Fees and Other Costs* section of this document.

The amount the Funder is paid can vary. For this Scheme, the amounts to which the Funder and the Lawyers are entitled cannot be more than 50% of the Resolution Sum. The application of the 50% cap is described in the *Fees and Other Costs* section of this document. There is no guarantee that the Resolution Sum will be a significant amount (or anything at all).

GST: Each claimant must, at the Funder's request, pay to the Funder any Input Tax Credit to which the claimant is entitled under the GST Act in respect of the incurrance of the Project Costs. If the Funder makes a request, any such amount is payable at the earliest time the claimant can claim the benefit of the Input Tax Credit from the Commissioner of Taxation. If upon Resolution there is any Input Tax Credit not paid to the Funder, that is payable or would be payable if the Funder had made a request, then the Funder will be entitled to receive payment to which that Input Tax Credit relates or would relate.

Notes for the Funder

This section of the PDS contains information for the Funder, who will be a member of the Scheme, holding a different class of interest in the Scheme from the claimants and the Lawyers.

In this section, “you” means the Funder.

28. No advice

This PDS is not legal advice to the Funder. It is not a recommendation by OBIML to fund the Class Action. The Funder must make its own decision and take its own independent advice about whether to fund the Class Action.

29. The Funder’s interest in the Scheme

Upon completing an application in writing, and that application being accepted by OBIML, the Funder will be issued with the Funder’s interest in the Scheme. The Funder’s interest will have the rights and obligations as set out in the Scheme’s constitution in relation to the Funder’s interest.

The Funder’s interest will:

- subject to satisfaction of the Condition Precedent (see section 41 below), oblige the Funder to meet the Project Costs of the Class Action;
- give the Funder the ability to project manage the Class Action, have access to all the claimants’ material in relation to the Class Action, and to give the Lawyers day to day instructions about the conduct of the Class Action except for the material decisions that are reserved for the claimants under the terms of the Claim Funding Terms; and
- entitle the Funder to be paid a share of the Resolution Sum (see section 27 above, section 30 below and the *Fees and Other Costs* section of this document).

OBIML may, in its absolute discretion, accept or reject an application from a person seeking to be admitted to the Scheme as a Funder. By applying for an interest in the Scheme, the Funder agrees to be bound by the Scheme’s constitution, including the Claim Funding Terms. There is no cooling-off period offered to the Funder. The Funder must not be a ‘retail client’ as defined in the *Corporations Act 2001*. The Funder has a separate class of interest in the Scheme from the claimants and may not be offered the same protections as a retail client. This document does not make the same level of disclosure to the Funder as for a retail client; the Funder must make its own investigations and satisfy itself that an interest in the Scheme as a Funder is right for it.

For further details on how to apply to become approved as a Funder please contact OBIML at: legal@omnibridgetway.com.

30. The Funder's return

In return for funding the Project Costs (including provision of security for costs and the payment of adverse costs), the Funder is entitled to a share of the Resolution Sum (if any) that is assigned to the Scheme by the claimants.

The Funder will be paid its share of the Resolution Sum by direction given to the Lawyers by the responsible entity. The Funder's share of the Resolution Sum will be paid as a distribution from the Scheme.

The Funder's share will be calculated as set out in section 27 and the *Fees and Other Costs* section of this document.

The aggregate of the Funder's and the Lawyers' share of the Resolution Sum cannot exceed 50% of the Resolution Sum. The application of the 50% cap is described in the *Fees and Other Costs* section of this document.

There is no guarantee that the Funder's share of the Resolution Sum will be more than the costs incurred by the Lawyers in prosecuting the Class Action. The Funder has no right to recover any amount of costs from the representative party or any of the other claimants, or any right to reimbursement of its funding other than as a distribution out of the Resolution Sum according to the terms of the Scheme's constitution.

Litigation can be a lengthy process and the course of it hard to accurately predict. The Funder should be aware that it may be required to bear the risk of the litigation for a number of years prior to any Resolution being achieved.

31. Funder taxation

OBIML does not expect that the Scheme will be subject to Australian income tax (including CGT) in relation to the receipt of the Resolution Sum.

OBIML expects that any income earned by the Scheme on assets within the Scheme (including the Resolution Sum after it has been received) will be subject to Australian income tax (including CGT).

The issue of the Funder's interest in the Scheme should not be subject to GST or stamp duty.

The Funder may be subject to tax on its share of the income earned within the Scheme or its share of the Resolution Sum (however paid). Any such amount will be treated as having an Australian source.

We recommend the Funder seeks independent tax advice.

It is not compulsory for the Funder to provide their partnership or company TFN or ABN details to the Scheme. However, unless an exemption applies, if the Funder does not provide its TFN or ABN, the responsible entity may be required to deduct tax from distributions to the Funder at the highest personal marginal rate plus the Medicare levy.

Notes for the Lawyers

This section of the PDS contains information for the Lawyers, who will be a member of the Scheme, holding a different class of interest in the Scheme from the claimants and the Funder.

In this section, “you” means the Lawyers.

32. No advice

This PDS is not legal advice to the Lawyers. It is not a recommendation by OBIML to the Lawyers to put their fees at risk in acting in respect of the Class Action. The Lawyers must make their own decision about whether to contribute their services in this way in respect of the Class Action.

33. The Lawyers’ interest in the Scheme

Upon entering into terms with the Funder and OBIML on terms the same as, or similar to, the Standard Lawyers’ Terms and a Retainer Agreement with a representative party, the Lawyers will be deemed to have applied for and been accepted as a member of the Scheme and will be issued with the Lawyers’ interest in the Scheme. The Lawyers’ interest will have the rights and obligations as set out in the Scheme’s constitution in relation to the Lawyers’ interest.

The Lawyers’ interest will:

- oblige the Lawyers to provide their services on a part conditional fee basis, with a percentage of At-Risk Fees;
- accept day to day instructions about the conduct of the litigation from the Funders except for the material decisions that are reserved for the claimants under the terms of the Claim Funding Terms and subject to the Lawyers’ overriding professional obligations to their clients and the Court, and subject to the representative party’s right to give overriding instructions to the Lawyers; and
- entitle the Lawyers to be paid a share of the Resolution Sum (see section 38 below and the *Fees and Other Costs* section of this document).

OBIML may, in its absolute discretion, accept or reject an application from a person seeking to be admitted to the Scheme as the Lawyers. By applying for an interest in the Scheme, the Lawyers agree to be bound by the Scheme’s constitution, including the Claim Funding Terms. There is no cooling-off period offered to the Lawyers. The Lawyers must not be a ‘retail client’ as defined in the *Corporations Act 2001*. The Lawyers have a separate class of interest in the Scheme from the claimants and may not be offered the same protections as a retail client. This document does not make the same level of disclosure to the Lawyers as for a retail client; the Lawyers must make their own investigations and satisfy themselves that an interest in the Scheme as the Lawyers is right for them.

For further details on how to apply to become approved as the Lawyers please contact OBIML at: legal@omnibridgeway.com.

34. The Lawyers' return

By putting a percentage of their normal professional fees at risk in the litigation (i.e. the At-Risk Fees), the Lawyers are effectively funding a portion of the costs of the Class Action. In return for doing so, the Lawyers are entitled to a share of the Resolution Sum (if any) that is assigned to the Scheme by the claimants.

The Lawyers will be paid their share of the Resolution Sum at the direction of the responsible entity. The Lawyers' share of the Resolution Sum will be paid as a distribution from the Scheme.

The Lawyers' share will be calculated as set out in the *Fees and Other Costs* section of this document and will be subject to the cap on the Funders and Lawyers Return as set out below.

The aggregate of the Funder and the Lawyers' share of the Resolution Sum cannot exceed 50% of the Resolution Sum. The application of the 50% cap is described in the *Fees and Other Costs* section of this document.

There is no guarantee that the Lawyers' share of the Resolution Sum will be equal to or more than the At-Risk Fees (or indeed, that it will be anything at all). The Lawyers have no right to recover any amount of costs from the representative party or any of the other claimants, or any right to reimbursement of its At-Risk Fees other than as a distribution out of the Resolution Sum according to the terms of the Scheme's constitution.

Litigation can be a lengthy process and the course of it hard to accurately predict. The Lawyers should be aware that they may be required to bear the risk of the litigation for a number of years prior to any Resolution being achieved.

35. Lawyers' taxation

OBIML does not expect that the Scheme will be subject to Australian income tax (including CGT) in relation to the receipt of the Resolution Sum.

OBIML expects that any income earned by the Scheme on assets within the Scheme (including the Resolution Sum after it has been received) will be subject to Australian income tax (including CGT).

The issue of the Lawyers interest in the Scheme should not be subject to GST or stamp duty.

The Lawyers may be subject to tax on their share of the income earned within the Scheme or their share of the Resolution Sum (however paid). Any such amount will be treated as having an Australian source.

We recommend the Lawyers seek independent tax advice.

It is not compulsory for the Lawyers to provide their partnership or company TFN or ABN details to the Scheme. However, unless an exemption applies, if the Lawyers do not provide their TFN or ABN, the responsible entity may be required to deduct tax from distributions to the Lawyers at the highest personal marginal rate plus the Medicare levy.

Fees and other costs

Claimants who are the representative party or a general member participating in the Class Action and who have an Interest in the Scheme will not pay any fees or other costs to the responsible entity. Each such claimant will remain entitled to their respective share of any Resolution Sum after the Lawyers and Funder have been paid their respective share of the Resolution Sum as described below.

Upon being issued with a Funder's interest in the Scheme, the Funder will be liable to pay the Project Costs, which includes the Lawyers' costs of prosecuting the Class Action (minus the At-Risk Fees), as set out in the Scheme's constitution and summarised in the Funding Terms section of this PDS. Project Costs are uncapped and could be material.

36. Fees and costs of the Scheme

The responsible entity is entitled to charge a fee of \$1,000 per annum (including GST) for its services in acting as trustee and responsible entity of the Scheme, accruing daily and payable in arrears upon receipt of the Resolution Sum. It is also entitled to be reimbursed for third party costs and other expenses of the Scheme such as establishment costs, audit fees, the fees of the Resolution Administrator, director's fees and fees for any professional advice it may require. Examples of the type of expenses OBIML may incur are set out in the Scheme's constitution. Some of these third party costs and other expenses may be material, for example, the fees of the Resolution Administrator (but will only be payable if the Court considers such fees to be reasonable and is dependent on various factors including the total number of claimants in the proceedings).

Support services provided to OBIML by the Omni Bridgeway group will not incur a cost in addition to the fee charged by the responsible entity as described above.²

37. Sharing in the Resolution Sum

The Funder obtains its economic return on its funding of the Project Costs by being allocated a share of any Resolution Sum. The Lawyers may also obtain an economic return in exchange for contributing a percentage of their professional services on a conditional fee basis by being allocated a share of any Resolution Sum. These distributions to the Funder and the Lawyers reduce the amount of the Resolution Sum that would otherwise be available to the claimants.

² However, to the extent that Omni Bridgeway or a related entity of Omni Bridgeway is appointed by the Court as Resolution Administrator, it shall be entitled to recover Court ordered fees in acting in that capacity in accordance with the Scheme's constitution.

Upon the Court awarding any damages, which will comprise the Resolution Sum, the Resolution Administrator appointed by the Court (who may be the Lawyers) will cause the Lawyers to make the following payments from any Resolution Sum out of the Lawyers' trust account in the strict order of priority set out below (after such Resolution Sum has been first used to pay or reimburse the costs/expenses of the Scheme as described in section 36 above):

1. as a first priority, pay to the Funder an amount equal to the Project Costs (this allows the Funder to recover the amounts it has spent funding the Lawyers in prosecuting the Class Action);
2. as a second priority, pay to the Funder an amount on account of GST at 10% on any taxable supply made by the Funder to any claimant;
3. as a third priority, pay to the Funder the Time-Weighted Amount (being a percentage of the Resolution Sum calculated in the manner described in section 38 below);
4. as a fourth priority, pay to the Lawyers their At-Risk Fees, the Uplift and the Prior Costs as described in section 38 below; and
5. finally, each claimant is entitled to a share of any remaining balance of the Resolution Sum in proportion to the value of their respective claims in the proceeding (subject to requirements for proof) as determined by the Resolution Administrator.

