

# WOOLWORTHS CLASS ACTION FUNDING AGREEMENT

BETWEEN

The Claimant

and

International Litigation Funding Partners Pte Ltd ("**the Funder**") together ("**the Parties**")

## CLAIMANT DETAILS

Please enter the name and details of the individual or company that is entering this agreement with International Litigation Funding Partners Pte Ltd.

Individual/Company

Name:

"the Claimant".

Country of incorporation:  
(if applicable)

ACN:  
(if applicable)

Registered address:

The Woolworths Class Action Funding Agreement is executed as an Agreement.

SIGNED by Fred Rose for International Litigation Funding Partners Pte Ltd	 x..... SIGNATURE DATE: / / 2018
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SIGNED by or on behalf of and with the authority of the Claimant (as specified above)*	x..... NAME OF SIGNATORY x..... POSITION OR ROLE (IF APPLICABLE) x..... EMPLOYER NAME (IF APPLICABLE) x..... CAPACITY TO SIGN FOR CLAIMANT (IF APPLICABLE)	x..... SIGNATURE DATE: / / 2018
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\* Please sign if you are the claimant. Alternatively, if this Agreement is signed by a duly authorised representative of the Claimant, the signatory hereby represents and warrants to International Litigation Funding Partners Pte Ltd that he/she/it has due power and authority in respect of each Claimant named (and in any additional pages to this Agreement) to enter into and bind each Claimant to perform its obligations under this Agreement.

**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.

**WOOLWORTHS CLASS ACTION FUNDING AGREEMENT  
BETWEEN**

**The Claimant**

and

**International Litigation Funding Partners Pte Ltd (the "Funder")**

(together the "**Parties**")

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**RECITALS**

- A. The Claimant and other persons have or may have Claims against the Respondent.
- B. The Claimant wishes to bring proceedings, or have proceedings brought by some other Funded Person, in respect of the Claims. The Claimant and the Funder have agreed that the Funder will provide financial assistance to the Claimant in connection with the prosecution of the Claims upon the terms set out below.

**AGREEMENT**

**1. DEFINITIONS**

In this Agreement, unless the contrary intention appears:

- 1.1. "**Acceptance**" means acceptance of this Agreement by the Claimant and includes Electronic Acceptance and "Accepted" shall be construed accordingly.
- 1.2. "**Agreement**" and "**Funding Agreement**" mean this funding agreement and if amended this agreement as amended.
- 1.3. "**Claimant**" means the person who enters this Agreement with the Funder.
- 1.4. "**Claims**" means the claim or claims the Claimant and other persons has or may have against some or all of the Respondent and Other Parties arising out of, or connected with, breach by the Respondent 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 such other period as the Lawyers advise and the Funder accepts.
- 1.5. "**Class Action**" means a proceeding under Part 10 of the *Civil Procedure Act 2005* (NSW), Rule 7.4 of the *Uniform Civil Procedure Rules 2005* (NSW), Part 13A of the *Civil Proceedings Act 2011* (Qld), Chapter 3 Part 1 (Div 5) of the *Uniform Civil Procedure Rules 1999* (Qld), Part 4A of the *Supreme Court Act 1986* (Vic), Order 18 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic), Part IVA of the *Federal Court of Australia Act 1976* (Cth), or Division 9.2 of the *Federal Court Rules 2011* (Cth), or equivalent proceedings.
- 1.6. "**Costs Order**" means an order made by a court requiring one or more parties to the Proceedings to pay the costs incurred by another party or parties to the Proceedings.
- 1.7. "**Date of Commencement**" means the date on which a copy of this Agreement, signed by the Claimant, is delivered to the Lawyers, or the date on which this Agreement is Accepted by the Claimant.

