

**MAURICE BLACKBURN  
WOOLWORTHS LIMITED (WOW) CLASS ACTION  
RETAINER AND COSTS AGREEMENT**

**BETWEEN**

**The Claimant**

**and**

**Maurice Blackburn Pty Ltd**

<b>PLEASE COMPLETE</b>	
<b>NAME OF CLAIMANT</b> <i>being the person(s) who acquired an interest in shares of WOW during the period 29 August 2014 to 6 May 2015 inclusive, or such other period as Maurice Blackburn may advise.</i>	
<b>SIGNATURE</b> <i>being the person(s) who acquired an interest in shares of WOW during the period 29 August 2014 to 6 May 2015 inclusive, or such other period as Maurice Blackburn may advise.</i>	
<b>DATE OF SIGNATURE:</b>	

<b>SIGNED by Maurice Blackburn Pty Ltd</b>	<i>Maurice Blackburn Lawyers</i>
<b>DATE OF SIGNATURE:</b>	<b>5 July 2018</b>

**IMPORTANT:** This document is confidential and subject to a joint privilege. It should not be disclosed to any person without the prior written consent of Maurice Blackburn Pty Ltd. If you are not the intended recipient, any use, dissemination, forwarding, printing, or copying of this document and any attachments is strictly prohibited. If you have received this document in error, please telephone our Brisbane office on (07) 3016 0300.

**MAURICE BLACKBURN  
WOOLWORTHS LIMITED (WOW) CLASS ACTION  
RETAINER AND COSTS AGREEMENT**

**SCHEDULE**

**ABOUT THIS CASE**

- A. Claimant:** The person who enters into this agreement with Maurice Blackburn (**You**)
- B. Respondent(s):** Woolworths Limited (**WOW**) (ACN 000 014 675) and related entities and individuals
- C. Claims:** any claims the Claimant and other persons have or may have against the Respondent(s) arising out of, or connected with, breach by WOW or other parties of the *Corporations Act 2001* (Cth), ASX Listing Rules, or other applicable laws or regulations during the period 29 August 2014 to 6 May 2015 inclusive or during such other period as Maurice Blackburn advises

**ABOUT ANY FUNDING ARRANGEMENTS**

- D. Are these funded Claims?** Yes

***If yes to Item D:***

- E. Funder:** International Litigation Funding Partners Pte Ltd (**ILFP**)
- F. Are these Disbursements-only funded Claims?** No

**ABOUT ANY CONDITIONAL COSTS ARRANGEMENTS**

- G. Is this a conditional costs agreement?** Yes

***If yes to Item G:***

- H. Percentage of Professional Fees that are conditional:** 25%
- I. Is payment of Disbursements conditional?** No
- J. Does an Uplift Fee apply?** Yes
- K. Percentage uplift:** 25%

**ABOUT THE LAW GOVERNING THIS AGREEMENT**

- L. Jurisdiction governing this agreement:** Victoria

## YOUR RIGHTS

**You have the right:**

- to negotiate a costs agreement with us;
- to negotiate the billing method (for example, by reference to timing or task);
- to receive a bill from us and to request an itemised bill within 30 days after receiving a bill that is not itemised or is only partially itemised;
- in the event of a dispute about legal costs, to seek the assistance of the Legal Services Commissioner of the jurisdiction governing this agreement (Victoria);
- to be given information about any significant change to the basis on which legal costs will be calculated or any significant change to the estimate of total legal costs;
- on reasonable request, to a written report of legal costs incurred to date (or since any previous bill) provided without charge and within a reasonable period;
- to seek independent legal advice before entering into this agreement;
- to terminate this agreement under a 21 day cooling-off period.

## OUR ESTIMATE OF LEGAL COSTS

- Class Actions are complex and difficult and involve many Claimants.
- Legal Costs for the whole of the Class Action are likely to be substantial.
- The advantage of a Class Action is that costs may be shared by all Claimants.
- Maurice Blackburn has run numerous Class Actions since they were introduced in 1992. In shareholder cases, whilst our costs are not calculated by reference to how much is recovered for Claimants, our costs have on average been approximately 12–15% of the amounts recovered.
- For more information about our estimate of Legal Costs, see clause 10.

## IMPORTANT

**If you have any questions about legal costs or anything else in this document, please speak to us. It is important to us that you understand this agreement and the work we propose to do for you.**