The Funder's share of the Resolution Sum is the aggregate of the amounts calculated as payable to the Funder under items 1, 2, and 3 of the above list.

The Lawyers' share of the Resolution Sum is the amount payable to the Lawyers under item 4 of the above list.

The amounts set out in items 1, 2, 3 and 4 are subject to the cap on the Funder's and Lawyers' return at 50% of the Resolution Sum meaning that the total amounts to which the Funder and the Lawyers are entitled from any Resolution Sum cannot exceed 50% of that Resolution Sum. After that limit has been reached, no further payments in respect of those items 1 to 4 can be made.

38. Calculation of the Funder's and the Lawyers' entitlements

In return for funding the Project Costs and managing the Class Action, each claimant who has an interest in the Scheme agrees to assign their share of the Resolution Sum to the responsible entity to hold on trust.

The Funder will be entitled to distributions from the Scheme paid out of the Resolution Sum, calculated to recover the Project Costs the Funder has spent in funding the Class Action, plus a success-based share of the Resolution Sum (the **Time-Weighted Amount**), calculated depending on the period of time that has elapsed from the satisfaction of the Condition Precedent to the Funder's obligation to pay Project Costs (see section 41 below), until the occurrence of a Resolution:

Time to Resolution	Percentage of Resolution Sum
For each Resolution which occurs on or before 12 months from the Condition Precedent Date	20%
For each Resolution which occurs after 12 months and on or before 24 months from the Condition Precedent Date	25%
For each Resolution which occurs after 24 months from the Condition Precedent Date	30%

If an additional respondent (a respondent other than Scenic Tours Pty Ltd) is added to the Class Action after the Condition Precedent Date, in accordance with the Claim Funding Terms an additional 2.5% will be added to the percentages set out in the above table for the purposes of calculating the Time-Weighted Amount. The maximum amount that may be added to the percentages set out in the table above for additional respondents is 7.5%.

If an appeal from any claim is funded by the Funder in accordance with the Claim Funding Terms, an additional 5% will be added to the percentages set out in the above table for the purposes of calculating the Time-Weighted Amount.

In return for putting a percentage of their fees at normal rates at risk in respect of the success of the Class Action, the Lawyers will be entitled to distributions from the Scheme paid out of the Resolution Sum as follows, (1) an amount equal to their At-Risk Fees and a success-based uplift calculated by reference to the At-Risk Fees and (2) an amount of prior costs incurred with respect to prior legal proceedings concerning the same subject matter as the Class Action.

The Lawyers' fees covered by the Funder as part of the funded Project Costs will be as follows:

- **from** the Condition Precedent Date:
 - 80% of their reasonable professional fees and 100% of their disbursements incurred for the sole purpose of preparing for, prosecuting and resolving the Class Action (in accordance with the Standard Lawyers' Terms, the Retainer Agreement and the Investment Budget) with the percentage of the Lawyers' fees being funded by the Funder reducing to 65% in respect of reasonable professional fees which exceed the Investment Budget up to the amounts in any Revised Budget (**Litigation Costs**).

The remainder of the Lawyers' reasonable professional fees not covered as above are "at risk" in respect of the Class Action.

The Lawyers' **At-Risk Fees** are:

- **from** the Condition Precedent Date:
 - the remaining 20% of the Lawyers' reasonable professional fees incurred as part of the agreed Investment Budget, but which are not funded by the Funder as Litigation Costs; and

- the remaining 35% of the Lawyers' reasonable professional fees incurred in excess of the agreed Investment Budget but within an agreed Revised Budget, and which are not funded by the Funder as Litigation Costs.

The **Uplift** payable on the Lawyers' fees is an amount equal to 25% of the At-Risk Fees.

The **Prior Costs** are an amount equal to \$174,638, being the amount of costs incurred by the Lawyers in, and adverse costs ordered with respect to, prior legal proceedings concerning the same subject matter as this Class Action conducted by the Lawyers.

If the Class Action is unsuccessful the Lawyers will not receive their At-Risk Fees, the Uplift or the Prior Costs.

The aggregate of the Funder and the Lawyers' share of the Resolution Sum cannot exceed 50% of the Resolution Sum (**the 50% cap**). If the entitlements of the Funder and the Lawyers exceed 50% of the Resolution Sum these entitlements will be scaled back as follows until the 50% cap is reached:

- first, only if the Time-Weighted Amount has been increased by 5% due to the Funder funding an appeal, the Funder's entitlement to the Time-Weighted Amount will be recalculated by reducing the increase in the Time-Weighted Amount for the funding of the appeal from 5% to 3%;
- second, the Uplift payable to the Lawyers will be reduced (but not below zero dollars);
- third, the entitlements of the Funder to the Time-Weighted Amount to be paid out of the Resolution Sum and the entitlements of the Lawyers in respect of At-Risk Fees will be reduced on a pro rata basis; and
- finally, the entitlements of the Funder to be paid the Project Costs may be reduced.

Project Costs has the meaning given in the *Dictionary* section of this document. They include, but are not limited to, the percentage of the Lawyers' reasonable professional fees for which the Funder is liable (as described above), 100% of the barrister's fees, any Adverse Costs awarded in favour of the Respondent and any indemnity given by the Funder and called upon in relation to security for costs.

Project Costs are a material component of the Funder's share of any Resolution Sum. The Funder's project budget is developed in consultation with the Lawyers and is not made public because it gives information about the proposed management of the case and predicted outcomes that may be sensitive, confidential and/or subject to legal professional privilege. The confidential nature of the project budget has been acknowledged by the Courts in past class actions. If you would like more information about the budget for Project Costs, please contact the Client Liaison Team using the details at the end of this document.

39. Worked examples of fees and costs – who gets paid what in various scenarios

Investment in litigation funding is inherently uncertain, and it is not possible for OBIML, the Funder or the Lawyers to predict with any accuracy or certainty whether the case will in fact be won, and if it is, what the quantum of any Resolution Sum could be. It is only at the time a favourable judgment is made, or a settlement is reached, that the full entitlements of Scheme members will become known (if any such favourable judgment or settlement in fact occurs). For this reason, it is not possible to provide any accurate projections as to what a Resolution Sum might be at any given time during the course of the proceedings and what the entitlements of Scheme members (if any) might be.

It may assist potential claimants to understand how the entitlements to a distribution from the Resolution Sum will be calculated by considering the five worked examples set out below. These examples calculate the relevant entitlements of Scheme members (including the Funder and the Lawyers) in the event of various example scenarios. The figures used in each scenario are not reflective of the amounts that may be involved in the Class Action and are only used to demonstrate how entitlements would be calculated under the Scheme's constitution in a range of scenarios.

In this respect, the scenarios outlined below are solely for illustrative purposes only, and are not, and should not be interpreted as forecasts or indicative of any potential or expected Resolution Sum or return in the Class Action, nor should it be interpreted as any indication of any actual or proposed budget for the Class Action. The Funder has no control over the amount that a Court may award, if the Class Action is successful.

Example 1 – Large settlement amount early on in the proceedings

Assume the parties come to a settlement early on in the proceedings (within 12 months of the Condition Precedent Date), and the total settlement amount (the Resolution Sum) is \$8,000,000

Resolution Sum = \$8,000,000

Time Weighted Amount = \$1,600,000 (20% of the Resolution Sum)

Lawyers’ total legal fees = \$100,000 (assume these are 80% funded as Project Costs, the balance being At-Risk Fees)

Lawyers’ disbursements = \$100,000 (assume these are 100% funded as Project Costs)

Total Project Costs = \$180,000 (inclusive of GST)

Lawyers’ At-Risk Fees = \$20,000 (assume this is 20% of the Lawyers’ total legal fees)

Lawyers’ Uplift = \$5,000(assume this is 25% of the At-Risk Fees)

Prior Costs = \$17,500 (inclusive of GST)

Costs/expenses of the Scheme, including the Resolution Administrator’s fees³ = \$50,000

Funder

The Funder will receive **\$1,780,000** calculated as follows:

- as a first priority payment, \$180,000 as recovery of Project Costs;
- as a second priority payment, \$0 in respect of GST on supplies made by the Funder to the claimants (which assumes no taxable supplies were made by the Funder); and
- as a third priority payment, \$1,600,000 (being the “Time-Weighted Amount”, in this case, assumed to be 20% of the Resolution Sum).

Lawyers

The Lawyers will receive, as a fourth-priority payment, **\$42,500** (being the At-Risk Fees of \$20,000 plus the 25% Uplift on the At-Risk Fees of \$5,000, plus the Prior Costs of \$17,500).

Claimants

The claimants will each receive a share of **\$6,127,500 (being approximately 76.6% of the Resolution Sum)**. This total is the Resolution Sum less the Funder’s entitlements, the Lawyers’ entitlements and the costs/expenses of the Scheme, including the Resolution Administrator’s fees (assumed to be \$50,000 and to be paid or reimbursed out of the Resolution Sum in priority to distributions to members of the Scheme).

Any single claimant’s entitlement to a share of this aggregate net Resolution Sum will depend on the value of their claim relative to the value of the claims of all claimants.

³ Note that the Resolution Administrator’s fees are set by the Court and are not able to be ascertained at the time this document is issued.

Example of fees and costs for a single claimant

The below table sets out how the commission/fees and costs/expenses of the Scheme will reduce a single claimant’s notional entitlement to a share of the Resolution Sum under the scenario described in this Example 1. Claimants should use this table (and the tables below for other scenarios) to compare the funding that is available to members under this Scheme with other funding packages that may be available in the market with respect to the funding or potential funding of a class action or multi-party litigation against the Respondent.

Example		For every \$100 to which a claimant is notionally entitled to receive from the Resolution Sum:
Acquisition Fee	0.000%	You will pay \$0 to acquire your interest in the Scheme – As set out in section 13, you do not have to pay anything to acquire an interest in the Scheme
PLUS Project Costs	2.250%	You will have deducted \$2.25 towards payment of Project Costs
PLUS Time Weighted Amount	20.000%	And, you will also have deducted \$20 towards payment of the Funders’ Time Weighted Amount
PLUS At-Risk Fees, the Uplift and the Prior Costs	0.531%	And, you will also have deducted \$0.531 towards payment of the Lawyers’ entitlements to the At-Risk Fees, the Uplift and the Prior Costs
PLUS Cost/expenses of the Scheme	0.625%	And, you will also have deducted \$0.625 towards payment of the costs/expenses of the Scheme
EQUALS Cost of Scheme		\$23.406
Net entitlement for every \$100 of a single claimant’s share of the Resolution Sum		For every \$100 to which a claimant is notionally entitled to receive from the Resolution Sum, your payment will be: \$76.594

Example 2 – Large settlement amount later on in the proceedings

Assume the parties come to a settlement later on in the proceedings (3 years after the Condition Precedent Date), and the total settlement amount (the Resolution Sum) is \$8,000,000

Resolution Sum = \$8,000,000

Time Weighted Amount = \$2,400,000 (30% of the Resolution Sum)

Lawyers' total legal fees = \$500,000 (assume these are 80% funded as Project Costs, the balance being At-Risk Fees)

Lawyers' disbursements = \$200,000 (assume these are 100% funded as Project Costs)

Project Costs = \$600,000 (inclusive of GST)

Lawyers' At-Risk Fees = \$100,000 (assume this is 20% of the Lawyers' total legal fees)

Lawyers Uplift = \$25,000 (assume this is 25% of the At-Risk Fees)

Prior Costs = \$17,500 (inclusive of GST)

Costs/expenses of the Scheme, including the Resolution Administrator's fees = \$50,000

Funder

The Funder will receive **\$3,000,000** calculated as follows:

- as a first priority payment, \$600,000 as recovery of Project Costs;
- as a second priority payment, \$0 in respect of GST on supplies made by the Funder to the claimants (which assumes no taxable supplies were made by the Funder); and
- as a third priority payment, \$2,400,000 (being the "Time-Weighted Amount", in this case, assumed to be 30% of the Resolution Sum).