- 1.8. **“Electronic Acceptance”** means an electronic indication of the Claimant’s identity and the Claimant’s intention to accept this Agreement on, and in accordance with instructions provided on, a website administered by the Lawyers.
- 1.9. **“Electronic Offer”** means the publication of this Agreement on a website administered by the Lawyers for the purpose of offering this Agreement to prospective Funded Persons.
- 1.10. **“Fair Market Value”** means the amount at which an asset, equity or liability could be exchanged in an arms-length transaction between informed and willing parties, other than in a forced or liquidation sale.
- 1.11. **“Funded Person”** means any person who has entered into an Other Funding Agreement. Except where the context otherwise indicates, Funded Persons include the Claimant.
- 1.12. **“Gross Recovery”** means the gross amount payable by way of Settlement or judgment in respect of the Claims, excluding any costs.
- 1.13. **“Group Settlement”** means a Settlement of the Proceedings or part of the Proceedings approved by the Court.
- 1.14. **“Lawyers”** means the lawyers, Maurice Blackburn Pty Ltd (ACN 105 657 949) or any firm of lawyers appointed in their place by the Claimant after consultation with the Funder.
- 1.15. **“Notice of Opting Out”** means a notice in the form prescribed by the Rules of Court for the purposes of opting out of Proceedings commenced as a Class Action.
- 1.16. **“Opt Out Date”** means any opt out date set by the Court in the Proceedings by which date the Claimant may give Notice of Opting Out of the Proceedings.
- 1.17. **“Other Funding Agreement”** means any agreement for the provision of funding by the Funder to a person with the same, similar or related claims as the Claims.
- 1.18. **“Other Parties”** means any other entity or persons which the Lawyers recommend be joined to proceedings commenced or to be commenced against the Respondent, the joinder of whom the Funder agrees to fund.
- 1.19. **“Privilege”** unless the context otherwise requires means legal professional privilege and includes any joint interest privilege or common interest privilege.
- 1.20. **“Proceedings”** means any legal proceedings to prosecute the Claims and claims of Funded Persons and includes a proceeding brought in contemplation of Proceedings, including without limitation, proceedings for preliminary discovery.
- 1.21. **“Relevant Shares”** means the number of Woolworths Shares purchased by the Claimant in the period covered by the Claims and held as at close of business on the last day of the period covered by the Claims.
- 1.22. **“Representative”** means any Funded Person who is the lead applicant or representative party in a Class Action.
- 1.23. **“Resolution”** means when all or any part of the Resolution Sum is received and where the Resolution Sum is received in parts, a “Resolution” occurs each time a part is received.
- 1.24. **“Resolution Sum”** means the amount or amounts, or the value of any goods or services, for which the Claims are settled, or for which judgment is given, including the value of any favourable terms of future supply of goods or services and including any interest and including costs recovered pursuant to a Costs Order or by agreement. For the avoidance of doubt, the Resolution Sum includes the Claimant’s share of the aggregate of amounts that are deducted from any unfunded class members under a “funding equalisation order” (if made by the Court) and redistributed to Funded Persons, such share to be determined by reference to the proportion that the Claimant’s Gross Recovery bears to the total Gross Recovery of all Funded Persons.
- 1.25. **“Respondent”** means Woolworths and any Other Parties named as defendants or respondents in the Proceedings.
- 1.26. **“Settlement”** means any settlement, compromise, discontinuance or waiver of the Claims or part of the Claims and “settles” shall be construed accordingly.

- 1.27. **“Termination”** means:
- (a) a termination in accordance with clause 17 or 18;
  - (b) any exercise of a right of withdrawal under the cooling-off period provided in clause 3; and
  - (c) any completion, failure, avoidance, rescission, annulment or other cessation of effect of this Agreement.
- 1.28. **“Woolworths”** means Woolworths Ltd (ACN 000 014 675).
- 1.29. **“Woolworths Share”** means an ordinary fully paid share issued by Woolworths.

## **2. GENERAL**

- 2.1. The written terms of this Agreement constitute the entire agreement between the parties.
- 2.2. Nothing in this Agreement shall constitute the Claimant and the Funder as partners, joint venturers or fiduciaries.
- 2.3. There shall be no variation or amendment to the terms of this Agreement except in accordance with clause 12.
- 2.4. A facsimile or email transmission of this Agreement signed by any party to it will be treated as an original signed by that party.
- 2.5. The Funder may offer this Agreement by way of an Electronic Offer, in which case:
- (a) the Funder acknowledges that the method used to make the Electronic Offer is as reliable as appropriate for the purpose for which the Electronic Offer is generated and communicated, in light of all of the circumstances; and
  - (b) the Funder agrees that making the offer as an Electronic Offer has the same effect, for all purposes, as affixing a signature to the Agreement.
- 2.6. If the Funder offers this Agreement by way of an Electronic Offer, the Claimant may effect Electronic Acceptance, in which case:
- (a) the Claimant acknowledges that the method used to effect Electronic Acceptance is as reliable as appropriate for the purpose for which the Electronic Acceptance is generated and communicated, in light of all of the circumstances; and
  - (b) the Claimant agrees that effecting Electronic Acceptance has the same effect, for all purposes, as affixing a signature to the Agreement.
- 2.7. If any provision of this Agreement, or the application thereof to any person or circumstances, shall be or become invalid or unenforceable, the remaining provisions shall not be affected and each provision shall be valid and enforceable to the full extent permitted by law.
- 2.8. The Claimant and the Funder will promptly execute all documents and do all things that either of them from time to time reasonably requires of the other to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by it.
- 2.9. The singular includes the plural and vice versa.