## MAURICE BLACKBURN CLASS ACTIONS RETAINER AND COSTS AGREEMENT

### 1. ABOUT THE CLAIMS

- 1.1 The Claimant wishes to retain Maurice Blackburn to:
- a) investigate the Claims; and
  - b) if the Claims have merit, prosecute the Claims as a Class Action.
- 1.2 The Claimant has:
- a) read, understood, and approved this agreement and the information disclosed in this document; and
  - b) been informed of the Claimant's right to seek independent legal advice before entering into this agreement.
- 1.3 The Claimant acknowledges and agrees that Maurice Blackburn has, prior to the date of this agreement, and since February 2015 conducted Investigation Work which is:
- a) of benefit to the Claimant;
  - b) necessary for the prosecution of the Claims; and
  - c) Legal Work for which Legal Costs are payable.
- 1.4 The Claimant:
- a) requires funding for the investigation and prosecution of the Claims;
  - b) requires indemnity against any amounts owing under any Adverse Costs Order in the Proceedings; and
  - c) will not prosecute the Claims unless financial accommodation that satisfies the requirements in paragraphs 1.4(a) and (b) is secured and maintained.
- 1.5 If an Uplift Fee applies under Item J of the Schedule, Maurice Blackburn has a reasonable belief that a Successful Outcome is reasonably likely.
- 1.6 The Claimant acknowledges that, in prosecuting the Claims, Maurice Blackburn may enter into conditional costs agreements with barristers under which uplift fees may be payable, and that any and all amounts payable by Maurice Blackburn under those agreements are Disbursements.
- 1.7 The Claimant acknowledges that:
- a) a court can, and usually will, make an Adverse Costs Order; and
  - b) if such an order is made in favour of the Claimant in the Proceedings, the amount that the Claimant recovers from the Respondent(s) in respect of such a costs order will not necessarily cover the whole of, and may be considerably less than, the total amount of the Legal Costs payable under the terms of this agreement. Maurice Blackburn estimates that the amount which the Claimant would recover from the Respondent(s) in respect of such a costs order would be between 50% and 70% of the total Legal Costs payable under this agreement.

*Note: Any gap between total Legal Costs and costs recovered from the Respondent(s) will be paid from the Resolution Sum.*

### 2. CREATING A LEGALLY BINDING AGREEMENT

- 2.1. This agreement sets out the terms on which Maurice Blackburn will act for the Claimant and supersedes any prior agreement entered into between Maurice Blackburn and the Claimant in connection with the Claims.

- 2.2. This agreement is an offer by Maurice Blackburn to enter into a legally binding costs agreement with the Claimant. The Claimant accepts this offer and signs this agreement:
- a) by electronic communication to Maurice Blackburn that identifies the Claimant and indicates the Claimant's intention to accept this offer and sign this agreement, being a method of signing to which Maurice Blackburn hereby consents;
  - b) by affixing the Claimant's usual handwritten signature to a copy of this agreement and returning that copy to Maurice Blackburn; or
  - c) if the Claimant is other than a natural person, by executing a copy of this agreement in accordance with relevant law and returning that copy to Maurice Blackburn.
- 2.3. A facsimile or email transmission of this agreement signed by any party to it will be treated as an original signed by that party.

### **3. YOU HAVE A COOLING-OFF PERIOD**

- 3.1. The Claimant may, by written notice, terminate this agreement within 21 days of entering into this agreement. If the Claimant does so, the Claimant will not be liable to pay any amounts whatsoever under this agreement.

*Note: You can get out of this agreement for any reason and not pay us anything as long as you write to us and tell us you are terminating this agreement within 21 days of entering into this agreement.*

### **4. THE WORK WE DO FOR YOU**

- 4.1. The Claimant instructs Maurice Blackburn to:
- a) provide such legal advice, legal representation and other legal services to the Claimant, or for the Claimant's benefit, as Maurice Blackburn may consider reasonably necessary to:
    - i. prosecute the Claims and the Proceedings;
    - ii. negotiate a Settlement;
    - iii. perform Investigation Work;
    - iv. perform Common Benefit Work;
    - v. perform Individual Legal Work; and
    - vi. secure and maintain funding for the investigation and prosecution of the Claims;
  - b) make day-to-day decisions as to the prosecution of the Claims and the Proceedings save for where, in the reasonable professional opinion of Maurice Blackburn, specific instructions from the Claimant are required;
  - c) take and act upon instructions from the Representative, including in relation to any Settlement, save where in the reasonable professional opinion of Maurice Blackburn separate instructions are required from the Claimant;
  - d) obtain information about other persons' Claims, ensure the accuracy of that information, and maintain and manage a database of that information and/or ensure that the Funder obtains such information and maintains such a database;
  - e) conduct the Proceedings other than as a Class Action, if in Maurice Blackburn's opinion it is appropriate to do so;
  - f) receive any Resolution Sum on behalf of the Claimant and:
    - i. pay the Resolution Sum into an account kept for that purpose;
    - ii. combine in that one account amounts received in respect of the Claims made by more than one person (in which case separate records will be kept identifying any amounts received which are specific to particular persons);

- iii. pay to Maurice Blackburn out of the Resolution Sum (or out of any other sum held by Maurice Blackburn on trust for the Claimant) any amounts due for payment by the Claimant to Maurice Blackburn under this Agreement; and
- iv. otherwise disburse the Resolution Sum in accordance with this Agreement and, if these are funded Claims, the Funding Agreement;
- g) seek approval from a court for Maurice Blackburn to be paid a sum for Legal Costs, from money received in a Settlement in a Class Action;
- h) if the Funder so requests, enter into an agreement with the Funder governing Maurice Blackburn's investigation and prosecution of the Claims;
- i) if these are funded Claims:
  - i. consult with and consider the views of the Funder regarding the prosecution of the Claims and the Proceedings; and
  - ii. provide the Funder with the Claimant's confidential information, and with confidential updates of the prosecution of the Claims and the Proceedings.