Lawyers

The Lawyers will receive, as a fourth-priority payment, **\$142,500** (being the At-Risk Fees of \$100,000 plus the 25% Uplift on the At-Risk Fees of \$25,000, plus the Prior Costs of \$17,500).

Claimants

The claimants will each receive a share of **\$4,807,500 (being approximately 60.1% of the Resolution Sum)**. This total is the Resolution Sum less the Funder's entitlements, the Lawyers' entitlements and the costs/expenses of the Scheme, including the Resolution Administrator's fees (assumed to be \$50,000 and to be paid or reimbursed out of the Resolution Sum in priority to distributions to members of the Scheme).

Any single claimant's entitlement to a share of this aggregate net Resolution Sum will depend on the value of their claim relative to the value of the claims of all claimants.

Example of fees and costs for a single claimant- *large settlement amount later on in the Proceedings*

The below table sets out how the commission/fees and costs/expenses of the Scheme will reduce a single claimant’s notional entitlement to a share of the Resolution Sum under the scenario described in this Example 2.

Example		For every \$100 to which a claimant is notionally entitled to receive from the Resolution Sum:
Acquisition Fee	0.000%	You will pay \$0 to acquire your interest in the Scheme – As set out in section 13, you do not have to pay anything to acquire an interest in the Scheme
PLUS Project Costs	7.500%	You will have deducted \$7.50 towards payment of Project Costs
PLUS Time Weighted Amount	30.000%	And, you will also have deducted \$30 towards payment of the Funders’ Time Weighted Amount
PLUS At-Risk Fees, the Uplift and the Prior Costs	1.781%	And, you will also have deducted \$1.781 towards payment of the Lawyers’ entitlements to the At-Risk Fees, the Uplift and the Prior Costs
PLUS Cost/expenses of the Scheme	0.625%	And, you will also have deducted \$0.625 towards payment of the costs/expenses of the Scheme
EQUALS Cost of Scheme		For every \$100 to which a claimant is notionally entitled to receive from the Resolution Sum, you will pay fees and costs of: \$39.906
Net entitlement for every \$100 of a single claimant’s share of the Resolution Sum		For every \$100 to which a claimant is notionally entitled to receive from the Resolution Sum, your payment will be: \$60.094

Example 3 – Lower settlement amount later on in the proceedings (including operation of the 50% cap)

Assume the parties come to a settlement later on in the proceedings (3 years after the Condition Precedent Date), and the total settlement amount (the Resolution Sum) is for a lower amount of \$3,000,000

Resolution Sum = \$3,000,000

Time Weighted Amount = \$900,000 (30% of the Resolution Sum)

Lawyers' total legal fees = \$500,000 (assume these are 80% funded as Project Costs, the balance being At-Risk Fees)

Lawyers' disbursements = \$200,000 (assume these are 100% funded as Project Costs)

Project Costs = \$600,000 (inclusive of GST)

Lawyers' At-Risk Fees = \$100,000 (assume this is 20% of the Lawyers' total legal fees)

Lawyers Uplift = \$25,000 (assume this is 25% of the At-Risk Fees)

Prior Costs = \$17,500 (inclusive of GST)

Costs/expenses of the Scheme, including the Resolution Administrator's fees = \$50,000

Funder

The Funder will receive **\$1,396,068.80** calculated as follows:

- as a first priority payment, \$600,000 as recovery of Project Costs;
- as a second priority payment, \$0 in respect of GST on supplies made by the Funder to the claimants (which assumes no taxable supplies were made by the Funder); and
- as a third priority payment, the Funder would be entitled to receive \$900,000 (being the "Time-Weighted Amount", in this case, assumed to be 30% of the Resolution Sum). However, this amount will be reduced to \$796,068.80 as set out below to ensure that the aggregate amount of the Funder's and Lawyers' entitlements do not exceed 50% of the Resolution Sum (50% being an amount equal to \$1,500,000).

Lawyers

The Lawyers would be entitled to receive, as a fourth-priority payment, to \$142,500 (being the At-Risk Fees of \$100,000 plus the 25% Uplift on the At-Risk Fees of \$25,000, plus the Prior Costs of \$17,500). However, this

Claimants

The claimants will each receive a share of **\$1,450,000 (being approximately 48.3% of the Resolution Sum)**. This total is the Resolution Sum less the Funder's entitlements, the Lawyers' entitlements and the costs/expenses of the Scheme, including the Resolution Administrator's fees (assumed to be \$50,000 and to be paid or reimbursed out of the Resolution Sum in priority to distributions to members of the Scheme).

Any single claimant's entitlement to a share of this aggregate net Resolution Sum will depend on the value of their claim relative to the value of the claims of all claimants.

amount will be reduced to **\$103,931.20** as set out below to ensure that the aggregate of the Funder's and Lawyers' entitlements do not exceed 50% of the Resolution Sum.

The operation of the 50% cap

After paying the Project Costs and GST, the remaining amount of the Resolution Sum which is available to the Funder and the Lawyers is \$2,400,000 (being \$3,000,000 less \$600,000). The 50% cap is implemented as follows:

First, as there is no appeal funding being provided by the Funder in this example, the Lawyers' entitlement to the 25% Uplift of \$25,000 will be reduced to zero.

Second, the Funder's entitlement to the Time-Weighted Amount (i.e. \$900,000) and the Lawyers' entitlement to the At-Risk Fees and Prior Costs (i.e. \$117,500) will be reduced on a pro-rata basis:

Total remaining entitlements = \$1,017,500
($\$900,000 + \$117,500$)

- The Funder's proportion of the remaining entitlements is 88.45% ($\$900,000 / \$1,017,500$) so its entitlement to the Time-Weighted Amount will be reduced by \$103,931.20.
- The Funder's Time-Weighted Amount will thus be \$796,068.80 (being \$900,000 less \$103,931.20).
- The Lawyers' proportion of the remaining entitlements is 11.55% ($\$117,500 / \$1,017,500$) so its entitlement to At-Risk Fees and Prior Costs will be reduced by \$13,568.80.
- The Lawyers' remaining entitlement to At-Risk Fees and Prior Costs will thus be \$103,931.20.

Example of fees and costs for a single claimant

The below table sets out how the commission/fees and costs/expenses of the Scheme will reduce a single claimant's notional entitlement to a share of the Resolution Sum under the scenario described in this Example 3.

Example		For every \$100 to which a claimant is notionally entitled to receive from the Resolution Sum:
Acquisition Fee	0.000%	You will pay \$0 to acquire your interest in the Scheme – As set out in section 13, you do not have to pay anything to acquire an interest in the Scheme
PLUS Project Costs	20.000%	You will have deducted \$20 towards payment of Project Costs
PLUS Time Weighted Amount	26.536%	And, you will also have deducted \$26.536 towards payment of the Funders' Time Weighted Amount (as reduced pursuant to the operation of the 50% cap)
PLUS At-Risk Fees and the Prior Costs	3.464%	And, you will also have deducted \$3.464 towards payment of the Lawyers' entitlements to the At-Risk Fees and the Prior Costs (as reduced pursuant to the operation of the 50% cap)
PLUS Cost/expenses of the Scheme	1.667%	And, you will also have deducted \$1.667 towards payment of the costs/expenses of the Scheme
EQUALS Cost of Scheme		For every \$100 to which a claimant is notionally entitled to receive from the Resolution Sum, you will pay fees and costs of: \$51.667
Net entitlement for every \$100 of a single claimant's share of the Resolution Sum		For every \$100 to which a claimant is notionally entitled to receive from the Resolution Sum, your payment will be: \$48.333

Example 4 – Large judgment in favour of representative party at the conclusion of the proceedings

Assume the case proceeds to trial and is successful; the Judge finds in favour of the representative party and awards the full value of group members’ claims, equating to a Resolution Sum of \$10,000,000 in favour of the representative party at the conclusion of the proceedings (4 years after the Scheme commences)

Court awarded damages = \$10,000,000

Costs award in favour of representative party = \$600,000

Resolution Sum = \$10,600,000

Time Weighted Amount = \$3,180,000 (30% of the Resolution Sum (inclusive of the costs award in favour of the representative party))

Lawyers’ total legal fees = \$500,000 (assume these are 80% funded as Project Costs, the balance being At-Risk Fees)

Lawyers’ disbursements = \$500,000 (assume these are 100% funded as Project Costs)

Project Costs = \$900,000 (inclusive of GST)

Lawyers’ At-Risk Fees \$100,000

Lawyers Uplift = \$25,000 (assume this is 25% of the At-Risk Fees)

Prior Costs = \$17,500 (inclusive of GST)

Costs/expenses of the Scheme, including the Resolution Administrator’s fees = \$50,000

Funder

The Funder will receive **\$4,080,000** calculated as follows:

- as a first priority payment, \$900,000 as recovery of Project Costs;
- as a second priority payment, \$0 in respect of GST on supplies made by the Funder (which assumes no taxable supplies were made by the Funder); and
- as a third priority payment, \$3,180,000 (being the “Time-Weighted Amount”, in this case, assumed to be 30% of the Resolution Sum).

Lawyers

The Lawyers will receive, as a fourth-priority payment, **\$142,500** (being the At-Risk Fees of \$100,000 plus the 25% Uplift on the At-Risk Fees of \$25,000, plus the Prior Costs of \$17,500).

Claimants

The claimants will each receive a share of **\$6,327,500 (being approximately 59.7% of the Resolution Sum)**. This total is the Resolution Sum less the Funder’s entitlements, the Lawyers’ entitlements and the costs/expenses of the Scheme, including the Resolution Administrator’s fees (assumed to be \$50,000 and to be paid or reimbursed out of the Resolution Sum in priority to distributions to members of the Scheme).

Any single claimant’s entitlement to a share of this aggregate net Resolution Sum will depend on the value of their claim relative to the value of the claims of all claimants.

In this example, the representative party has been granted a costs award. In this situation, the costs award would be payable into the Trust Account maintained by the Lawyers and distributed in accordance with the Scheme’s constitution. Such amount would form part of the Resolution Sum.

Example of fees and costs for a single claimant

The below table sets out how the commission/fees and costs/expenses of the Scheme will reduce a single claimant's notional entitlement to a share of the Resolution Sum under the scenario described in this Example 4.