## **3. COOLING OFF PERIOD**

- 3.1. The Claimant may, by written notice given to the Funder, within 21 days from the Date of Commencement, withdraw from this Agreement without cost. Time is of the essence.
- 3.2. If the Claimant withdraws in accordance with clause 3.1, the Claimant shall have no continuing or further obligation to the Funder save for any obligations of confidence arising in respect of information received by the Claimant prior to the withdrawal. Nothing in clause 3.1 shall derogate from any obligations in relation to Privilege attaching to any information received by the Claimant prior to the withdrawal.

#### 4. OBLIGATIONS OF CLAIMANT

- 4.1. In recognition of the fact that the Funder has an interest in the Resolution Sum and an interest in the efficient and effective prosecution of the Proceedings, the Claimant irrevocably directs the Lawyers to consult with the Funder with regard to any significant issue in the Proceedings and to properly consider its views as to the conduct of the Proceedings. The Claimant also irrevocably directs the Lawyers to promptly respond to any reasonable request by the Funder for information relating to the Proceedings. Notwithstanding the above:
- (a) the Claimant shall retain and provide instructions to the Lawyers; and
  - (b) the Funder accepts that the Lawyers' professional duties are owed to the Claimant and not to the Funder.
- 4.2. The Claimant must:
- (a) inform the Lawyers of any change in contact details or any information, circumstance or change in circumstances likely to affect any issue in the Proceedings;
  - (b) provide full and honest instructions to the Lawyers;
  - (c) conduct the Proceedings in such manner as to avoid unnecessary cost and delay; and
  - (d) accept and follow the Lawyers' reasonable legal advice.
- 4.3. The Claimant agrees that all information, communications and documents provided to it at any time by the Lawyers, the Funder or their respective officers, servants or agents in relation to the Claims:
- (a) is or may be, and will 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
  - (b) may be subject to joint interest privilege that the Claimant is not at liberty to waive.
- 4.4. The Claimant will not disclose any information to which clause 4.3 refers to any other person without the prior written consent of the Funder (if the information was provided by it) or the Lawyers (if the information was provided by them).
- 4.5. The Claimant:
- (a) will not during the period of this Agreement have any communication with the Respondent, its officers, servants or agents relating to the Claims or any compromise of the Claims other than through the Lawyers or upon their reasonable advice; and
  - (b) will not, after any Termination, disclose to the Respondent any information of a kind referred to in clause 4.3.
- 4.6. For the avoidance of doubt, the obligations in clauses 4.3, 4.4 and 4.5 survive Termination.
- 4.7. Save where advised otherwise by the Lawyers, and subject to such conditions as the Lawyers may advise, the Claimant will authorise the Lawyers to provide to the Funder information communicated to or by potential and actual witnesses. Any information provided pursuant to this clause shall be treated by the Funder as:
- (a) confidential; and
  - (b) subject to Privilege that the Funder is not at liberty to waive.
- 4.8. The Claimant agrees that the Representative will give binding instructions to the Lawyers and make binding decisions on behalf of the Claimant in relation to the Claims and claims of Funded Persons, including but not limited to instructions and decisions in relation to Settlement.
- 4.9. The Claimant irrevocably authorises and requires the Lawyers to:
- (a) immediately advise the Funder of any settlement discussions with the Respondent or their advisors and to invite the attendance of a representative of the Funder to attend the same;
  - (b) immediately report in detail to the Funder any settlement discussions that occur at which a representative of the Funder is not in attendance;