The Claimant does not thereby intend to waive any Privilege between Maurice Blackburn and the Claimant which may attach to such communications; and

- j) if these are funded Claims, do anything reasonable and proper to facilitate the effective performance of the Funding Agreement according to its terms including, if necessary, to enforce payment of Legal Costs.

(clauses 4.1(a) to 4.1(j) are all **Legal Work**)

- 4.2. The Legal Work does not include, Maurice Blackburn shall not provide, and this agreement does not extend to, the provision of legal services in respect of:
  - a) possible claims against persons other than the Respondent(s);
  - b) other claims of the Claimant; or
  - c) taxation or revenue matters.
- 4.3. The Legal Work will be performed by persons filling the positions specified in Annexure A and such other persons as may be nominated from time to time by Maurice Blackburn.
- 4.4. The Claimant authorises Maurice Blackburn to retain and instruct counsel, experts and other persons or entities to assist in the prosecution of the Claims and the Proceedings.

## 5. WHAT YOU MUST PAY

- 5.1. Under this Retainer:
  - a) the Claimant's obligation to pay Legal Costs under clause 5.2 is conditional upon the Claimant entering into a Funding Agreement under which Legal Costs must be paid on the Claimant's behalf by the Funder;
  - b) Maurice Blackburn will not pursue the Claimant for payment of any Legal Costs; and
  - c) the Claimant hereby directs the Funder to pay to Maurice Blackburn all amounts the Claimant must pay to Maurice Blackburn under this agreement, when those amounts are due for payment.

*Note: As this is a conditional costs agreement, some of the Legal Costs are only due for payment if there is a Successful Outcome; see clause 6.*

- 5.2. Subject to clauses 5.1 and 6, the Claimant must pay Legal Costs to Maurice Blackburn for the Legal Work.

5.3. Legal Costs are due for payment upon Maurice Blackburn issuing a bill for Legal Costs.

*Note: Legal Costs are split into Professional Fees and Disbursements.*

5.4. Professional Fees are:

- a) calculated at the hourly rates (billable in units of six minutes or part thereof) set out in Annexure A; and
- b) if an Uplift Fee applies, subject to the charge of an additional amount under clause 7 if there is a Successful Outcome.

5.5. Maurice Blackburn may vary the hourly rates set out in Annexure A, effective 1 July each year. Maurice Blackburn will provide written notice to the Claimant of any such variation.

5.6. Disbursements are charged at cost, together with any applicable GST payable.

*Note: Disbursements Maurice Blackburn commonly incurs are barristers' and experts' fees, searching fees, fees payable to litigation technology service providers, lodging fees, travel expenses, courier fees and photocopying fees.*

5.7. The Claimant acknowledges and agrees that the amount of any Legal Costs calculated in accordance with this agreement may be higher than those calculated on the basis of any relevant court scale.

## 6. CONDITIONAL COSTS

6.1. The Claimant must pay to Maurice Blackburn the Professional Fees set out at Item H of the Schedule only if there is a Successful Outcome.

*Note: The Schedule states that 25% of Professional Fees are conditional, and the Funder will pay only 75% of those fees when we issue a bill. The remaining amount is paid only if there is a Successful Outcome.*

## 7. UPLIFT FEE

7.1. If there is a Successful Outcome, the Claimant must (subject to clause 7.2) pay to Maurice Blackburn an amount equal to a percentage (being the percentage set out at item K of the Schedule) of the amount payable under clause 6.1.

*Note: An Uplift Fee is an extra amount you must pay if there is a Successful Outcome. It is in addition to any Professional Fees that are also conditional on a Successful Outcome.*

*Example A: Our Professional Fees amount to \$10,000, and the Schedule states that the Percentage Uplift is 25% and 25% of Professional Fees are conditional.*

*The Funder pays 75% of our fees when we issue monthly bills, totalling \$7,500.*

*If there is a Successful Outcome the Funder also pays our conditional fees of \$2,500 plus 25% of \$2,500: \$625.*

*Total Professional Fees: \$10,625.*

7.2. Any Uplift Fee shall not be greater than the balance of the Resolution Sum after payment to the Funder from that Resolution Sum of amounts paid by the Funder in satisfaction of obligations owed by the Claimant under this Agreement.

7.3. An Uplift Fee is charged as a premium for conducting the Proceedings on a conditional fee basis and is warranted for the following reasons:

- a) the extensive, complex and specialised skill required to prosecute the Claims as a Class Action;

- b) the nature and circumstances of the Claims and the Proceedings, including their size and the amount and complexity of facts, evidence and documents to be considered; and
- c) the risk to Maurice Blackburn in entering into this conditional costs agreement.