Example		For every \$100 to which a claimant is notionally entitled to receive from the Resolution Sum:
Acquisition Fee	0.000%	You will pay \$0 to acquire your interest in the Scheme – As set out in section 13, you do not have to pay anything to acquire an interest in the Scheme
PLUS Project Costs	8.491%	You will have deducted \$8.491 towards payment of Project Costs
PLUS Time Weighted Amount	30%	And, you will also have deducted \$30 towards payment of the Funders' Time Weighted Amount
PLUS At-Risk Fees, the Uplift and the Prior Costs	1.344%	And, you will also have deducted \$1.344 towards payment of the Lawyers' entitlements to the At-Risk Fees, the Uplift and the Prior Costs
PLUS Cost/expenses of the Scheme	0.472%	And, you will also have deducted \$0.472 towards payment of the costs/expenses of the Scheme
EQUALS Cost of Scheme		For every \$100 to which a claimant is notionally entitled to receive from the Resolution Sum, you will pay fees and costs of: \$40.307
Net entitlement for every \$100 of a single claimant's share of the Resolution Sum		For every \$100 to which a claimant is notionally entitled to receive from the Resolution Sum, your payment will be: \$59.693

Example 5 – Judgment in favour of the Respondent at the conclusion of the proceedings

Assume the case proceeds to trial and is not successful; the Judge finds in favour of the Respondent, meaning there is no award (and therefore no Resolution Sum), and makes an adverse costs award in favour of the Respondent of \$600,000 at the conclusion of the proceedings

Resolution Sum = \$0

Costs award in favour of Respondent = \$600,000

Time Weighted Amount = \$0 (assume this was supposed to be 30% of the Resolution Sum)

Lawyers' total legal fees = \$500,000 (assume these are 80% funded as Project Costs)

Lawyers' disbursements = \$500,000 (assume these are 100% funded as Project Costs)

Project Costs = \$900,000 (inclusive of GST)

Lawyers' At-Risk Fees = \$100,000 (assume this is 20% of the At-Risk Fees)

Lawyers Uplift on At-Risk Fees = \$0 (assume this was supposed to be 20% of the At-Risk Fees)

Prior Costs = \$17,500 (inclusive of GST)

Costs/expenses of the Scheme, no Resolution Administrator's fees = \$5,500

Funder

The Funder will be liable for the Project Costs of the litigation and any adverse costs orders, despite there being no Resolution Sum.

Accordingly, the Funder would have incurred a loss of \$1,500,000, comprising:

- \$900,000 in Project Costs; and
- \$600,000 in Adverse Costs.

Lawyers

The Lawyers will receive the portion of reasonable legal fees the Funder is liable to fund for preparing for and pursuing the litigation (being \$400,000, which is 80% of the Lawyers' total legal fees), and will have been reimbursed 100% of their disbursements, but the Lawyers will not receive their At-Risk Fees, any Uplift or the Prior Costs.

Responsible Entity

OBIML will bear the costs and expenses of operating the scheme as there is no resolution sum out of which it may be reimbursed. It will incur a loss of \$5,500. OBIML will not receive any Trustee Fee.

Claimants

The claimants will bear no losses in the event of the litigation being unsuccessful. This means that each single claimant will pay \$0 and receive \$0.

The Funding Terms

This section contains a summary of the terms on which the Funder will provide funding for the Class Action.

This is a summary only, and the terms of the Scheme’s constitution prevail. The clauses listed below are clauses of the Scheme’s constitution, which contains the Claim Funding Terms in Schedule 3. You should read the Scheme’s constitution to see the full details of the terms. **By signing the Application Form, you are agreeing to the litigation funding terms as set out in the Scheme’s constitution.**

Words used with capital letters in this section have the meanings given to them in Schedule 1 of the Scheme’s constitution.

Term	Summary
Project Investigation ahead of commencing proceedings (Sch 3, cl 2)	<p>The Funder has an interest in the outcome of the Proceedings. Accordingly, the Claimant consents to the Funder investigating and collating information relevant to the Proceedings.</p> <p>The Claimant agrees to provide all such information and assistance as the Funder may reasonably request for the project investigation.</p>
Project Management (Sch 3, cl 3.1)	<p>The Funder will provide the following management services in respect of the Project:</p> <ul style="list-style-type: none"> • advising the Claimants on strategy; • negotiating and seeking compliance with the Project Budget; • considering the advice of the Lawyers and providing day-to-day instructions to the Lawyers; • database and document management; and • facilitating periodic meetings between participants in the Project, administering reports to the Claimants in respect of progress and any Alternative Dispute Resolution Process.
Proceedings (Sch 3, cl 4.1)	<p>The Claimant agrees that the representative party will determine, in consultation with the Lawyers and Funder what Claims should be pursued at any stage in the Proceedings brought by the representative party.</p> <p>Subject to the representative party’s right to give overriding instructions to the Lawyers as their client, the Funder will give day-to-day instructions to the Lawyers on all matters concerning the Claims and the Proceedings and may give binding instructions to the Lawyers and make binding decisions on the Claimant’s behalf.</p>
The Claimant Obligations	<p>The Claimant must:</p>

Term	Summary
(Sch 3, 4.2 to 4.8)	<ul style="list-style-type: none"> • act at all times in good faith; • follow all reasonable legal advice given by the Lawyers and by barristers retained by the Lawyers in relation to the Proceedings and the Claims and in the case of conflicting advice, will follow the advice of the most senior barrister retained; • promptly provide full, frank and honest instructions to the Lawyers and barristers and provide the Lawyers with all documents in the Claimant's possession, custody or power that are relevant to the Claims or the Proceedings; • if requested by the Lawyers to do so, provide a signed, written witness statement to the Lawyers for use in the Proceedings, attend Court to give evidence in person and actively participate in any Alternative Dispute Resolution Process; • diligently prosecute the Proceedings and any appeals and do all things necessary to enable the Lawyers to ensure that the Proceedings and any appeals are conducted with the goal of resolving the Proceedings quickly, efficiently and with a view to maximising the Resolution Sum whilst keeping costs as low as possible; • opt out of or discontinue any other proceeding conducted against the Respondent, if the claims pursued in that proceeding overlap with the Claims in the Proceedings funded by the Funder; • comply with all orders of the Court and all statutory provisions, regulations, rules and directions; • inform the Lawyers and Funder of any change in contact details; • inform the Lawyers and Funder of any information, circumstance or change in circumstances likely to affect the Claims, any issue in any Proceedings or the recoverability of any Resolution Sum; • promptly take all appropriate actions, at the Funder's expense and with the Funder's written agreement, to tax or assess any costs claimed by any Respondent in an Adverse Costs Order; • take all appropriate action to diligently enforce any Settlement with, or any Judgment; and • fully co-operate with the Funder and the Lawyers and act with the care and diligence of a prudent business person.

Term	Summary
	<p>The Claimant must not (without the prior written consent of the Funder):</p> <ul style="list-style-type: none"> • if proceedings have not been commenced, commence proceedings; • discontinue, abandon, withdraw or Settle the Proceedings or make any admission in relation to any Claims (unless it is in accordance with the Scheme’s constitution); • unilaterally reject any Settlement offer made by any Respondent (unless doing so is in accordance with the process in the Scheme’s constitution); • reject any offer made by the Respondent to engage in any form of Alternative Dispute Resolution Process; • terminate the retainer of the Lawyers or retain any other solicitors in place of the Lawyers; • seek any order from any court which may detrimentally affect the Funder’s rights under this Agreement, other than with the consent of the Funder; or • provide any comment concerning the Proceedings to any news outlet, journalist or media of any sort. <p>The Claimant instructs the Lawyers to do everything set out at Schedule 3, clause 4.4 of the Scheme’s constitution.</p> <p>The Claimant will not disclose to any person, other than the Lawyers for the purpose of obtaining confidential legal or financial advice, or to the Funder, any information outlined at Schedule 3, clause 4.6.</p> <p>The Claimant will not, during the period of the Scheme’s constitution, have any communication with any Respondent, relating to the Claims, other than through the Lawyers or upon their reasonable advice.</p>
<p>Project Costs (Sch 3, cl 5)</p>	<p>The Funder will pay the Project Costs from after satisfaction of the Condition Precedent (i.e. the Condition Precedent Date).</p> <p>If any Respondent makes any payment by way of costs during the course of any Proceedings, then the payment will be paid into the Lawyers’ Trust Account on trust for the Funder and may be utilised by the Funder in paying or reimbursing any Project Costs.</p> <p>If there is any Resolution Sum that is money in the Trust Account at the time an Adverse Costs Order is payable, then that money will first be employed to pay the Adverse Costs Order and the Funder will pay any balance outstanding after such payment.</p>

Term	Summary
<p>Ceased claim (Sch 3 – cl 5.6 – 5.7, clause 11 of the Scheme’s constitution)</p>	<p>The Funder may decide, in its sole discretion following consultation with the Lawyers and the representative party, to cease to fund all Claims or any Claim, either completely or as against any particular Respondent (Ceased Claim), in accordance with clause 11 of the Scheme’s constitution and by giving 14 days’ written notice to the Claimants and OBIML.</p> <p>The Lawyers will be instructed to discontinue the prosecution of the Ceased Claim.</p> <p>The Funder will cease to have any entitlement to a success-based share of the Resolution Sum, but will remain liable for, and able to be reimbursed for Project Costs payable in relation to the Ceased Claim up to the date the Funder ceased to fund it.</p>
<p>Receipt of Resolution Sum (Sch 3, cl 6.1 and 6.3)</p>	<p>The Claimant, OBIML and the Funder instruct the Lawyers to immediately pay any Resolution Sum comprising money into an interest-bearing trust account to be kept for that purpose.</p> <p>The Resolution Sum will be distributed by the Lawyers and/or the Resolution Administrator in the strict order of priority set out in clause 12 of the Scheme’s constitution, with all payments within a priority level to be made <i>pari passu</i> and <i>pro rata</i>.</p>
<p>Payment of Resolution Sum (Sch 3, cl 7.1 – 7.4)</p>	<p>If a lump sum amount is received in Settlement or by way of Judgment, the Claimant will be paid the balance of funds after deducting all amounts required to be paid to the Funder and the Lawyers under the terms of the Scheme’s constitution.</p> <p>If for whatever reason (including due to change of circumstances, overpayment or an error) amounts paid or released to the Claimant under the Scheme’s constitution by the Lawyers exceed the Claimant’s entitlement under the Scheme’s constitution, the Lawyers may demand the Claimant repay an amount equal to the difference between such amounts (Overpayment Amount). The Claimant must immediately refund (or procure the refund of) the Overpayment Amount to the Lawyers.</p> <p>The Claimant agrees not to bring any claim against the Funder if the amount paid or released to the Claimant by the Lawyers is less than the Claimant’s entitlement.</p>
<p>Appeals (Sch 3, cl 8.1 – 8.2)</p>	<p>Should there be an unfavourable judgment, and the Funder notifies the Claimant (or the Representative Member) that it is prepared, in its discretion, to fund an appeal then the Funder will pay, as part of the Project Costs, the reasonable legal fees and disbursements of the appeal and any Adverse Costs Order if the appeal is unsuccessful.</p> <p>If there is judgment in the Proceedings in favour of the Claimants and the Respondent appeals, the Funder may elect (but it is not obliged) to fund the defence of the appeal.</p>

Term	Summary
The Lawyer's Retainer Agreement and Settlement (Sch 3, cl 9)	<p>The Claimant acknowledges and accepts that the Lawyers have entered, or will enter, into an agreement with the Funder in the same or similar terms to the Standard Lawyers' Terms and a Retainer Agreement with the Claimants.</p> <p>If there is any inconsistency between the terms of any Retainer Agreement and the Scheme's constitution or the Standard Lawyers' Terms, the terms of the Scheme's constitution or the Standard Lawyers' Terms, as applicable, will prevail.</p> <p>The Claimant acknowledges that they will be bound by an order of the Court made in any Proceedings approving the Settlement of the Proceedings (unless the Claimant has validly opted out).</p>
Difference in opinion (Sch 3, cl 9.7 – 9.13)	<p>Recognising that the Funder has an interest in the Resolution Sum, where there are differences in opinion as to the appropriateness of accepting any settlement sum, the parties must resolve the difference by referring it to the barristers for advice on whether, in their opinion, Settlement is fair and reasonable in all of the circumstances.</p> <p>The Funder will pay the costs of the barristers in providing the opinion.</p>
Confidentiality (Sch 3, cl 11)	<p>The Funder and the Claimant acknowledge that:</p> <ul style="list-style-type: none"> • all the Project Information is confidential; • the Project Information may be subject to a claim of Privilege by the Claimant (including any joint interest or common interest privilege); and • the communications are "confidential communications" and the documents are "confidential documents" within the meaning of Part 3.10 of the <i>Evidence Act 1995</i> (Cth), <p>unless any part of the Project Information is already in the public domain through no breach of the Scheme's constitution.</p>
Default by Funder (cl 4.15 – 4.21 of the Scheme's constitution)	<p>If the Funder fails to pay any amount drawn down from it in accordance with the Scheme's constitution, or commits a material breach of the Scheme's constitution and does not remedy the breach within 30 days after receiving written notice from OBIML, OBIML may classify the Funder as a Defaulting Funder and take steps to designate a replacement funder to assume responsibility for the Funder and cancel the Funder's interest in the Scheme. If OBIML does not replace the Funder, OBIML must wind up the Scheme and treat the Claims as Ceased Claims.</p>
Withdrawal by the Claimant, removal of a Claimant from the Scheme	<p>If the Proceedings are conducted as a Class Action and a Claimant exercises their right to opt out of the Class Action in accordance with the court rules or any Court Order, then upon the exercise of that right the Claimant will be deemed to have withdrawn from the Scheme.</p>