- (c) consult with the Funder as to the terms of any proposed settlement;
  - (d) arrange a joint conference as to the terms of any proposed settlement, if requested by the Funder to do so, between the Funder, the Representative, the Lawyers and Senior Counsel briefed in the Proceedings.
- 4.10. In recognition of the fact that the Funder has an interest in the Resolution Sum and the efficient and effective prosecution of the Proceedings, the Claimant and the Funder irrevocably agree that if there is a disagreement between the Funder and the Representative as to the appropriate terms for settlement of the Proceedings:
- (a) the Lawyers will brief Senior Counsel to provide an advice as to whether the proposed settlement is reasonable having regard to all the circumstances;
  - (b) a representative of the Funder may attend any conference with Senior Counsel at which the issue is to be discussed;
  - (c) the legal costs of obtaining the advice shall be met by the Funder as part of the reasonable costs of the Proceedings; and
  - (d) the advice of Senior Counsel will be final and binding on both the Claimant and the Funder.
- 4.11. Under clause 4.10 above, in determining whether a proposed settlement is reasonable having regard to all the circumstances, Senior Counsel may proceed as he or she sees fit to inform himself or herself before forming and delivering his or her advice, but any such determination shall include the following considerations:
- (a) the strengths and weaknesses of the claims of all Funded Persons;
  - (b) the quantum of the claims of all Funded Persons and any difficulties which might exist in proving that quantum;
  - (c) the recoverability of a judgment sum from the Respondents or any one of them;
  - (d) the extent to which further legal costs incurred in the Proceedings are likely to be recoverable from the Respondents or any one of them;
  - (e) the risk of the Funder being ordered to pay adverse costs and the quantum of such costs. Counsel will have regard to this factor as though all Funded Persons carried such risk rather than the Funder;
  - (f) the matters set out in paragraph [248.95] of the Australian Securities and Investments Commission's *Regulatory Guide 248: Litigation schemes and proof of debt schemes: Managing conflicts of interest* (April 2013); and
  - (g) any other matter Counsel considers relevant.

## **5. FUNDING**

- 5.1. The Funder will pay:
- (a) all legal costs and disbursements of the Claimant reasonably incurred by and payable to the Lawyers (including in respect of counsel) and the cost of any expert or experts in connection with the preparation and prosecution of the Proceedings and of any settlement negotiations, including any amounts in relation to GST payable by the Lawyers, insofar as those costs were incurred either before or during the term of this Agreement; and
  - (b) any Costs Order which the Court makes in the Proceedings against any Funded Person in favour of the Respondents (or any one or more of them), in so far as those costs were incurred during or before the term of this Agreement.
- 5.2. The Lawyers will be paid directly by the Funder on behalf of the Claimant during the Proceedings upon tax invoices being rendered by the Lawyers to the Funder.
- 5.3. As soon as reasonably practicable upon any request from the Lawyers, the Funder will provide a written undertaking to those Respondents who are named in the Proceedings to pay any Costs Order which the Court makes in the Proceedings against any Funded Person in

favour of those Respondents (or any one or more of them), in so far as those costs were incurred during or before the term of this Agreement.

- 5.4. The Funder will provide any security for costs in the Proceedings, in the form that the Court orders, or in the absence of any order in such other form as the Funder determines and the Respondents accept, relating to costs incurred during or before the term of this Agreement.
- 5.5. In order to secure its obligations under clauses 5.1(b), 5.3 and 5.4 above the Funder will procure an irrevocable Standby Letter of Credit, or Letter of Guarantee, or such other form of security as the Lawyers require, in favour of the Lawyers and in a form, and for such amount, and with such institution as the Lawyers require, and will do so:
  - (a) prior to the commencement of the Proceedings; and
  - (b) annually thereafter; and
  - (c) at any time during the currency of the security referred to in this clause, within 30 days of any request by the Lawyers.