## **8. BILLS AND STATEMENTS OF ACCOUNT**

- 8.1. Maurice Blackburn shall issue monthly itemised bills or statements of account for Legal Costs to:
- a) the Representative; and
  - b) the Funder.
- 8.2. A copy of each itemised bill or statement of account issued by Maurice Blackburn under this agreement will be made available for inspection by the Claimant at the offices of Maurice Blackburn or, upon the request of the Claimant, be delivered to the Claimant.
- 8.3. The Claimant acknowledges that:
- a) each bill or statement of account may include confidential communications subject to Privilege; and
  - b) disclosure of information contained in each bill or statement of account may offer strategic or tactical advantages to the Respondent(s).
- 8.4. The Claimant agrees that:
- a) the whole of the information contained in each bill or statement of account will be treated by the Claimant as strictly confidential;
  - b) the Claimant will not disclose information contained in any bill or statement of account to any other person except to the legal or financial advisors of the Claimant for the purpose of obtaining legal or financial advice; and
  - c) the Claimant hereby irrevocably consents to the making of orders restraining the Claimant from disclosing information contained in any bill or statement of account to any person save in accordance with clause 8.4(b).
- 8.5. The Claimant consents to receiving bills or statements of account:
- a) by fax to any fax number specified by the Claimant; or
  - b) electronically, by means of the Claimant's usual email address or mobile phone number (or another email address or mobile phone number specified by the Claimant).

## **9. INTEREST ON LEGAL COSTS**

- 9.1. The Claimant must pay interest to Maurice Blackburn on any amount in a bill for Legal Costs which remains unpaid for 30 days after Maurice Blackburn has given that bill to the Representative, with interest calculated from that date.
- 9.2. If this is a conditional costs agreement:
- a) Maurice Blackburn may, prior to any Successful Outcome, give to the Representative a statement of account for any Legal Costs that may become payable under clause 6; and
  - b) if there is a Successful Outcome, the Claimant must pay interest to Maurice Blackburn on any amount in a statement of account for Legal Costs payable under clause 6 from 30 days after the date that statement of account was given, with interest calculated from that date.
- 9.3. Interest payable under this clause 9 is calculated at the rate specified in or determined under reg 75 of the *Legal Profession Uniform General Rules 2015* (Vic).



## 10. OUR ESTIMATE OF LEGAL COSTS

10.1. As at the date of this agreement, Maurice Blackburn's estimates of the Legal Costs are as follows:

### **YOU WILL NOT PAY ANY AMOUNT UNLESS AND UNTIL THERE IS A SUCCESSFUL OUTCOME**

*Note: This estimate is for costs payable for Individual Legal Work and your share of Common Benefit Work costs and includes barristers' costs and other Disbursements.*

<b>YOUR SHARE OF COMMON BENEFIT WORK COSTS</b>	
<p><b>Note: Your share of Common Benefit Work Costs is calculated by reference to the value of Your Claim as a proportion of the total of all Claims.</b></p> <p>Without knowing the final totals of factors such as the amount of any Resolution Sum or the number of Claimants involved, it is impossible at this early stage to provide you with a practical estimate of the cost amount you will bear, other than to say it will never exceed any payment you are due upon success.</p> <p>We can however provide you with a practical example of how the cost proportion will work for you, based on the examples below:</p> <p>Example A:</p> <p>If the class action were to settle for \$100m inclusive of costs and disbursements of \$8m, a person whose share of the settlement was \$10,000 (before deduction of the Project Costs) would contribute \$800 towards legal costs.</p> <p>Example B:</p> <p>If the case were to resolve for \$70m inclusive of costs and disbursements of \$10m, a person whose share of the settlement was \$14,000 (before deduction of the Project Costs) would contribute \$2,000 towards legal costs.</p> <p>Please note that these examples do not take into account the amounts payable to the Funder pursuant to the Funding Agreement.</p>	
<b>INDIVIDUAL LEGAL WORK</b>	<b>ESTIMATE (inc GST)</b>
<p>In most of the cases we run, few if any individual costs are incurred because it is exceedingly rare for cases to progress to the point where individual claims are determined. If we were required to prosecute your individual case our current estimate of costs associated with that work is set out below:</p>	
Obtaining instructions	\$5,000
Preparing and settling individual damages claim	\$10,000

**ESTIMATE OF TOTAL COSTS BORNE BY THE FUNDER AND MAURICE BLACKBURN UNLESS THERE IS A SUCCESSFUL OUTCOME**

*Note: This estimate is for costs payable for Common Benefit Work and includes barristers' costs and other Disbursements. These costs will be borne by Maurice Blackburn or the Funder as indicated below unless there is a Successful Outcome, in which case they will be shared among Claimants (as set out above).*