Term	Summary
(cl 10 of the Scheme's constitution)	<p>OBIML must also cancel a Claimant's interest in the Scheme and remove them from the register of members if OBIML reasonably determines a Claimant does not have a valid Claim, or the Court finds that the Claimant's claims have been unsuccessful, or the Class Action is settled out of Court or determined by the Court and the Resolution Administrator determines that a Claimant does not have a valid claim.</p> <p>If the Claims of the Claimant are resolved at the time it withdraws from the Scheme, or thereafter, the Claimant's assignment of its interest in any Resolution Sum to the Scheme remains in force and the Resolution Sum will continue to be allocated and distributed according to the Scheme's constitution.</p> <p>The replacement of Lawyers will not terminate the agreement. The replacement of the Lawyers will be on the same or substantially the same terms as the Standard Lawyers' Terms.</p>

General terms

This section contains information relevant to every participant in the Scheme.

40. The risk of conflicts of interest, related party transactions

Omni Bridgeway and the responsible entity (OBIML) are related to each other, and Omni Bridgeway has indirect managerial responsibilities in respect of the Funder.

OBIML is under an obligation not to prefer the interests of the Funder over the interests of other members of the Scheme.

The Funder and the general members of the Class Action may have different interests in continuing to fund or settle the Class Action. They may also have different opinions about other steps in the litigation. This is possible because the Funder is on risk for the costs of pursuing the Class Action and also is paid its share of the Resolution Sum ahead of any distribution to claimants, so the Funder may consider that an early settlement, or settlement for a smaller amount than the claimants would like to accept, is warranted.

The Funder is entitled to give instructions to the Lawyers in relation to the day-to-day management of the Class Action (subject to the representative party's right to give overriding instructions to the Lawyers as their client), seek orders from the Court (such as orders for discovery of relevant documents) and make decisions about settlement offers to be made to the Respondent. This gives the Funder the opportunity to act in its own interests, which may be different from the general members' (although, as the client of the Lawyers, the representative party has the right to over-ride the instructions of the Funder).

The Lawyers also have financial risk on the Class Action in that they will not be paid the At-Risk Fees, Uplift or Prior Costs unless the Class Action is successful. Their views on the likelihood of receiving an award in the Class Action, and the value of that award and the likelihood of being able to recover it, versus the amount of work they will be required to contribute (i.e. the value of fees at risk) may lead to the Lawyers taking a different view from the Funder and/or the claimants on the conduct and continuation of the Class Action (though it should be noted that the Lawyers have professional obligations which mean they are obliged to act in the best interests of their clients). The Lawyers are entitled to cease acting in the Class Action at any time. Their withdrawal as counsel would cause significant disruption to the conduct of the case.

Claimants may also have conflicting interests between themselves, depending on the relative strength, value and nature of their claims. This may lead some claimants being in favour of an early or smaller settlement than the other claimants are happy to accept.

The representative party is the person against whom a costs award will be made if the Class Action fails. The representative party must rely on reimbursement from the Funder under the terms of the Scheme's constitution. This different exposure to the risk of adverse costs in the proceedings means that the representative party may have a conflict of interest with the other claimants.

The Funder and the responsible entity use as their guiding principle, the ‘Overarching Purpose’, which is to facilitate the just resolution of the claims and the Class Action according to law and as quickly, inexpensively and efficiently as possible with the aim of maximising settlement or judgment proceeds net of Project Costs and minimising all risks, including, in particular, the risk of the Proceedings being unsuccessful.

Omni Bridgeway, the Funder and OBIML have conflict management policies in accordance with ASIC Regulatory Guide 181. A copy of these policies can be obtained by contacting the Client Liaison Team using the details at the end of this document.

41. Condition precedent to providing the funding

The responsible entity will not issue any interests in the Scheme to general members unless a Funder has confirmed in writing that it agrees to be bound by the Scheme’s constitution and to subscribe for the Funder’s interest in the Scheme. Claimants are encouraged to submit their Application Forms in advance of this happening, but if the Funder does not agree to fund the action, the responsible entity will return your Application Form (or at your direction, destroy it).

Even after the Funder has applied to become a member of the Scheme, it will not be obliged to fund the Project Costs until it has satisfied itself that (1) the Class Action is commercially viable for it to fund and (2) it has received an unconditional recommendation from its investment committee that it fund the Class Action.

Claimants should also note that the Funder has the right, where it subsequently determines that the action has become unviable, to withdraw its funding and terminate its participation in the Scheme. If the Funder does not provide funding and no alternative funder is found, it is likely that the representative party will withdraw the Class Action.

42. Risks

Before deciding to participate in the Scheme, you should consider the risks involved.

Litigation may be unsuccessful: It is very hard to accurately predict whether litigation will be successful, and over what time frame (which can be years), or if successful, the value of damages that may be awarded or agreed. It is possible that the Funder may not recover all the Project Costs they have paid in pursuing the litigation, or the claimants may not receive any material amount out of the Resolution Sum once the costs of litigation have been met and the Funder has received its share. Neither the Funder nor the responsible entity is able to give any claimant legal advice about the litigation.

Neither the Funder nor the responsible entity gives any guarantee of any payment to the Funder, Lawyers or any claimant in connection with the Class Action or an interest in the Scheme.

Causes of action: Class Action litigation addresses only those issues which are common to all members of the class. An individual claimant may have additional or different causes of action that would, if litigated separately, entitle it to recover more than they may be entitled to as a member of the class.

Proof of loss: Litigation is an adversarial process: a claimant may be called upon to prove their loss. Depending on the nature of the claim, this can be a stressful experience. We recommend that claimants speak to a lawyer to understand the process and determine whether litigation is the right path for them.

Perception of fairness: Claimants have suffered a loss, which is the subject of the litigation. The Funder takes on all the risk of paying for the litigation, so it is making a financial investment. These are quite different situations with different motivations and incentives, but both positions give rise to claims on the Resolution Sum. Before participating in the Scheme, a claimant should satisfy itself that if the litigation is successful they will feel that the Funder's share of the Resolution Sum is fair.

Conflicts of interest: The different members of the Scheme may have competing interests. Conflicts of interest are discussed in more detail in section 40 above (*The risk of conflicts of interest, related party transactions*).

Ability to manage litigation: The Funder has rights under the Claim Funding Terms in the Scheme's constitution to instruct the Lawyers in the day-to-day management of the proceedings (subject to the representative party's right to give overriding instructions to the Lawyers as their client), to seek orders from the Court, and to make decisions in respect of the proceedings including acceptance of settlement offers (subject to certain obligations to consult the Lawyers and the representative party). Claimants may disagree with the Funder's decisions, and the Funder may be incentivised by its risk exposure to the costs of the proceedings to prefer its own interests ahead of the claimants'.

Competing class actions; Amalgamation of class actions: There are other litigation funders in the market and one or more of those other litigation funders may offer competing funding terms in relation to your claim. The terms and conditions upon which other litigation funders provide funding may differ to those offered by OBIML (including in a material way). We encourage you to consider whether there are any other funding options in the market before making a decision about your claim. In addition, other class actions litigating the same causes of action the subject of the Class Action may be ordered by the Court to amalgamate into one class action. If that was to occur, the funding may be given by another funder on terms that are different (better or worse) from those offered by OBIML under this Scheme.

Difficulty of recovering Resolution Sum: Even if judgment is awarded or a settlement agreement is reached, the Respondent may be insolvent or otherwise unwilling or unable to pay the Resolution Sum. The Funder may decide to invest more money in pursuing enforcement action in order to obtain payment, but these additional costs may further reduce the share of the Resolution Sum that is paid to the claimants.

Payment in kind: In rare cases, the Respondent may meet its resolution obligations by the transfer of assets rather than cash. The Funder and the responsible entity may be required to expend money on liquidating the assets in order to produce cash for distribution by the Lawyers to the Funder and the claimants. This may cause delay and additional costs may further reduce the share of the Resolution Sum that is paid to the claimants. The Funder and the responsible entity may not be able to realise the assets for their full market value, or at all.

Claimant has limited rights to withdraw: The Court has developed rules to address what is known as the risk of “free-riding”, where it was possible for funded claimants to have the benefit of having the prosecution of their claims funded, only to terminate the funding agreement just before a resolution of the claims is reached. As a result, after the cooling-off period has elapsed, then subject to any applicable Court rules the claimant may only withdraw from the Scheme if it also opts out of the proceedings (which means that the claimant will not receive a share of the Resolution Sum). If a claimant withdraws from the Scheme after the cooling-off period, the claimant’s share of the Resolution Sum (if any) remains part of the Scheme.

Funder’s return may be capped by the Court or by regulation: The Funder should understand that, even in relation to litigation that is on foot at the time regulation may be made, its potential share of any Resolution Sum may be subject either to adjustment by the Court or by intervening regulation, notwithstanding the terms of this Scheme.

Difficulty of changing funding arrangements: Once the funding arrangements have been entered into with the Funder and any cooling-off period has passed, the responsible entity has only a limited set of default circumstances that gives it the right to terminate the funding arrangements with the Funder and cancel the Funder’s interest in the Scheme, even if the responsible entity is unhappy with the project management of the litigation by the Funder. Claimants are urged to read the terms of the Claim Funding Terms closely. You can find it at the back of the Scheme’s constitution.

Termination risk: The Funder may terminate funding at its discretion on 14 days’ notice including in circumstances where it considers the proceedings have become unviable. That may mean the proceedings are terminated and the claimants have no further ability to seek redress for their claims unless alternative funding can be found, even where they disagree with the decision that has been taken by the Funder.

Failure to pay: The Funder’s ability to pay is not unlimited. Due to its insolvency or other default, the Funder may fail to make payments of the Lawyers’ fees, security for costs or for adverse costs. This would lead to the Funder being considered in default of its obligations to the Scheme, and the responsible entity may remove the Funder from the Scheme. Even where a substitute Funder is found, payment default by the Funder is likely to lead to serious disruption to the proceedings and may lead to their discontinuation. In that case, the claimants would be unlikely to receive any Resolution Sum.

Risk for representative party: The representative party is the named plaintiff bringing the Class Action. The representative party is primarily legally responsible for paying the Lawyers’ costs and, if the Class Action is unsuccessful, may have costs awarded against them by the Court, payable to the Respondent. The representative party is indemnified for these costs by the Funder through the Scheme, but if the Funder defaults on this indemnity the representative party may be personally liable. These amounts may be material.