## **6. OTHER OBLIGATIONS OF THE FUNDER**

- 6.1. The Funder:
  - (a) will not retain the Lawyers for any purpose connected with this Agreement or connected with any Proceedings to which this Agreement applies;
  - (b) will inform the Claimant in writing if the Funder retains or commences to retain the Lawyers for a purpose not connected with this Agreement or any Proceedings to which this Agreement applies, but this obligation shall not:
    - (i) require the Funder to disclose any confidential or privileged information; nor
    - (ii) require the Funder to disclose the fact that the Funder is providing funding to other persons in connection with claims or proceedings that are unrelated to the Claims and the Proceedings and in which the Lawyers are acting;
  - (c) will provide such assistance as the Lawyers may reasonably request from time to time and the costs thereof shall form part of the costs for which the Funder is liable under this Agreement;
  - (d) will comply with and implement procedures to meet the requirements of regulation 7.06.01AB of the *Corporations Regulations 2001* (Cth); and
  - (e) will inform the Claimant in writing if the Funder breaches regulation 7.06.01AB of the *Corporations Regulations 2001* (Cth).
- 6.2. Where any information is provided to the Funder by the Claimant or the Lawyers for a purpose connected to this Agreement or any Proceedings to which this Agreement applies the Funder shall:
  - (a) strictly maintain the confidentiality of the information;
  - (b) adopt proper and effective procedures for maintaining the confidentiality and safe custody of the information;
  - (c) ensure that access to the information is only provided to the Funder's staff (or the staff of the Funder's manager or advisers, provided such persons enter into a confidentiality agreement in a form reasonably required by the Lawyers) who are engaged in the functions for which the information was provided to the Funder;
  - (d) only use the information for purposes for which the information was provided;
  - (e) not disclose the information contained therein to any person other than the Lawyers or Counsel retained in the Proceedings; and
  - (f) return all records of the information to the Lawyers at the conclusion of all Proceedings to which this Agreement and Other Funding Agreements apply.

## **7. APPEALS**

- 7.1. If the Proceedings are wholly or partly unsuccessful, or any appeal from the Proceedings is wholly or partly unsuccessful, and Senior Counsel, briefed by the Lawyers, advises that there are reasonable grounds to appeal, or further appeal, as the case may be, the Claimant agrees that the Lawyers may commence and prosecute an appeal, or further appeal, on the Claimant's behalf, or for the benefit of the Claimant (if the Claimant is not a Representative), provided the Funder has, pursuant to clause 7.3, elected to provide funding for that purpose.
- 7.2. If the Proceedings are wholly or partly successful, or any appeal from the Proceedings is wholly or partly successful, and any one or more of the Respondents lodges an appeal, the Claimant agrees that the Lawyers may defend such appeal, or further appeal, on the Claimant's behalf, or for the benefit of the Claimant (if the Claimant is not a Representative) provided the Funder has, pursuant to clause 7.3, elected to provide funding for that purpose.
- 7.3. The Funder may elect to fund any appeal or the defence of any appeal, or any further appeal, or the defence of any further appeal, in respect of the Proceedings, by notice in writing to the Claimant.
- 7.4. If the Funder makes an election under clause 7.3 to provide funding, such funding will be on the terms of this Agreement, and the term "Proceedings" wherever used in this Agreement will be treated as including a reference to the appeal the subject of the notice.

## **8. RECEIPT OF RESOLUTION SUM**

- 8.1. The Claimant acknowledges that:
  - (a) the conduct of Proceedings will or may encourage some or all of the Respondents to seek to compromise claims including the Claimant's Claims; and
  - (b) Proceedings may have the effect set out in clause 8.1(a) above notwithstanding that the Claimant may have terminated this Agreement and terminated its involvement in the Proceedings.
- 8.2. The Claimant irrevocably authorises and directs the Lawyers to receive any Resolution Sum and to immediately pay any Resolution Sum into an account kept for that purpose.
- 8.3. If the Claimant obtains any Settlement or obtains any judgment in respect of the Claims, it will:
  - (a) treat any money, other asset or benefit received from the Respondent in connection with the Settlement or judgment as the Resolution Sum; and
  - (b) cause the money, or an amount being the reasonable market value of the asset or benefit, to be delivered to the Lawyers to be dealt with as part of the Resolution Sum.
- 8.4. The obligation in clause 8.3 is a continuing obligation and survives any termination of this Agreement save for a termination pursuant to clause 18.1.

## **9. APPLICATION OF RESOLUTION SUM AND COSTS ORDER**

- 9.1. The Claimant irrevocably authorises and directs the Lawyers forthwith to pay out of the account referred to in clause 8.2 above all payments referred to in clause 10.1.
- 9.2. Subject to any Court order, if a lump sum amount is received by way of Settlement, the balance, after firstly deducting all amounts as permitted by this Agreement, and secondly deducting any amounts as permitted by any retainer with the Lawyers entered into in connection with the Proceedings, will be distributed to Funded Persons on a pro rata basis by reference to the Gross Recovery of all Funded Persons.
- 9.3. If any of the consideration received in respect of a Settlement or judgment is other than money, the Claimant will, upon receipt of the consideration, pay to the Lawyers for deposit into the account referred to in clause 8.2 above, an amount equal to the value of the consideration (as determined by clause 10.2 below).

## **10. COSTS AND COMMISSION**

- 10.1. Upon Resolution, the Claimant will pay to the Funder or its nominee, from the Resolution Sum:



- (a) an amount equal to the Claimant's share of the total monies paid by the Funder pursuant to clause 5 above and the equivalent clause in Other Funding Agreements, such share to be determined by reference to the proportion that the Claimant's Gross Recovery bears to the total Gross Recovery of all Funded Persons; plus
- (b) subject to any Court order, an amount equal to a percentage of the Resolution Sum where that percentage is determined in accordance with the table below by reference to the number of Woolworths Shares purchased by the Claimant in the period covered by the Claims and held as at close of business on the last day of the period covered by the Claims (i.e. number of Relevant Shares), as follows:

<b>Number of Relevant Shares</b>	<b>Percentage of Resolution Sum</b>
<b>Less than or equal to 75,000</b>	35%
<b>More than 75,000 and less than 150,000</b>	32.5%
<b>Greater than or equal to 150,000</b>	30%

For the avoidance of doubt and in accordance with the definition of "Claimant" in clause 1.3, where a Claimant holds or held Relevant Shares in more than one capacity, each such holding will be treated as a separate holding and the number of Relevant Shares held by a Claimant in different capacities will not be aggregated for the purposes of determining the "Number of Relevant Shares" held by the Claimant for the above table; plus

- (c) if, pursuant to clause 7 above, the Funder funds an appeal, or the defence of an appeal, or any further appeal or the defence of any further appeal, a further 5% of the Resolution Sum in respect of each appeal so funded.
- 10.2. If the Resolution Sum is not money, the value of the consideration received will be calculated by reference to the Fair Market Value of the consideration.
- 10.3. If there is a dispute between the Parties as to the Fair Market Value of the consideration in clause 10.2, the Parties agree:
- (a) to refer the matter to the President of the Victorian Bar to appoint a relevant valuer to assess the Fair Market Value of the consideration; and
  - (b) the decision of the appointed valuer to assess the Fair Market Value of the consideration will be final and binding on the Parties; and
  - (c) the costs of such appointment shall be borne equally between the Parties.
- 10.4. No fees, commissions or other payments will become due or owing by the Claimant to the Funder unless and until Resolution and then will not exceed the Resolution Sum.

## **11. NO CHARGE OR OTHER ENCUMBRANCE**

- 11.1. The Claimant warrants that there is no charge or other encumbrance on the Resolution Sum as at the date of this Agreement.
- 11.2. The Claimant will not cause or permit any charge, lien or other encumbrance to arise over or otherwise attach to the Resolution Sum after the date of this Agreement, except with the prior written consent of the Funder.

## **12. VARIATION AND AMENDMENT**

- 12.1. The Funder may reasonably vary or amend the terms of this Agreement by providing written notice to the Claimant of the variation or amendment.
- 12.2. A variation or amendment made in accordance with clause 12.1 takes effect 21 days after the notice has been given to the Claimant, or such longer period as the Funder determines and indicates in the notice.

## **13. WARRANTIES AND COVENANTS**

- 13.1. Each Party represents and warrants to the other that:
  - (a) it has the full power to enter into this Agreement and perform its obligations under this Agreement;
  - (b) its obligations under this Agreement are valid and binding on it and (subject to the power of any court to withhold any discretionary remedy) are enforceable in accordance with their terms;
  - (c) the execution of this Agreement, and the performance of its obligations under this Agreement, does not and will not contravene any contractual restriction or any existing applicable law or regulation binding on it;
  - (d) if the Party is or includes a natural person, either:
    - (i) the Party is not an insolvent under administration (as defined in s 9 of the *Corporations Act 2001* (Cth)) and is not the subject of any proceedings that may lead to an order being made against the estate of the person under bankruptcy legislation; or
    - (ii) the action contemplated by this Agreement is brought by the person's trustee;
  - (e) if the Party is or includes a corporation, either:
    - (i) no order or application has been made or resolution passed or other action taken for the appointment of a liquidator or administrator to the corporation or of a receiver to any or all of its assets; or
    - (ii) the action contemplated by this Agreement is brought by or with the consent of the corporation's liquidator, administrator or receiver.
- 13.2. The Claimant represents and warrants to the Funder that it has not assigned, charged or created any legal or equitable interest in or otherwise encumbered the Resolution Sum or any right, claim or other chose in action the Claimant seeks to enforce in the Proceedings.

## **14. MISCELLANEOUS**

- 14.1. The Claimant and the Funder will:
  - (a) act in good faith toward each other and be just and faithful in their dealings with each other in all matters arising out of or connected with this Agreement; and
  - (b) save as provided in this Agreement, not do or permit to be done any thing likely to deprive any party of the benefit for which the party entered this Agreement.
- 14.2. If this Agreement or any part thereof is annulled, avoided or held unenforceable the Claimant will forthwith do all things necessary, including without limitation executing any further or other agreement or instrument, to ensure that the Funder receives any remuneration, entitlement or other benefit to which this Agreement refers or is contemplated by this Agreement. The Claimant irrevocably agrees that production of a copy of this Agreement shall be conclusive evidence of the Claimant's undertaking as set out in this clause.
- 14.3. The Claimant will not seek any order from any court that may detrimentally affect the Funder's rights under this Agreement other than with the consent of the Funder.
- 14.4. If the Claimant acts in breach of this Agreement, clauses 8, 9 and 10 will continue to apply to any consideration received by the Claimant in respect of the Claims.

- 14.5. The Claimant and the Funder will keep the contents of this Agreement confidential in so far as it concerns the terms of the relationship between the Claimant and the Funder, except where disclosure is required by law or disclosure is, in the Funder's absolute discretion, made by the Funder to the Respondent or their agents.
- 14.6. The Claimant acknowledges and accepts that the Funder either has entered into or will enter into Other Funding Agreements. The Claimant also accepts that it is possible that if the Proceedings are conducted as a Class Action there may be members of the class who have not entered into a funding agreement with the Funder. Termination of this Agreement will not affect the Funder's right to do any thing authorised or contemplated by any Other Funding Agreement.

## **15. DURATION OF AGREEMENT**

- 15.1. This Agreement commences on the Date of Commencement and continues in operation until:
- (a) the Proceedings, and any appeal funded by the Funder, have concluded; and
  - (b) the Funder has complied with all of its obligations arising pursuant to this Agreement or Other Funding Agreements, and the Resolution Sum (if any) has been disbursed in accordance with the said agreements,
- unless terminated earlier in accordance with clause 17 or 18 of this Agreement.

## **16. NO ASSIGNMENT**

- 16.1. A Party must not assign, transfer or encumber its interest (or any part thereof) in this Agreement without the prior written consent of the other Party.
- 16.2. The Funder may, at any time, by written notice to the Claimant, nominate another entity to assume the rights and obligations of the Funder under this Agreement provided that the Funder shall continue to be jointly and severally liable with that entity for all such obligations for the duration of this Agreement, and subject to the written approval of the Lawyers, which shall not be unreasonably withheld.

## **17. TERMINATION BY THE FUNDER**

- 17.1. The Funder is entitled, at its sole discretion, to terminate its obligations under this Agreement, other than obligations accrued, by giving 7 days written notice to the Claimant that the Agreement and the Funder's obligations are terminated.
- 17.2. If the Funder terminates its obligations pursuant to clause 17.1 above then it will not be entitled to any payment pursuant to clause 10.1(b) or 10.1(c) but will continue to be entitled to receive payment pursuant to clause 10.1(a) although only from any Resolution Sum. The obligations in this clause are continuing obligations and survive any termination of this Agreement.
- 17.3. All obligations of the Funder under this Agreement cease on the date the Funder's termination becomes effective, save for obligations accrued to that date, and the Funder shall account to the Claimant for any money held by the Funder on behalf of the Claimant which is payable to the Claimant pursuant to the terms of this Agreement.
- 17.4. The accrued obligations of the Funder referred to in clauses 17.1 and 17.3 comprise:
- (a) payment of any outstanding costs pursuant to clause 5.1 incurred up to the date of the notice of termination;
  - (b) indemnification of the Claimant for any costs and disbursements reasonably incurred and payable to the Lawyers up to the date of notice of termination; and
  - (c) payment of any quantified Costs Order against the Claimant in the Proceedings in respect of costs which arise in, or are attributed to, the period ending on the date the Funder's termination becomes effective.

## **18. TERMINATION BY CLAIMANT**

- 18.1. If the Funder commits a serious breach of this Agreement and does not remedy the breach within 30 days after receiving written notice from the Claimant or the Representative requiring it to do so, the Claimant may terminate this Agreement forthwith by written notice to the Funder.
- 18.2. If the Funder commits a breach of regulation 7.06.01AB of the *Corporations Regulations 2001* (Cth) and does not remedy the breach within 30 days after providing notice of the breach to the Claimant pursuant to clause 6.1(e) above, the Claimant may terminate this Agreement forthwith by written notice to the Funder.
- 18.3. The Claimant may terminate this Agreement immediately by giving notice in writing of such termination to the Funder on the happening of any of the following events:
- (a) if the Funder has a receiver or administrator appointed to the whole or any substantial part of its assets; or
  - (b) if any order is made or a resolution passed for the winding up of the Funder;
- and further, any termination under this clause will be without prejudice to the rights of the Claimant in relation to anything done or omitted under this Agreement before such termination or in relation to any monies or other claims outstanding at the time of termination.
- 18.4. If there is a Group Settlement that affects the Claimant and the Claimant rejects the Group Settlement, or settles the Claims otherwise, the Claimant will be deemed to have terminated this Agreement. This Agreement will terminate upon a Notice of Opting Out being given by the Claimant by the Opt Out Date and in the manner ordered by the Court.
- 18.5. If the Funder provides notice of a variation or amendment to this Agreement in accordance with clause 12.1, the Claimant may terminate this Agreement by providing written notice of the termination to the Funder within 21 days of the date of the notice of the variation or amendment.
- 18.6. If this Agreement is terminated by the Claimant pursuant to clause 18.1, 18.2 or 18.3 above then:
- (a) the Funder remains liable for the obligations referred to in clause 17.4 above; and
  - (b) the Claimant will not be required to make any payment to the Funder under clause 10 above.
- 18.7. If this Agreement is terminated pursuant to clause 18.4 or 18.5 above and there is a Resolution of the Claims of the Claimant at that time or at any later time, clause 8.3 will continue to apply and the Claimant will be liable to pay the Funder, from the Resolution Sum, the amounts set out in clause 10.1 above. The obligations in this clause are continuing obligations and survive any termination of this Agreement.

## **19. DISPUTE RESOLUTION**

- 19.1. In the event of a dispute between the Claimant and the Funder in relation to any matter arising under or in connection with this Agreement or the conduct of the Proceedings, other than a dispute as to the terms for Settlement of the Proceedings (as to which see clause 4 above), the Parties agree that the following provisions shall apply.
- 19.2. The Parties must seek to negotiate, in good faith, a resolution of the dispute with the assistance (if available) of counsel briefed in the Proceedings.
- 19.3. If the Parties are unable to resolve the dispute under clause 19.2 within 7 days of the dispute arising (or such longer period as the Parties agree), the dispute will be referred to mediation. The mediator will be such suitably qualified person as the Parties agree or, failing agreement, as nominated by the President of the Victorian Bar. The costs of the mediation shall be borne equally by the Parties.
- 19.4. If, at the conclusion of the mediation referred to in clause 19.3, the Parties have still not resolved their dispute, the Parties agree that the dispute will be referred back to the counsel briefed in the Proceedings for the purpose of making a determination. In making a determination counsel may proceed as he or she sees fit to inform himself or herself before making the determination, and the Parties agree that the determination of counsel will be final

and binding on them. The costs of obtaining counsel's determination shall be borne equally by the Parties.

## **20. GOVERNING LAW**

20.1. This Agreement is to be construed in accordance with and governed by the laws of Victoria, Australia, and the parties submit to the exclusive jurisdiction of the Courts of that State.

## **21. NOTICES**

21.1. All notices given under this Agreement shall be in writing and may be served personally, by post, facsimile or by email.

21.2. A copy of any notice of termination of this Agreement given or received by the Funder shall be served on the Lawyers by the Funder.

21.3. A copy of any notice of termination of this Agreement given or received by the Claimant shall be served on the Lawyers by the Claimant.

21.4. The address for service of the Funder will be:

International Litigation Funding Partners Pte Ltd  
Anson Road  
#27-01 Springleaf Tower  
SINGAPORE 079909

21.5. The address for service of the Claimant will be the address of the Claimant provided to the Lawyers on Acceptance, or otherwise as notified to the Funder or the Lawyers in writing if that address changes.

21.6. The address for service of the Lawyers shall be the address specified in the Proceedings for the service of Court documents.

21.7. Notices shall be deemed to be received on the day after they are posted and the day they are transmitted by facsimile or email.

[End of Agreement]