<b>COMMON BENEFIT WORK COSTS</b>	<b>Professional Fees Paid by Funder (75%) (Incl GST)</b>	<b>Professional Fees borne by Maurice Blackburn (25%) (Incl GST)</b>	<b>Disbursements Paid by Funder (Incl GST)</b>
Merit investigation	\$710,820	\$236,940	\$113,300
Application & Statement of Claim	\$209,748	\$69,916	\$207,400
Particulars, defence, and close of pleadings	\$100,683	\$33,561	\$59,500
Discovery <sup>1</sup>	\$1,512,669	\$504,223	\$539,683
Subpoenas	\$60,951	\$20,317	\$17,100
Evidence	\$924,462	\$308,154	\$2,147,150
Interlocutory procedures	\$393,063	\$131,021	\$240,500
Settlement negotiations and mediation	\$249,843	\$83,281	\$140,950
Preparation for hearing	\$420,750	\$140,250	\$395,500
Multi-party function	\$448,932	\$149,644	\$70,000
Other (Including liaison with Funder)	\$103,818	\$34,606	\$0
Trial	\$642,510	\$214,170	\$780,600
<b>Total</b>	<b>\$5,778,249</b>	<b>\$1,926,083</b>	<b>\$4,711,683</b>

**ESTIMATE OF ANY UPLIFT FEE IN THE EVENT OF A SUCCESSFUL OUTCOME**

In the event of a Successful Outcome, an Uplift Fee of 25% is payable to Maurice Blackburn on the Conditional Percentage of Maurice Blackburn's Professional Fees. It is not reasonably practical to estimate the amount of any Uplift Fee, but if all of the above steps are necessary to secure the Successful Outcome, the Uplift Fee would be approximately \$500,000 (incl GST).

*Note: These are preliminary estimates based on our current understanding of the Claims. They are not binding on us. We will give you revised estimates if our view changes.*

10.2. The Claimant acknowledges that it has been made aware that:

- a) these estimates are not quotes and are subject to change;

<sup>1</sup> Discovery costs assume 20,000 documents. For each additional 1,000 documents allow an additional \$57,600 in professional fees paid by funder, \$19,200 in professional fees borne by Maurice Blackburn and \$6,700 in disbursements.

- b) the estimates in clause 10.1 are made on the basis of information available to Maurice Blackburn at the date of this agreement and are subject to change as more information becomes available to Maurice Blackburn and as the prosecution of the Claims proceeds;
- c) the major variables that will affect the total Legal Costs for the Common Benefit Work are:
  - i. the length of time required for the investigation;
  - ii. the amount of evidence required to be gathered;
  - iii. the strategy/tactics adopted by the Respondent(s);
  - iv. how far the prosecution of the Claims proceeds before it is concluded;
  - v. the length of the trial, if the prosecution of the Claims does not conclude prior to trial;
  - vi. the number of witnesses and experts required to provide reports, information and evidence;
  - vii. unexpected problems, the co-operation of other persons and administrative and other delays beyond the control of Maurice Blackburn; and
  - viii. the complexity of the issues that arise in investigating and prosecuting the Claims;
- d) the major variables that will affect the total Legal Costs for the Individual Legal Work are:
  - i. unexpected problems, the co-operation of other persons and administrative and other delays beyond the control of Maurice Blackburn;
  - ii. the amount of evidence required to be gathered in connection with the specific Claims of the Claimant; and
  - iii. the complexity of the issues that arise in investigating and prosecuting the specific Claims of the Claimant; and
- e) the major variables that will affect the calculation of any Uplift Fee are set out in clauses 10.2(c) and 10.2(d).

## 11. YOUR OBLIGATIONS

11.1. The Claimant must (without limiting any other obligations of the Claimant under this agreement):

- a) provide full and honest instructions to Maurice Blackburn in a timely manner;
- b) cooperate in the preparation of the Claims and do all that Maurice Blackburn reasonably asks in a timely manner;
- c) accept and follow Maurice Blackburn's reasonable legal advice, including advice as to reasonable offers of Settlement;
- d) inform Maurice Blackburn promptly of any changes to the Claimant's address, e-mail address, phone number or name;
- e) not discuss any aspect of the Claims, the Proceedings or related issues with the media without the prior approval of Maurice Blackburn;
- f) use best endeavours to hold the Funder to its obligations under the Funding Agreement, including by instructing Maurice Blackburn to act on the Claimant's behalf to resolve any dispute with the Funder in respect of the Funding Agreement; and
- g) without limiting clause 11.1(f), take all reasonable steps, at Maurice Blackburn's expense, to recover any outstanding costs payable to Maurice Blackburn by the Funder under the Funding Agreement. Clause 5.1 does not prevent Maurice Blackburn from seeking any orders necessary to enforce this clause.

11.2. The Claimant acknowledges that all information, communications and documents provided to it at any time by Maurice Blackburn or the Funder, or their respective officers, servants or agents,

in relation to the Claims, are or may be, and must be treated as, confidential information within the meaning of equity, and “confidential communications” or “confidential documents” within the meaning of Part 3.10 of the *Evidence Act 1995* (Cth), and may be subject to Privilege that the Claimant is not authorised to waive.

11.3. The obligation in clause 11.2 is a continuing obligation requiring strict compliance, and survives any Termination of this agreement. The Claimant must not attempt to adduce evidence of the information, communications or documents the subject of clause 11.2 without the express written authority of Maurice Blackburn.

## 12. ENDING THIS AGREEMENT

12.1. This agreement may be terminated by Maurice Blackburn:

- a) if there is a breach of any of the obligations set out in clause 11;
- b) ceasing to be the solicitors acting in the Proceedings;
- c) if the Claimant terminates the Funding Agreement;
- d) if it would be unlawful for Maurice Blackburn to continue to act for the Claimant;
- e) if there is a potential or actual conflict of interest in Maurice Blackburn continuing to act for the Claimant;
- f) if Maurice Blackburn forms the opinion that a Successful Outcome resulting in a substantial benefit to the Claimant is not reasonably likely;
- g) if, under clause 13.5, the Claimant objects to Maurice Blackburn changing the terms of this agreement; or
- h) if any amounts payable to Maurice Blackburn under this agreement are not paid within 30 days of the date due for payment.

12.2. This agreement will be terminated by the Claimant:

- a) filing a notice in the form prescribed by any rules of court for the purposes of opting out of the Proceedings by any date set by a court by which the Claimant may file such notice;
- b) failing to file a notice in the form ordered by a court for the purposes of opting in to the Proceedings by any date set by a court by which the Claimant may file such notice;
- c) if there is a Settlement approved by a court in a Class Action that affects the Claimant, being removed from the effect of that Settlement;
- d) effecting a Settlement other than a Settlement approved by a court in a Class Action;
- e) failing to accept an offer that arises from or is related to the Legal Work and is one that Maurice Blackburn reasonably recommends the Claimant accept as a Settlement;
- f) entering into a written agreement with Maurice Blackburn to do so;
- g) giving 7 days' written notice of termination to Maurice Blackburn if there is serious misconduct by Maurice Blackburn; or
- h) giving written notice of termination to Maurice Blackburn, for any reason, prior to the later of:
  - i. the expiry of any applicable cooling-off period in this agreement; or
  - ii. if these are funded Claims, the expiry of any cooling-off period in the Funding Agreement.

12.3. If there is a Termination under clause 12.1, or any of clauses 12.2(a) to (f), the Claimant must pay to Maurice Blackburn (subject to clause 5):

- a) all Legal Costs payable under clause 5.2 as at the date of Termination;

- b) if this is a conditional costs agreement, and if there is a Successful Outcome after the date of Termination:
    - i. all Legal Costs payable under clause 6; and
    - ii. any Uplift Fee;
 incurred for Legal Work performed prior to the date of Termination; and
  - c) all interest payable under clause 9 (including interest payable after the date of Termination).
- 12.4. If there is a Termination under clause 12.2(g), the Claimant must pay to Maurice Blackburn:
- a) all Legal Costs payable under clause 5.2 as at the date of Termination; and
  - b) all interest payable under clause 9 (including interest payable after the date of Termination).
- 12.5. If there is a Termination under clause 12.2(h), the Claimant will not be liable to pay any amounts whatsoever under this agreement.
- 12.6. The Claimant agrees:
- a) irrevocably, that Maurice Blackburn shall notify the Funder of any Termination of this agreement by the Claimant;
  - b) at Maurice Blackburn's expense, to take all reasonable steps to recover any outstanding amounts payable to Maurice Blackburn by the Funder under the Funding Agreement; and
  - c) that it will notify Maurice Blackburn if it takes any of the steps set out in clauses 12.2(a) to 12.2(d).

### **13. GENERAL MATTERS**

- 13.1. The law of the jurisdiction set out at item L of the Schedule applies to the Legal Costs and to this agreement.
- 13.2. When this matter is completed Maurice Blackburn will return all of the Claimant's documents to the Claimant at the Claimant's request provided there are no outstanding Legal Costs owing. Otherwise, those documents will remain in Maurice Blackburn's possession for a period of seven years after the date the last bill of costs is sent to the Claimant. After seven years, the Claimant authorises Maurice Blackburn to destroy the documents and the Claimant's file. If the Claimant requires access to the Claimant's file, the Claimant will have to pay the reasonable costs of accessing those stored documents. The Privacy Statement at Annexure B further explains the Claimant's privacy rights and how Maurice Blackburn will collect, use and disclose information about the Claimant.
- 13.3. If any provision in this agreement or part thereof is held to be invalid, unenforceable or illegal for any reason, the agreement shall otherwise remain in full force, except for such prohibited clause or part thereof.
- 13.4. Failure by Maurice Blackburn to enforce any of Maurice Blackburn's rights or remedies under this agreement on any one or more occasions does not constitute a waiver of those rights and remedies for all time.
- 13.5. Maurice Blackburn may reasonably change the terms of this agreement and will provide 30 days' written notice to the Claimant of any such change. The Claimant is presumed to agree to the change unless the Claimant gives written objection to Maurice Blackburn prior to the date the change takes effect.
- 13.6. Unless otherwise specified, in this agreement all amounts payable are expressed as inclusive of GST. Where an amount payable is expressed as exclusive of GST and the supply is subject to GST, the applicable GST will be added to that amount.

13.7. In this document, headings, notes, the boxed text on page 3 headed 'Your rights', 'Our estimate of legal costs' and 'Important', are not terms, and do not form any part, of this agreement.

## 14. DEFINITIONS

In this document:

<b>Adverse Costs Order</b>	means a court order requiring a person to pay costs incurred by a successful party in litigation.
<b>Agreement</b>	means this Retainer and Costs Agreement.
<b>Claimant</b>	means the person at Item A of the Schedule.
<b>Claims</b>	are defined at Item C of the Schedule.
<b>Class Action</b>	means a proceeding under Part IVA of the <i>Federal Court of Australia Act 1976</i> (Cth) or equivalent legislation in other jurisdictions.
<b>Common Benefit Work</b>	means Legal Work investigating, preparing, prosecuting, and resolving issues for the common benefit of all Claimants making Claims in the Proceedings.
<b>Conditional Percentage</b>	means the percentage stated at Item H of the Schedule.
<b>Costs</b>	means Legal Costs.
<b>Disbursements</b>	means any expense Maurice Blackburn incurs, whether as principal or as agent on the Claimant's behalf, in relation to the Legal Work.
<b>Funder</b>	means the person or entity (or where there is more than one Funder, the persons or entities) set out at Item E of the Schedule.
<b>Funding Agreement</b>	means the funding agreement between the Claimant and the Funder relating to the Claims.
<b>GST</b>	has the same meaning given to the term "GST" in the GST Act.
<b>GST Act</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Individual Legal Work</b>	means Legal Work solely pertaining to the specific Claims of the Claimant.
<b>Investigation Work</b>	means: <ul style="list-style-type: none"> <li>a) legal analysis and factual analysis and investigation to determine whether the Claimant and other persons have Claims with reasonable prospects of success which are appropriate to pursue as a Class Action; and</li> <li>b) securing funding for the investigation and prosecution of the Claims.</li> </ul>
<b>Legal Costs</b>	means Professional Fees and Disbursements taken together.
<b>Legal Work</b>	is defined at clause 4.1.
<b>Maurice Blackburn</b>	means Maurice Blackburn Pty Ltd (ABN 21 105 657 949) ( <b>We</b> or <b>Us</b> ).
<b>Privilege</b>	means legal professional privilege and includes any joint interest privilege or common interest privilege as recognised at law.
<b>Proceedings</b>	means any legal proceedings to prosecute the Claims and includes legal proceedings brought in contemplation of such proceedings, including any ancillary proceedings including, without limitation, applications for inspection of a company's books or for preliminary discovery.
<b>Professional Fees</b>	means Maurice Blackburn's fees for Legal Work, excluding Disbursements.
<b>Project Costs</b>	means the total monies paid by the Funder pursuant to clause 5 of the Funding Agreement.

- Representative** means any person who is, or, if Proceedings have yet to be issued, who has agreed with Maurice Blackburn to be, the representative party in a Class Action to prosecute the Claims.
- Resolution Sum** means:
- a) an amount or amounts, or the value of goods or services, received on account of Settlement or judgment in respect of the Claims, in favour of the Claimant (or the Representative on behalf of persons including the Claimant), including the value of any favourable terms of future supply of goods or services and including any interest; as well as
  - b) any amounts received by or on behalf of the Claimant under an order made by a court, or by agreement, that a person pay some or all of the costs and disbursements incurred by any person with Claims (including costs and disbursements incurred in any interlocutory proceedings).
- For the avoidance of doubt the Resolution Sum includes any amounts and the value of any goods and services received on account of Settlement or judgment in respect of the Claims, which is paid or provided by or on behalf of any entity from whom some or all of the Respondents assert or could assert a claim for contribution.
- Respondent(s)** means the person at Item B of the Schedule and any other party:
- a) named by the Claimants as a defendant or respondent in the Proceedings, or
  - b) which Maurice Blackburn recommends be joined to Proceedings commenced or yet to be commenced and, if these are funded Claims, the joinder of whom the Funder agrees to fund.
- Settlement** means any settlement, compromise, discontinuance or waiver of all or part of the Claims, or all or part of any one Claim.
- Successful Outcome** is:
- a) a verdict or award of money in favour of the Claimant in connection with the Claims of the Claimant and/or the Representative;
  - b) the recovery of money as a result of any Settlement, including a Settlement completed after termination of this agreement;
  - c) a Settlement approved by a court in a Class Action, whether or not accepted by the Claimant;
  - d) an offer to the Claimant that arises from or is related to the Legal Work and is one that Maurice Blackburn reasonably recommends the Claimant accept as a Settlement; or
  - e) a final order for costs, being an order made in connection with the final disposition of the Claimant's or the Representative's Claims.
- Termination** means a termination in accordance with clauses 12.1 or 12.2, or any completion, failure, avoidance, rescission, annulment or other cessation of effect of this agreement.
- Uplift Fee** means any amounts payable under clause 7.1.



**ANNEXURE A  
HOURLY RATES**

<b>Person / Position</b>	<b>Hourly Rate (ex GST)</b>	<b>Hourly Rate (incl GST)</b>
Principal	\$765	\$841.50
Special Counsel	\$680	\$748
Senior Associate	\$600	\$660
Associate	\$530	\$583
Lawyer	\$440	\$484
Trainee Lawyer	\$360	\$396
Law Clerk/Paralegal	\$300	\$330
Litigation Technology Consultant	\$255	\$280.50

## **ANNEXURE B PRIVACY STATEMENT**

Maurice Blackburn respects your privacy and is committed to protecting your personal information. This Policy outlines our obligations in managing personal information about our clients, potential clients, contractors and others. We are bound by the Australian Privacy Principles contained in the *Privacy Act 1988* (Cth).

### **Personal information we collect and hold**

'Personal information' is information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether true or not, and whether recorded in a material form or not.

In general, the type of personal information we collect and hold includes (but is not limited to): names, birth dates, addresses, contact details, occupations, medical history and treatment, memberships and associations, financial and tax records, family situations and other information which assists us in conducting our business, providing and marketing our services and meeting our legal obligations.

Some personal information which we collect is 'sensitive information'. Sensitive information includes information about a person's racial or ethnic origin, political affiliation, religious affiliation, mental health, disability, trade union or other professional or trade association membership, sexual preferences and criminal record, and other health information.

Personal information is generally collected and held about clients, associates and potential clients, suppliers and their employees, and prospective employees, employees and contractors.

### **How we collect and hold personal information**

We will generally collect personal information by way of forms filled out by people, face-to-face meetings, interviews, business cards, telephone conversations and from third parties. We also collect personal information from our web site and the internet, through receiving subscription applications and emails. We also use third parties to analyse traffic at that web site, which may involve the use of cookies. Information collected through such analysis is anonymous.

In some circumstances we may be provided with personal information about an individual from a third party, for example a report provided by a medical professional or a reference from another person.

We hold personal information in secure and confidential files maintained in paper and/or electronic form. Sometimes personal information held by us is securely stored with third party data storage providers. We take all reasonable steps to protect personal information held by us from misuse and loss and from unauthorised access, modification or disclosure, for example by use of physical security and restricted access to electronic records.

The privacy of your information is important to us and we will take reasonable steps to ensure that information about you is not subject to the danger of being lost, destroyed or damaged or of being accessed by unauthorised parties. However we cannot guarantee the security of information about you and do not accept liability if, despite our efforts, loss or damage arises from a failure to maintain privacy.

### **Why we collect, hold, use and disclose personal information**

We collect, hold, use and disclose personal information for the purposes of:

- (a) providing legal and related services including the establishment, exercise or defence of a legal or equitable claim, the utilisation of a confidential alternative dispute resolution process, and securing litigation and/or disbursement funding,

- (b) assessing and processing inquiries and requests for the provision of our services,
- (c) marketing, including direct marketing and market research and analysis,
- (d) the general conduct and management of our business, including provision and enhancement of our services and purchasing goods and services from others, and
- (e) meeting our legal obligations.

If the personal information we request is not provided, we may not be able to provide the relevant service.

### **Access your personal information held by us**

You have rights to access and seek correction of your personal information held by us, as set out in Australian Privacy Principles 12 and 13. Please address all requests for access and correction of personal information to our Privacy Officer, David Halstead on 03 9605 2700 or [privacy@mauriceblackburn.com.au](mailto:privacy@mauriceblackburn.com.au).

### **Complaints**

If you are unhappy with the manner in which we have dealt with your personal information, or if you believe that we have breached our obligations under Australian privacy law, please contact our Privacy Officer, David Halstead on 03 9605 2700 or [privacy@mauriceblackburn.com.au](mailto:privacy@mauriceblackburn.com.au) and we will do our best to respond to you within a reasonable time (normally, one month). If after that time we have not resolved your complaint, you may refer your complaint to the [Office of the Australian Information Commissioner](#) on 1300 363 992 or [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au).

### **Disclosure of personal information to overseas entities**

There may be situations where we consult overseas-based experts regarding your claim or your matter is funded by an overseas-based litigation funder. If these situations apply to you, we will be required to disclose your personal information to recipients outside Australia. To the best of our knowledge at this time, any such recipients would likely be located in Canada, Ireland, the Netherlands, Singapore, the United Kingdom or the United States.