Regulatory Risk: The requirement to establish a registered managed investment scheme in order to fund multi-party litigation was introduced by regulation passed under the *Corporations Act 2001* in July 2020. The regulations removed a previously available statutory exemption. Those regulations have been subject to debate in the Senate and to an ongoing process of regulatory development. The requirement to implement litigation funding via a managed investment scheme rests on a Full Federal Court decision. The passing of new regulations reinstating an exemption or giving other relief or imposing additional requirements, or the overturning of the Federal Court’s decision in the future may again change the regulatory environment in ways which are uncertain. The outcome may lead to the Funder becoming unwilling to continue to participate in the Scheme or may materially alter the costs associated with the Class Action.

Funder’s risks: A return is entirely dependent on the case being “won” or settled. In the event that the case is lost, the Funder will have no entitlement to any return and will have to pay the costs of the Respondent which could be significant. At the time of joining the Scheme, the Funder cannot know with certainty the quantum of these costs or if the case will be won. Litigation is dynamic and inherently uncertain. Risks may arise throughout the course of the case and while the Funder has certain rights to withdraw, if it does so, it will not recoup any expenses it has already paid and will remain liable to pay the costs of any Respondent referable to the period prior to the Funder’s withdrawal. Class actions typically run for several years which is effectively the period of investment required by the Funder before its first return (which as noted above is conditional on the case being won). In the event of success, the quantum of the Funder’s returns may still be affected by matters beyond its control including: (i) the ability of the court to reduce the Funder’s return and (ii) the Respondent’s inability to pay.

43. No transfer of Scheme interests

Your interests in the Scheme are not able to be sold or transferred to anyone else. This Scheme will not be listed and no market is expected to develop in the Scheme interests. The constitution makes provision for dealing with Scheme interests if a member of the Scheme dies or becomes incapable.

44. Your right to obtain documents relating to the Scheme

The *Corporations Act 2001* provides that, if interests in the Scheme are held by more than 100 claimants, the interests in the Scheme shall be “ED (Enhanced Disclosure) Securities” as defined under the *Corporations Act 2001*, and consequently the Scheme, in those circumstances, will be a “disclosing entity” for the purposes of the *Corporations Act 2001*.

If the Scheme is a “disclosing entity”, the Scheme will be subject to regular reporting and disclosure obligations and required to lodge various additional documents with ASIC. Copies of any additional documents so lodged with ASIC in relation to the Scheme may be obtained from, or inspected at, an ASIC office.

If the Scheme is a “disclosing entity” for the purposes of the *Corporations Act 2001*, members of the Scheme will have a right to obtain a copy of the following documents:

- the annual financial report most recently lodged with ASIC by the Scheme;

- any half-year financial report lodged with ASIC by the Scheme after the lodgement of that annual financial report and before the date of this PDS; and
- any continuous disclosure notices given by the Scheme after the lodgement of that annual report and before the date of this PDS.

Where the Scheme is a “disclosing entity” for the purposes of the *Corporations Act 2001*, following OBIML’s receipt of a request by a member of the Scheme for an abovementioned document, OBIML will give the relevant member a copy of the requested document free of charge as soon as practicable, and in any event within five days after receipt of the request.

Please note that the admission of more than 100 claimants as members of the Scheme will not, for the purposes of the Condition Precedent (as described more fully in section 41 of this document), necessarily constitute the Class Action being considered commercially viable by the Funder or result in an unconditional recommendation being made by the Funder’s investment committee that it fund the Class Action.

45. How can I complain?

OBIML is committed to taking all feedback, in particular all complaints that we receive, seriously. We believe that dealing appropriately with a complaint provides an opportunity for us to improve our services and preserve our good reputation.

You can contact the person you have been dealing with directly at Omni Bridgeway by calling:

Tel: 1800 016 464;

or by posting details of your complaint to:

Compliance Manager – Omni Bridgeway Investment Management Limited
PO Box 5106
St Georges Terrace
Perth WA 6831;

or by emailing details of your complaint to the Complaints Officer at:

complaints@omnibridgeway.com.

If we are unable to resolve the complaint or you are dissatisfied with our final response you may lodge a complaint with the Australian Financial Complaints Authority:

Online: www.afca.org.au

Email: info@afca.org.au

Phone: 1800 931 678 (free call)

Mail: Australian Financial Complaints Authority

GPO Box 3, Melbourne VIC 3001

Time limits may apply to complaints to AFCA and so you should act promptly or otherwise consult the FOS and AFCA websites to find out if or when the time limit relevant to your circumstances expires.

46. Privacy statement

Omni Bridgeway has a privacy policy which covers the group of companies that comprise the Omni Bridgeway group, including OBIML. OBIML collects, holds, discloses, uses and otherwise processes personal information in accordance with this privacy policy. A copy of the Omni Bridgeway Privacy Policy can be obtained here:

<https://omnibridgeway.com/website-policies/privacy-policy>.

The Application Form at the back of this PDS requires you to provide personal information. OBIML may share your personal information, as permitted by applicable law, for the business and commercial purposes listed in the Omni Bridgeway Privacy Policy.

OBIML may use your personal information to let you know about products and services that it believes will be of interest to you. OBIML does not disclose any personal information it collects to third parties for the purpose of allowing them to directly market their products and/or services to you. The Omni Bridgeway Privacy Policy sets out how you can manage your marketing preferences.

Contact us

Omni Bridgeway Client Liaison Team
PO Box 5106
St Georges Terrace
PERTH WA 6831

mailto: scenictours@omnibridgeway.com

1800 016 464 (freecall within Australia) or +61 8 9225 2322

Dictionary

Adverse Costs	means costs awarded in favour of any Respondent in relation to the Class Action in respect of costs of that Respondent incurred in respect of the Class Action during the term of the Scheme (and Adverse Costs Order means an order for Adverse Costs).
Application Form	means the application form attached to this PDS as Annexure A.
At-Risk Fees	means an amount of fees and costs that the Lawyers have at risk in respect of the Class Action and which will be used to calculate the Lawyers' entitlement to a distribution out of the Resolution Sum as set out in the Scheme's constitution. In the Scheme's constitution, the At-Risk Fees the Uplift and Prior Costs to which the Lawyers are entitled are together defined as Remaining Costs .
Claim Funding Terms	means the terms applicable to the provision of funding and project investigation and management services relating to the Class Action by the Funder, which take effect as an agreement between the Funder, the responsible entity, the claimants and the Lawyers, including the terms upon which the Funder agrees to pay the Project Costs. The Claim Funding Terms form part of the Scheme's constitution.
claimant	means a person with a claim that is the subject of the Class Action.
Class Action	is a lawsuit filed by an individual acting on behalf of a group and in this PDS means the class action described in sections 3 and 9.
Commencement Date	means the date the Scheme commences as defined in clause 27.1 of the Scheme's constitution.
Condition Precedent	means (1) the Funder, OBIML and the Lawyers agreeing in writing that the Class Action is commercially viable to fund, and (2) the Funder notifying OBIML and the Lawyers in writing that it has received an unconditional recommendation from its investment committee that it fund the Class Action on the Claim Funding Terms.
Condition Precedent Date	means the date on which the Condition Precedent has been satisfied.
Funder	means Omni Bridgeway (Fund 5) Australian Invt. Pty Ltd, acting as the funder of the costs of litigating the Class Action in accordance with the Claim Funding Terms.
Input Tax Credit	has the meaning given in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).

- Investment Budget** means the set of cost estimates for the Class Action (inclusive of any GST payable), prepared by the Lawyers and agreed with the Funder and the responsible entity at the commencement of the Standard Lawyers' Terms.
- managed investment scheme** is defined in section 9 of the *Corporations Act 2001* (Cth), and is created by a group of people contributing money or money's worth in a common enterprise in the expectation of a return, where the members of the scheme do not have day to day control over the operation of the scheme.
- Opt Out Notice** means the form of notice mandated by the Court, to be completed by any claimant wishing to opt out of the Class Action and be excluded from membership of the class in relation to whom the common facts are to be determined by the Class Action.
- Prior Costs** means an amount equal to \$174,638, being the amount of costs incurred by the Lawyers in, and adverse costs ordered with respect to, prior legal proceedings concerning the same subject matter as this Class Action conducted by the Lawyers.
- Project Costs** means:
- (a) the costs and expenses associated with the Funder undertaking investigations of the merits of the Class Action and managing the litigation;
 - (b) the costs involved in the provision by the Funder of any security for costs;
 - (c) any Adverse Costs Order paid or payable by the Funder in accordance with the terms of the Scheme's constitution;
 - (d) the costs incurred by the Funder in quantifying any Adverse Costs Order;
 - (e) from the Condition Precedent Date, amounts incurred for the sole purpose of preparing for, prosecuting and resolving the Class Action payable by the Funder as follows:
 - (i) 80% of the Lawyers' reasonable legal fees and 100% of the disbursements of the Lawyers up to the amount of such costs contained in the Investment Budget in accordance with the Standard Lawyers' Terms, the Retainer Agreement and the Investment Budget; and
 - (ii) for amounts within any Revised Budget, 65% of the Lawyers' reasonable legal fees and 100% of the disbursements of the Lawyers in accordance with the Standard Lawyers' Terms and the Retainer Agreement;

- (f) any other costs or expenses which are expressly stated to form part of the “Project Costs” payable by the Funder under the terms of the Scheme’s constitution;
- (g) all of the Funder’s out of pocket costs and expenses paid or incurred in relation to the Class Action, including in relation to any consultants engaged by the Funder (other than those costs and expenses already referred to in this definition);
- (h) the provision of finance, other financial accommodation and/or indemnities to the Lawyers in respect of a Class Action; and
- (i) any GST payable on any supply made by any entity as a result of the cost or expense being incurred.

representative party is the person or persons who bring a claim in order to resolve issues of law and fact that are common to a Class Action.

Resolution means each time all or any part of the Resolution Sum is received in respect of the Class Action (this can occur as the result of a Court award or as a settlement reached out of Court with the Respondent).

Resolution Administrator means the Lawyers or such other person (which may be Omni Bridgeway or a related entity of Omni Bridgeway) appointed by Court order to determine the proper distribution of the Resolution Sum.

Resolution Sum means any money, services, benefits and/or any in-kind assets for which the Class Action is settled, or for which judgment is given, in favour, or otherwise for the benefit (directly or indirectly) of any claimant or an External Controller of such claimant, and includes:

- (a) any interest (including any interest earned on money while held in the Lawyers’ trust account);
- (b) any costs pursuant to a costs order made by the Court or by agreement;
- (c) any ex gratia payments or any compensation (whether statutory or otherwise) directly or indirectly in relation to the Class Action;
- (d) if a Respondent (or any property, assets or liabilities of any defendant) is, or comes, under the control of an External Controller, any amounts or property paid or distributed by the External Controller of such Respondent in relation to the Class Action or any settlement or judgment in respect thereof.

Respondent means the person or persons against whom the Class Action is brought, including Scenic Tours Pty Ltd.

responsible entity	means Omni Bridgeway Investment Management Limited, acting in its capacity as the trustee of the Scheme.
Retainer Agreement	means the terms of engagement upon which it is proposed the representative party and each other claimant will engage the Lawyers.
Revised Budget	means a budget prepared and agreed in accordance with Term 3.2 of the Standard Lawyers' Terms, solely in respect of all amounts therein in excess of the Investment Budget.
Scheme	means the Scenic Tours Litigation Funding Scheme (ARSN 649 659 094), a managed investment scheme comprising the pooling of resources between the Funder, the Lawyers and the members of the class in the Class Action, together with the responsible entity.
Standard Lawyers' Terms	means the terms upon which the Funder will deal with Lawyers, including as to timing of payments in respect of the Project Costs, which are attached to the Application Form as Schedule 1.
Uplift	means the uplift payable on the Lawyers' fees in the event of a Resolution, being an amount equal to 25% of the At-Risk Fees.

ANNEXURE A – APPLICATION FORM

Omni Bridgeway Investment Management Limited

This Application Form relates to the Product Disclosure Statement ('PDS') issued by Omni Bridgeway Investment Management Limited (ACN 642 086 593, AFSL 524023) ('OBIML') as the Responsible Entity ('RE'), in relation to the Scenic Tours Litigation Funding Scheme (ARSN 649 659 094) ('Scheme'). Information about the Scheme can be found in the PDS for the Scheme, of which this Application Form is part, or it can be downloaded here: <https://portal.omnibridgeway.com/scenic>. Please read the PDS, this Application Form, the Claim Funding Terms at the end of the Scheme's constitution, and the Scheme's constitution itself carefully, as together those documents contain terms that will be binding on you if your application is accepted by the RE.

Information on how to complete this Application Form

- Please use BLOCK LETTERS and record your responses on the solid lines.
- If there is not sufficient space on these pages to include all of your relevant information, please copy and attach additional pages.
- Please return your completed and signed Application Form **by no later than 15 December 2021**. If we postpone this date, we will post the new date on the website: <https://portal.omnibridgeway.com/scenic>
- It is important that the person(s) signing this Application Form has authority to do so on behalf of the Claimant (as set out in Part 2)
- If you are the Funder or the Lawyers, do NOT complete this Application Form. Your participation in the Scheme will be agreed in writing directly between you and OBIML.
- Return this Application Form to Omni Bridgeway (*you should retain a copy for your records*) by:
 Email: scenictours@omnibridgeway.com

or

Post:
Omni Bridgeway Investment Management Limited
PO Box 5106
PERTH WA 6831
AUSTRALIA

Part 1. Contact Information

To ensure you receive all important correspondence, please ensure you keep your contact details up to date with us throughout the duration of the matter. Our preferred method of correspondence is by email.

By providing the below information, I agree that OBIML may use my information to provide me with information about the Claim

Title	<input type="text"/>	First Name	<input type="text"/>	Middle Name	<input type="text"/>	Last Name	<input type="text"/>
Company	<input type="text"/>			Position	<input type="text"/>		
Landline Phone	<input type="text"/>			Mobile Phone	<input type="text"/>		
Email Address	<input type="text"/>						
Mailing Address	<input type="text"/>						
Suburb	<input type="text"/>	State	<input type="text"/>	Postcode	<input type="text"/>	Country	<input type="text"/>

Part 2. Claimant Details

The claimant is the passenger on river cruises operated by the Respondent from 1 June 2018 to 31 December 2018 on the Rhine-Moselle-Main-Danube river systems.

Please provide the full name of the claimant.

The claimant must be the person who was a passenger on the relevant river cruises.

Full name of the claimant

Date of Birth (D.O.B.)

D.O.B.	Full Name

Part 3. Claimant Address

Please provide the registered address of the Claimant described in Part 2.

- If the address is the same as the contact address in Part 1, please tick this box (Note: If the contact address in Part 1 is a PO Box, the claimant address **must** be completed below.)

Claimant Street Address (Not a PO Box)

Suburb

State

Postcode

Country

Part 4. Claim Information

Please provide the following details in relation to the river cruise that is the subject of this claim:

- Name of the river cruise the claimant travelled on:
- Was the river cruise a Scenic or Evergreen river cruise?
- What dates did the claimant travel on the river cruises?
- Start location of river cruise:
- End location of river cruise:

Part 5. Declaration and Signing by the Parties

Your application is subject to a cooling-off period as described in section 17 of the PDS.

Claimant's Acceptance

I/we declare and agree that I/we:

- have read and understood in full the PDS and the Scheme's constitution (including the Claim Funding Terms in Schedule 3 of the Scheme's constitution) (collectively, the **Scheme Documents**), copies of which are available at <https://portal.omnibridgeway.com/scenic>.
- agree that the terms and conditions of the Scheme Documents form part of this declaration and agree to be bound by the Scheme's constitution;
- by signing this declaration, represent that I/we am/are eligible to be a funded member of the Scheme and agree to make the Assignment referred to in the Scheme's constitution;
- agree that all of the information provided in my/our application is true and correct and I/we undertake to inform you of any changes to the information supplied as and when they occur;
- acknowledge that this application may be submitted electronically and that such electronic version shall be legally binding;
- warrant (if applicable) that I/we have authority to sign this Application Form on behalf of the claimant;
- agree that OBIML may contact me/us where required by using the email address provided on this Application Form;
- acknowledge that OBIML may require us to provide any additional documentation or other information to enable compliance with any laws relating to anti-money laundering and counter terrorism financing ('**AML/CTF**') or any other law, including the Foreign Account Tax Compliance Act ('**FATCA**') and OECD Common Reporting Standard ('**CRS**'); and
- agree to sign and return a copy of the Retainer Agreement with Somerville Legal Pty Ltd.

Signature

Print Name

Capacity

Date

If there is not sufficient space on these pages to include all of your relevant information, please copy and attach additional pages.

Schedule 1 - Standard Lawyers' Terms (Agreed Form)

This agreement is made the _____ day of _____ 202____

PARTIES

Omni Bridgeway **Omni Bridgeway (Fund 5) Australian Inv. Pty Ltd ACN 635 083 984** of Level
18, 68 Pitt Street, Sydney, New South Wales 2000

OBIML **Omni Bridgeway Investment Management Limited ACN 642 086 593** of Level
18, 68 Pitt Street, Sydney, New South Wales 2000

Lawyers **Somerville Legal Pty Ltd ACN 117 159 172** of 10/32 Walker St, North Sydney
NSW 2060.

Email: bhemsworth@somervillelegal.com.au

SCHEME

Scheme Scenic Tours Litigation Funding Scheme ARSN 649 659 094

RECITALS

- A Omni Bridgeway has entered into, or proposes to enter into, the obligation to fund the prosecution of the Claims by participating as a member of the Scheme, on the terms set forth in the Scheme's constitution.
- B The Lawyers are aware of the terms of the Scheme's constitution including the Claim Funding Terms and have agreed to act consistently with, and in accordance with, the terms of the Scheme's constitution, the Claim Funding Terms and these Terms.

AGREED TERMS

1. Definitions

1.1 In these Terms, unless the contrary intention appears:

Claims has the meaning given in the Scheme's constitution.

Claim Funding Terms means the litigation funding terms included in the Scheme's constitution.

Funded Person means a claimant who has an interest in the Scheme as a result of agreeing to accept funding to pursue their Claims under the Scheme's constitution or who is otherwise deemed by law or Court order to be a member of the Scheme as a general member of the class which is the subject of the Claims.

Insolvency Event means, in respect of a person, one of the following occurs:

- (a) a controller (as defined in section 9 of the Corporations Act), receiver, receiver and manager, administrator or similar officer is appointed in respect of that person or any asset of that person;
- (b) a liquidator, provisional liquidator or administrator is appointed in respect of that person;
- (c) except for the purpose of a solvent reconstruction or amalgamation, any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraph (a) or (b) of this definition;
 - (ii) winding up, dissolving or deregistering that person; or
 - (iii) proposing or implementing a company voluntary arrangement or a scheme of arrangement, other than with the prior approval of the other parties to these Terms under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
- (d) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
 - (i) moratorium of any debts of that person;
 - (ii) any other assignment, composition or arrangement (formal or informal) with that person's creditors; or

- (iii) any similar proceeding or arrangement by which the assets of that person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,

or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;

- (e) as a result of the operation of section 459F(1) of the Corporations Act, that person is taken to have failed to comply with a statutory demand (as defined in the Corporations Act);
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of that person;
- (g) anything analogous to anything referred to in paragraphs (a) to (f) inclusive of this definition, or which has a substantially similar effect, occurs with respect to that person under any law; or
- (h) that person is, or admits in writing that his, her or it is, or is declared to be, or is presumed or taken under any applicable law to be (for any purpose), insolvent or unable to pay his, her or its debts as they fall due.

Key Personnel means those partners, directors, special counsel or equivalent roles of seniority designated in accordance with Term 3.1.1, or such other persons as may be agreed between the Lawyers and Omni Bridgeway from time to time.

Personal Information means:

- (a) "Personal Information" as defined in the *Privacy Act 1988 (Cth)* (as amended, updated or replaced from time to time); and
- (b) information or an opinion, whether true or not, and whether recorded in a material form or not, about an identified customer, client, claimant or personnel member of Omni Bridgeway or of the Lawyers, or a customer, client, claimant or personnel member of Omni Bridgeway or of the Lawyers who is reasonably identifiable, and where that customer, client, claimant or personnel member of Omni Bridgeway or of the Lawyers is not a natural person (e.g. a corporation).

Privacy Laws means all applicable privacy and data protection legislation, including the *Privacy Act, 1988 (Cth)*, the *SPAM Act, 2003 (Cth)* and any legislation in any jurisdiction which affects privacy or which regulates the collection, storage, use and disclosure of personal information, including any orders, recitals, guidelines, codes of conducts, recommendations or directives made or issued under such legislation, and as may be in force from time to time.

Remaining Costs has the meaning given in the Scheme's constitution.

Scheme means the registered managed investment scheme constituted for the purpose of funding the Claims, as named above.

Scheme's constitution means the trust deed establishing the Scheme.

Terms means this agreement and "**Term**" means a provision of these Standard Lawyers' Terms.

- 1.2 Unless the contrary intention appears or unless specifically defined above, the definitions of words in the Scheme's constitution apply to define the meaning of words used in these Terms.
2. The Scheme's constitution and Claim Funding Terms
 - 2.1 The Lawyers will:
 - 2.1.1 act consistently with the terms of the Scheme's constitution including the Claim Funding Terms (including complying with all instructions set out in, or provided pursuant to, the Claim Funding Terms); and
 - 2.1.2 do all things which the Scheme's constitution and the Claim Funding Terms contemplate the Lawyers will do.
 - 2.2 The Lawyers agree that if there is any inconsistency between the Scheme's constitution and/or these Terms and the terms of any Retainer Agreement (including any costs disclosure) between the Lawyers and any Funded Person, then the terms of the Scheme's constitution and/or these Terms (as appropriate) will prevail.
 - 2.3 The Lawyers shall enter into a Retainer Agreement with each Funded Person and shall disclose to each Funded Person the sources of all fees or other income they may receive in relation to this Project, including providing a budget for all estimated costs and expenses up to the conclusion of a trial in the proposed Proceedings which shall be consistent with the Project Budget.
 - 2.4 The Lawyers agree that by signing these Terms, they apply for an interest in the Scheme with the entitlement to a share of any Resolution Sum as indicated, and subject to, the terms of the Scheme's constitution.
 - 2.5 OBIML enters into these Terms in its capacity as trustee and responsible entity for the Scheme for the purpose of holding the mutual promises of the Lawyers and the Funder under these Terms on trust as part of the Scheme property, allocable to the classes of interest in the Scheme held by the Funder and the Lawyers respectively (and for no other purpose). No promise of the Funder, nor any promise of the Lawyers, given in these Terms may be enforced against OBIML except to the extent it is able to enforce such promise against the relevant party in its capacity as trustee of the Scheme.
3. Commencement of the Project
 - 3.1 The Lawyers will inform Omni Bridgeway in writing of:
 - 3.1.1 the name and title of each lawyer who it is proposed will provide the Legal Work, for the purposes of Term 5.2;

- 3.1.2 the hourly rates of those lawyers (inclusive of GST) for the purposes of Term 5.1;
 - 3.1.3 the hourly and daily rates of any barristers or experts retained or proposed to be retained (inclusive of GST); and
 - 3.1.4 the Lawyers' estimate of fees and disbursements to prosecute the Claims up to the conclusion of a trial in the proposed Proceedings (separately identifying the estimated fees of the Lawyers, the barristers and the experts, if any, by reference to each event in the Investment Budget).
- 3.2 The Lawyers will use their best endeavours to ensure that the total actual costs and disbursements set out in the Investment Budget are not exceeded. If at any time the Lawyers form a view that the Investment Budget is no longer their best estimate of the costs and disbursements for the Project, they will advise Omni Bridgeway in writing, setting out why they have come to that view, and identify their revised best estimate of the costs and disbursements. Such revised estimate, if approved by Omni Bridgeway, would constitute a Revised Budget.
- 4. Reporting
 - 4.1 The Lawyers will keep Omni Bridgeway fully informed of all matters concerning the Claims and the Proceedings, including any mediation and settlement discussions. The Lawyers will ensure that Omni Bridgeway is given all necessary information and advice in order for Omni Bridgeway to provide informed instructions and the Project Management Services.
 - 4.2 The Lawyers will inform Omni Bridgeway, in writing and as soon as they become aware that:
 - 4.2.1 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 Omni Bridgeway Limited's issued share capital or at least 1% of the limited partnership interests in Omni Bridgeway (Fund 5) LP; and
 - 4.2.2 any barrister or expert witness retained or briefed by the Lawyers in relation to the Project (or any spouse or child of any such barrister or witness) beneficially owns at least 1% of Omni Bridgeway Limited's issued share capital or at least 1% of the limited partnership interests in Omni Bridgeway (Fund 5) LP,and the Lawyers agree:
 - 4.2.3 to make all reasonable enquiries, at the commencement of these Terms or when initially retaining all barristers and expert witnesses, in order to determine whether Terms 4.2.1 or 4.2.2 apply;
 - 4.2.4 to require, for the duration of these Terms, all persons referred to in this Term 4.2 to immediately inform the partner of the Lawyers with responsibility for this Project of any change in the circumstances referred to in Terms 4.2.1 and 4.2.2 which have been previously disclosed to Omni Bridgeway; and

- 4.2.5 that the partner of the Lawyers with responsibility for this Project will immediately inform Omni Bridgeway of any information received pursuant to Term 4.2.4.
- 4.3 Without limiting Term 4.1, 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 for any judgment sum to be recovered, the Lawyers will immediately inform Omni Bridgeway of that information.
- 4.4 The Lawyers will inform the Funded Persons of significant developments in the Proceedings by means of update reports which Omni Bridgeway will email or post to each Funded Person and, unless otherwise agreed, will provide a quarterly report within 7 days of the end of March, June, September and December to any Representative Member and to Omni Bridgeway which:
- 4.4.1 identifies any change to the previous quarterly report and any significant developments since that report;
- 4.4.2 reviews and updates the issues relevant to liability and quantum; and
- 4.4.3 provides advice in respect of any proposed changes to the Claims' percentage chance of success and any proposed changes to the Project Budget without derogating in any way from the continuing obligation in Term 3.2.
5. Costs and Disbursements
- 5.1 Subject to Term 6, the Lawyers will charge for the Legal Work performed by reference to the time reasonably and properly spent at the hourly rates notified to Omni Bridgeway pursuant to Term 3.1, subject to an annual revision in those rates which is acceptable to Omni Bridgeway, the Representative Member and the Lawyers. Detailed time records must be kept to facilitate time details being provided in accordance with Term 6.
- 5.2 No fee will be charged by the Lawyers for any fee earners, other than those notified to Omni Bridgeway pursuant to Term 3.1, without the prior written consent of Omni Bridgeway. Omni Bridgeway will not be liable to pay the fees of any barristers or experts other than those notified to Omni Bridgeway pursuant to Term 3.1 or those briefed with Omni Bridgeway's written consent. Omni Bridgeway will not unreasonably refuse to provide its written consent.
- 5.3 The Lawyers will only seek reimbursement from Omni Bridgeway for expenditure reasonably incurred by the Lawyers in progressing the Proceedings being:
- 5.3.1 photocopying and scanning at the rates agreed in writing between Omni Bridgeway and the Lawyers prior to incurring the expenditure; and
- 5.3.2 other reasonable expenditure, supported by invoices where \$500 or above.

6. Invoices
 - 6.1 The Lawyers will render monthly invoices to Omni Bridgeway (emailed to invoices@omnibridgeway.com), with a copy to any Representative Member, by the 20th day of each month, accompanied by:
 - 6.1.1 the details contemplated by Term 6.4;
 - 6.1.2 a summary of the time details by their total cost (in a single dollar figure) allocated to each relevant event in the Proceedings; and
 - 6.1.3 invoices from barristers, experts (both also being allocated to each event as in Term 6.1.2) and for any other significant disbursements (\$500 or above).
 - 6.2 Following the Condition Precedent Date, the monetary details in the monthly invoices will include a charge for the time detailed:
 - 6.2.1 in respect of amounts within the Investment Budget, at the percentage of professional fees specified in paragraph (e)(i) of the definition of Project Costs in the Scheme's constitution and 100% of the professional fees of the barristers and experts notified to Omni Bridgeway pursuant to Term 3.1; and
 - 6.2.2 in respect of amounts within any Revised Budget, at the percentage of professional fees specified in paragraph (e)(ii) of the definition of Project Costs in the Scheme's constitution and 100% of the professional fees of the barristers and experts notified to Omni Bridgeway pursuant to Term 3.1.
 - 6.3 Provided invoices from the Lawyers comply with these Terms and validly form part of the Project Costs in accordance with the Scheme's constitution including the Claim Funding Terms, Omni Bridgeway will pay them within 30 days from the end of the month in which the Lawyers' invoice is received by Omni Bridgeway.
 - 6.4 The time details for fees of the Lawyers must be in a separate document to each invoice and must include, for each time entry:
 - 6.4.1 the date on which the time was spent;
 - 6.4.2 the solicitor or paralegal who spent the time;
 - 6.4.3 the time spent in six minute units; and
 - 6.4.4 a brief explanation of the work performed.
 - 6.5 Omni Bridgeway may at its discretion require the Lawyers to submit any one or more of their invoices to taxation.

7. Payment of Lawyers' Remaining Costs
 - 7.1 Following Resolution, to the extent of any allocation of the Resolution Sum mandated by the Scheme's constitution, the Lawyers shall be entitled to a distribution by the Scheme calculated by reference to their Remaining Costs.
8. Priorities, Lien and Insurance
 - 8.1 The Lawyers agree not to seek payment of any amounts outstanding to them in excess of that for which Omni Bridgeway is liable under these Terms.
 - 8.2 The Lawyers agree that the payment to them of any amount in respect of their Remaining Costs is only available as a distribution by the responsible entity for the Scheme out of the corpus of the Scheme and subject to the Scheme's constitution, and is not a liability of, and may not be recovered from, Omni Bridgeway or Omni Bridgeway Limited or any of its related bodies corporate.
 - 8.3 The Lawyers are not entitled to claim a lien in respect of documents in their possession relevant to the Proceedings if there are no fees payable pursuant to Term 5.
 - 8.4 The Lawyers will maintain professional indemnity insurance of at least \$10 million for the duration of these Terms plus three years.
 - 8.5 The Lawyers will provide evidence of the insurance to Omni Bridgeway on Omni Bridgeway's request.
9. Termination of these Terms
 - 9.1 The Lawyers may terminate these Terms on 7 days' written notice to Omni Bridgeway in the following circumstances:
 - 9.1.1 if Omni Bridgeway fails to pay any costs in accordance with these Terms after Omni Bridgeway has been given 30 days' written notice to do so; or
 - 9.1.2 if the Lawyers terminate all Retainer Agreements between the Lawyers and Funded Persons relating to the Proceedings in accordance with their right to do so.
 - 9.2 Omni Bridgeway may terminate these Terms:
 - 9.2.1 by giving written notice, upon an Insolvency Event occurring in relation to the Lawyers;
 - 9.2.2 by agreement with the Lawyers;
 - 9.2.3 upon 7 days' written notice to the Lawyers in the event of professional misconduct or negligence by the Lawyers that has caused or is reasonably likely to cause material loss to a Funded Person or to Omni Bridgeway; or
 - 9.2.4 upon 7 days' written notice if:

- (a) any of the Key Personnel cease to be engaged in providing the Legal Work; and
- (b) Omni Bridgeway does not consent to the Lawyers' proposed replacement of the relevant Key Personnel, such consent not to be withheld unreasonably.

9.3 If these Terms are terminated pursuant to either Term 9.1 or 9.2, the Lawyers remain liable for all obligations under these Terms accrued by them between the date of termination and the date of their appointment, but thereafter all obligations and entitlements of the Lawyers cease except:

9.3.1 the obligations to do those things set out in sections 6 and 7 of the Claim Funding Terms, where the Lawyers are not replaced by other solicitors to provide the Legal Work;

9.3.2 those entitlements under Term 6 (in respect of Legal Work up to the date of termination) and in respect of any Remaining Costs relating to such Legal Work payable out of any Resolution Sum, in each case, unless the termination of the Lawyers is under Term 9.2.3; and

9.3.3 the Lawyers shall continue to maintain any legal professional privilege attaching to, and the confidentiality of, the Project Information defined in the Claim Funding Terms.

9.4 If these Terms are terminated pursuant to Term 9.2.3 the Lawyers will be entitled only to payment under Term 6 in respect of Legal Work up to the date of termination subject to a deduction for the amount of the loss caused by the Lawyers' professional misconduct or negligence.

9.5 These Terms will terminate when the Scheme is terminated, such termination to take effect upon the last date on which the Scheme is in existence prior to being wound up. If there is a termination pursuant to this Term each party will remain liable for its obligations accrued to the date of termination. Nothing in these Terms shall affect or limit Omni Bridgeway's rights to terminate its funding arrangements with the Scheme.

10. Privacy

10.1 Each party must comply with all Privacy Laws in the performance of its obligations and the exercise of its rights and remedies under and in connection with these Terms and the Project.

10.2 The Retainer Agreement permits the sharing of Personal Information by the Lawyers with Omni Bridgeway in the manner contemplated by these Terms and the Project. Each party agrees that it will comply with all reasonable directions of the other party with regard to the collection, use, disclosure and sharing of their respective Personal Information, including in respect of the notification of incidents and resolution of complaints.

11. Confidentiality

11.1 The Lawyers agree to keep the contents of any original documents produced by Omni Bridgeway (or by Omni Bridgeway Limited or any of its related bodies corporate) to which the Lawyers have access (including Omni Bridgeway's Conflicts Management Policy) confidential and not to use them for any purpose other than the Project unless disclosure of any of this information by the Lawyers is agreed in writing by Omni Bridgeway or is required by law. The obligations in this Term 11.1 will survive the termination of these Terms.

12. Address for Service

12.1 Omni Bridgeway's address for service is as set out in the Scheme's constitution.

12.2 The Lawyers' address for service is the address identified on the first page of these Terms or as otherwise notified to Omni Bridgeway in writing if that address changes.

13. Variation

13.1 These Terms may only be varied in writing signed by the Lawyers and Omni Bridgeway.

Execution by the parties

SIGNED by **Omni Bridgeway (Fund 5)**)
Australian Invt. Pty Ltd)
ACN 635 083 984 in accordance with)
section 127 of the *Corporations Act*)
2001 (Cth))
)

_____)
Print Name:

Title:

Date:

_____)
Print name:

Title:

SIGNED by **Omni Bridgeway**)
Investment Management Limited)
ACN 642 086 593 in accordance with)
section 127 of the *Corporations Act*)
2001 (Cth))
)

_____)
Print Name:

Title:

Date:

_____)
Print name:

Title:

SIGNED for and on behalf of)
Somerville Legal Pty Ltd ACN 117 159)
172 by its duly authorised)
representative, in the presence of:)

Signature of authorised person
Print Name:
Position:
Date:

Witness signature
Print Name:
Address:

Occupation:
Date: