

CHALMERS LEGAL STUDIO
COSTS AGREEMENT
TERMS AND CONDITIONS

1. DISCLOSURE AND COSTS AGREEMENT

- 1.1 The Engagement Letter and these Terms and Conditions constitute a Disclosure Notice and Costs Agreement ("Document") under the Uniform Law between Chalmers Legal Studio and you.
- 1.2 This Document relates to you in your capacity directly as a Client and also as an Associate of a Client. An Associate is any person that has agreed to pay the Legal Costs of the Client or entity for whom we have agreed to act. If there is no Associate then the reference to the Associate wherever it appears in this Document is to be ignored.
- 1.3 These Terms and Conditions form a part of our contract with you for the provision of legal services to you.

2. INTERPRETATION

- 2.1 In this Document a reference to the following words has the meaning set out adjacent to them, unless the context otherwise requires:

“**Associate**” has the meaning given to it in clause 1.2;

“**Client**” means the person described as the client in the Engagement Letter;

“**Costs Agreement**” means the offer we have made to you to enter into an agreement for the provision of legal services to you which covers the payment of Legal Costs and other matters governing the provision of legal services to you or at your request;

“**Disbursements**” mean moneys we spend or are liable to spend on your behalf, examples of which are set out in this Document;

“**Disclosure Notice**” means this Document including the Engagement Letter which is sent to you in conjunction with it;

“**Document**” has the meaning given to it in clause 1.1;

“**Engagement Letter**” means the document entitled Engagement Letter which is or has been sent to you in conjunction with this Document and which forms part of this Document.

“**GST**” has the meaning given to it in clause 11.1;

“**Legal Costs**” means your Professional Fees and Disbursements;

“**Lump Sum Fee**” has the meaning given to it in Clause 7.1;

“**Professional Fees**” means the fees charged for the performance of work of any one or more of our lawyers and staff on your matter or for any work that we undertake at your request;

“**Scope of Work**” means the legal services to be performed by us described in that part of the Engagement letter entitled Scope of Work or similar;

“**Terms and Conditions**” means the terms and conditions set out in this Document and which with the Engagement Letter forms part of the Costs Agreement;

“**Time Charge Fee**” has the meaning given to it in clause 8.1;

“**Uniform Law**” means the Legal Profession Uniform Law (WA);

“**Uniform General Rules**” means the Legal Professional Uniform General Rules.

2.2 In this Document:

“**Chalmers Legal Studio**” is referred to in this Document as “**we**”, “**us**” or “**our**”;

“**The Client**” s referred to as “**you**” or “**your**”; and

If there is an “**Associate**” then the reference to “**you**” or “**your**” is also a reference to the Associate, where relevant.

3. THIS DOCUMENT IS A PART OF OUR COSTS AGREEMENT AND RETAINER WITH YOU

3.1 This Document includes any Engagement Letter, email, letter or other communication that we send to you that refers to it.

3.2 By accepting our offer to undertake legal services at your request, including providing instructions to us to undertake legal services, you acknowledge having received and read this Document.

3.3 In the event of any inconsistencies or conflict between the terms of this Document and any Engagement Letter or written communication with you over the terms of our Costs Agreement with you to provide legal services then:

3.3.1 The terms of the Engagement Letter or other written communication shall have precedence;

3.3.2 This Document shall be read down to be consistent with the Engagement Letter or other written communication.

3.4 No oral communication shall prevail over the Costs Agreement and you agree and confirm that you did not, and will not in future, rely upon any oral communication that is not later reduced to writing and communicated by us to you.

4. LEGAL COSTS - YOUR RIGHTS

4.1 You have the right to:

4.1.1 Negotiate a Costs Agreement with us;

4.1.2 Negotiate a method of billing (e.g task based or time based)

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- 4.1.3 Receive a bill of costs from us;
 - 4.1.4 Request an itemised bill of costs within 30 days after you receive a lump sum bill or partially itemised bill from us or it is payable;
 - 4.1.5 Request written reports about the progress of your matter and the Legal Costs incurred in your matter;
 - 4.1.6 Apply for Legal Costs to be assessed within twelve (12) months if you are unhappy with our Legal Costs;
 - 4.1.7 Apply for the Costs Agreement to be set aside;
 - 4.1.8 Accept or reject any offer we make for an interstate costs law to apply to your matter;
 - 4.1.9 Notify us that you require an interstate costs law to apply to your matter; and
 - 4.1.10 Be notified of any significant change in the matters disclosed in this Document affecting costs.
- 4.2 This Document provides you with information about our legal services, the cost of those services and your rights.
- 4.3 Further you have the right in certain circumstances to notify us in writing in accordance with the time limits of the corresponding law that you require the law of another jurisdiction to apply. The following avenues are open to you under the terms of the Uniform Law in the event of a dispute in relation to Legal Costs:
- 4.3.1 To apply for a costs assessment within twelve (12) months of delivery of a bill or request for payment or such extended time as may be permitted by the court or costs assessor after considering the reason for the delay (except sophisticated clients as defined in the Uniform Law;
 - 4.3.2 To apply to set aside the Costs Agreement within six years or other time as the law permits.

5. SCOPE OF WORK

- 5.1 The legal services to be provided by us are set out in that part of the Engagement Letter entitled Scope of Work or similar. It is important that you read the Scope of Work carefully to ensure we are not proposing to undertake work you do not want us to do and that the Scope of Work does actually include all the services you wish us to provide.
- 5.2 We are not responsible to advise you upon, nor to act to protect your interests in any way, in relation to a matter that is not within this Scope of Work. Hence, even if there is an issue that you have that relates to a matter that we are conducting for you, we are not responsible in any way for any loss that you suffer as a consequence of us not advising you unless you instruct us to consider the same and we agree to do so.
- 5.3 You agree by instructing us in future, that the terms and conditions set out in this Document and Costs Agreement act as a master retainer for all matters that we are instructed by you to undertake in the

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future. This is so even if we do not send to you an Engagement Letter or other correspondence for that new additional work.

5.4 You acknowledge and agree that:

5.4.1 we do not offer any advice in relation to the commercial viability or the taxation implications of any particular matter unless we specifically take on this responsibility in writing in the Scope of Work;

5.4.2 you have neither requested nor require us to advise you on tax matters in respect of your instruction other than as may be described in the Scope of Work;

5.4.3 there may be tax issues or consequences which we will not consider when we give our advice or prepare any documents in respect of your instruction;

5.4.4 you should take specialist tax advice when considering acting on our advice or entering into any document we prepare for you in response to your instruction;

5.4.5 you have been given the opportunity to obtain other legal advice including specialist tax advice prior to entering into the Costs Agreement.

6. HOW ARE YOUR PROFESSIONAL FEES CALCULATED?

6.1 In general terms, your Professional Fees will either be calculated on the basis of:

6.1.1 a lump sum; or

6.1.2 according to the time spent on the matter.

6.2 If no method is set out in the Engagement Letter you then you agree to our usual time costing rates.

6.3 The Engagement Letter sets out the basis of our charging for each matter.

6.4 If no Engagement Letter is sent, and work is conducted under a master retainer, the time costing method is applied until otherwise agreed in writing.

7. WHAT IS A LUMP SUM FEE?

7.1 A Lump Sum Fee is where we agree to perform specific legal services for a fixed Professional Fee which is fixed.

7.2 The Lump Sum Fee is based on information you give to us prior to entering into the Costs Agreement and upon us only being required to carry out the legal services specified.

7.3 If we have to undertake additional legal services outside the legal services described in the Scope of Works for any reason there will be an additional charge for that legal service and it will be charged and calculated on a time basis.

7.4 The Engagement Letter will specify whether or not a Lump Sum Fee is applicable and the amount of the Professional Fee.

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7.5 The Engagement Letter will estimate the Disbursements to be incurred by us.

8. WHAT IS TIME CHARGE?

8.1 Where we charge on a time basis, everyone in the practice who carries out chargeable work on your matter will record their time for the legal services they carry out.

8.2 We will charge on a time basis for legal services carried out by paralegals or people undertaking paralegal work. Paralegal work comprises things that are done by a person that does not hold a current practicing certificate as a legal practitioner but who undertakes work in substitution for work that a lawyer would otherwise perform. The work may include: conferences, telephone calls, drafting letters and documents, reading letters or other documentation, conducting searches, preparing instructions for briefs to experts, external consultants or barristers, legal research, attendances at court and similar activities. It does not include typing and work of a purely clerical or administrative nature.

8.3 Each person has their own level of skill, experience and training and their own hourly rate of charge. The rates for the various categories of lawyers and for paralegal work will be set out in the Engagement Letter. However, as it possible that people other than those specifically named may perform some work on your matter that are not listed, you agree that our usual rates for each person that does work for you applies, on the basis that you have a right to review the same within the time period allowed by law for you to review our accounts.

8.4 We may send to you an updated Engagement Letter or communication updating you on these rates at any time. Unless specified to the contrary, the hourly rates are exclusive of GST and may, by notice to you, change from time to time.

8.5 Should any change in the rate increase by more than CPI - Consumer Price Index (All Groups Figures for the City of Perth) ("CPI"), as set out below, you agree with us that you can terminate our retainer within fourteen (14) days. If you provide instructions for us to undertake further work after this communication has been received by you then you agree to those new rates applying.

8.6 In the absence of any notice to the contrary, you agree that the rates notified to you will be automatically be increased on 1 July each year by an amount equal to any upward movement in the CPI in the twelve (12) month period ending 31 March immediately preceding 1 July. At our option we may choose not to charge you this increase each year.

8.7 When we charge Professional Fees on a time basis, we charge in blocks, or units of six (6) minutes. Each unit or part unit is therefore charged at one-tenth of the appropriate hourly charge out rate. This means that attendances of up to six (6) minutes may be counted as one (1) unit.

9. DISBURSEMENTS

9.1 In addition to Professional Fees, you agree to pay all Disbursements properly incurred by us in acting for you or acting in accordance with your instructions. These include barrister's fees, search fees, enquiry fees, registration fees, courier fees, cost of expert consultants, medical reports, court fees, filing and lodgement fees, banking charges, government revenue charges, stamp duty, transaction specific banking charges, process servers and investigators, clinical records from hospitals, medical, experts' reports and other external consultants, agents' fees including other solicitors used as agents, travel and

accommodation, witness fees and expenses, transcript fees and fees for copies of documents from other sources.

9.2 If we become liable to pay any interest on any liability for Disbursements as a consequence of delay on your part to reimburse us, then you agree to us passing that charge on to you.

10. ESTIMATING LEGAL COSTS

10.1 It is difficult for any legal practice to give an accurate quotation of how much a particular matter will cost unless the exact scope of the work to be carried out can be determined in advance. Where we are charging Professional Fees on a time basis the Engagement Letter will set out our estimate or range of estimates of the professional fees and disbursements.

10.2 The estimates are based on the information available at the time the Costs Agreement is entered into and the estimates will probably change when more information is available to us. The overall cost of a matter will be directly related to the complexity of the matter, the time spent on it and the disbursements incurred.

10.3 The major factors which will affect the estimates include: the number and type of matters in dispute; decisions made by other parties; changes in your instructions; ease or difficulty in taking instructions; additional information provided by you or ascertained by us; and problems discovered or arising during the conduct of the matter.

10.4 These are just some of the things which can have a significant bearing on the overall Legal Costs and which may result in quite a variation to any estimate which has been given to you. The Engagement Letter may also set out other factors specific to your matter that may affect the Legal Costs payable.

10.5 Unless we clearly state otherwise, any figures given to you for Legal Costs are estimates only and not a firm quotation. Any estimate that we give is neither a quote nor a cap on what we will charge you.

10.6 We will use our best endeavours to update any estimates should we believe that an estimate is likely to be inaccurate and you are entitled to have us provide you with an up-to-date estimate of the cost of work to date and our expectation of what further Legal Costs will be incurred, at any time during the conduct of a matter on your behalf.

11. GST

11.1 In this Document:

11.1.1 GST means any tax on goods and/or services including any value-added tax, broad based consumption tax or other tax of a similar nature and, without limiting the above, specifically include GST within the meaning of the GST Act;

11.1.2 GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended); and

11.1.3 GST Law means any law which applies during any part of the Costs Agreement regardless of when it was created and which imposes or purports to impose or otherwise deals with the administration or imposition of a GST on the supply of goods and/or services in Australia.

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- 11.2 Unless otherwise specified, the Legal Costs described in this Document (including the Engagement Letter) for the supply of goods or services are exclusive of GST. If we do quote a GST exclusive fee then, if GST is payable in relation to any goods or services we supply, the amount of GST will be added to the GST exclusive supply price attributable to any supply and is payable by you at the time our bill is given to you.
- 11.3 We can also ask you to pay any GST which we may have to pay on reimbursement of Disbursements in excess of any input tax credit which we are entitled to receive for the Disbursements. We will advise you of the amount you have to pay for GST on Legal Costs when our bill is given to you. The amount is payable by you when our bill is given to you.

12. **BILLS**

- 12.1 Bills will be sent to you containing information on Professional Fees, Disbursements and GST at the times set out in the Engagement Letter. For the purpose of the Costs Agreement, you will be deemed to have received our bill if it is:
- 12.1.1 Given to you or to your agent personally - on the day it is given to you;
 - 12.1.2 Sent to you at the address specified in the Engagement Letter or to your agent by post - within two (2) business days of posting;
 - 12.1.3 Sent to you by facsimile transmission - on the day that it is transmitted to your facsimile number unless our facsimile system generates a message indicating unsuccessful transmission; and
 - 12.1.4 Sent to you by electronic communication - on the day that it is sent unless we receive a message stating that our email transmission was unsuccessful.
- 12.2 Although we may set out the individual items of work and the charges applicable to them you agree that we are not obliged to do this unless you specifically request it. We may furnish bills with a general description of the work undertaken and Disbursements incurred called a Lump Sum Fee.
- 12.3 When we send a bill at various intervals during a matter, each bill is a final bill for the work performed and disbursements incurred for that interval. We will ask for payment even if you have paid a retainer fee or other instalment payment into our trust account.
- 12.4 Please note that if you do not pay our bills when due or our requests for payment into our trust account are not paid when requested, then we have the right to stop work on your matter.
- 12.5 However, regardless of whether we do or do not continue with the work, you are still responsible for payment of our Legal Costs. If you have any queries about the amount of our Legal Costs or the work to which the bill relates, please talk to the person who is handling the matter or the Legal Director of Chalmers Legal Studio.
- 12.6 Where you communicate with us by email, then for the purposes of Section 290(6)(d) of the Uniform Law, your email address shall be an address to which we can send bills to you by email, and where our bills are sent to you by email, the requirement for our bills to be signed is met by the name of the legal director being inserted where the words "With Compliments Chalmers Legal Studio" appears, or by an

electronic signature of the legal director or an Australian Legal Practitioner in the employ of Chalmers Legal Studio being inserted where the words "With Compliments Chalmers Legal Studio" appear in the bill.

13. FAILURE TO PAY OUR BILL

- 13.1 Our bills are payable on receipt.
- 13.2 If you do not pay a bill within thirty (30) days of giving you the bill then you agree to pay to us interest on the same from the date when each account sent to you states it was due for payment at the rate prescribed under the Uniform Law.
- 13.3 You also agree that we may charge Legal Costs for all reasonable attendances needed to collect payment of outstanding debts on a time basis. If you do not pay our bill then we are entitled to exercise a solicitor's lien. The lien allows us to retain all your documents and trust funds until the bill is paid.
- 13.4 You acknowledge that this is a genuine pre-estimate of the amount that we have lost as a consequence of your breach of our Costs Agreement with you.
- 13.5 The Uniform Law provides that we cannot take action for recovery of legal costs until 30 days after a tax invoice (which complies with the Uniform Law) has been given to you or becomes payable.

14. BARRISTERS AND OTHER EXPERTS

- 14.1 In some legal matters it is necessary to engage an expert, separate contractor or engage another lawyer or a barrister either within this jurisdiction or elsewhere in the world.
- 14.2 You agree to us undertaking all such engagements on your behalf without having to obtain separate quotations or seek your specific instructions in each instance provided that the engagement is reasonably or otherwise prudent or desirable to advance your matter or protect your interests.
- 14.3 In the event that you have not been provided with an estimate of this cost in a Engagement Letter or some other communication from our office we agree to provide such estimate as soon as we are reasonably able to do so. You agree that a failure to provide an estimate does not remove your liability to reimburse us or otherwise pay for such costs provided the engagement was reasonably or otherwise prudent or desirable to advance your matter or protect your interests.
- 14.4 As a matter of public policy, the law provides immunity from suit in relation to advocacy.
- 14.5 When we undertake advocacy in accordance with your instructions, we are subject to that immunity.
- 14.6 Further, we are part of a professional standards scheme which limits our liability. Nothing that we do at any time acts to remove or adversely affect the operation of that professional standards scheme.

15. LEGAL COSTS PAYABLE TO OR RECOVERABLE FROM ANOTHER PARTY

- 15.1 If you are successful in a litigious matter, you may be entitled to request the court for an order that you recover part of your Legal Costs from another party. There is no guarantee that the court will agree. In some jurisdictions, costs are never awarded or only occasionally awarded. We therefore do not

guarantee, represent or in any way hold out that you will be entitled to recover any of your costs.

- 15.2 Regardless of any costs orders you are always liable to pay our accounts as and when they fall due.
- 15.3 When Legal Costs are awarded they are usually calculated according to a scale of costs for the appropriate court and some complex rules apply. These are usually what are called costs on the standard basis. They will usually be much less than the Legal Costs payable by you under your Costs Agreement with us.
- 15.4 Some Legal Costs required to be paid by you, but which are not normally recoverable from another party include:
 - 15.4.1 Legal Costs for interviewing witnesses in the expectation that their evidence might be relevant to your action but who are not actually called upon to give evidence;
 - 15.4.2 Expert's fees if the expert is requested to be available for court but is not called as a witness, for example because the trial did not proceed on that day;
 - 15.4.3 A portion of a barrister's fees;
 - 15.4.4 File reviews — reviews of your file from time to time as is necessary and is a fundamental part of running a case diligently; and
 - 15.4.5 Legal Costs associated with providing you with updates and information regarding the matter.
- 15.5 The Engagement Letter sets out the range of Legal Costs that we reasonable estimate that you may be entitled to ask the court for an order that will allow you to recover from the other party if you are successful in the litigation. It is not possible at that start of most matters to provide an accurate estimate and the sums given are merely estimates.
- 15.6 As a part of our ongoing service to you we will update you about our estimate of these costs at important times. In the interim, please use an estimate of a recovery of around 50% to 70% of the costs that we charge to you as a general guide (only if we have indicated to you that the jurisdiction is one in which costs are usually recovered by a successful party).
- 15.7 In some, relatively rare cases, you will be entitled to costs on the indemnity basis and this would mean you would recover a much greater proportion of Legal Costs than would have been payable on the standard basis. In assessing Legal Costs on the indemnity basis, one of the matters which will be taken into account will be the terms of our Costs Agreement with you. Regardless of any right you may have to make another party pay some of your Legal Costs, you will still have to pay the full amount of our Legal Costs even if the other party fails to pay the Legal Costs they are supposed to pay to you.
- 15.8 If your claim is not successful you will usually be required to pay the other party's Legal Costs in addition to paying the Legal Costs payable to us under your Costs Agreement. Where the court or tribunal orders you to pay the other party's or parties' legal costs, the amount could be between 50% and 70% of the amount of our fees for what was done.
- 15.9 Sometimes, you may be required to pay another party on the indemnity basis and this would mean you would have to pay a much greater proportion of Legal Costs than would have been payable on a

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standard basis. The Engagement Letter may set out the range of Legal Costs that may be recovered against you by the other party. It is not possible at this time to provide an accurate estimate and the sums given are merely estimates.

- 15.10 If settlement of your claim is being resolved by alternate dispute resolution including court or tribunal ordered mediation, then prior to any agreement resolving the matter we will provide you with a reasonable estimate of our Legal Costs payable by you on settlement, a reasonable estimate of the Legal Costs you would obtain from the other party on settlement if the settlement is favourable to you or a reasonable estimate of the Legal Costs you may have to pay the other party.

16. SUBSTANTIAL CHANGES TO DISCLOSURE

- 16.1 You will be informed, as soon as is reasonably practicable, of any substantial changes to anything contained in this Document.

17. INCORPORATED STATUS OF THIS PRACTICE

- 17.1 You acknowledge that we are an incorporated legal practice.
- 17.2 You further agree that:
- 17.2.1 All services that are provided are provided by the incorporated legal practice and not by any individual or other entity;
- 17.2.2 We are not bound to undertake any work that you request us to do unless, and until, we have agreed to do so in writing. You agree that this is fundamental term of our Costs Agreement with you;
- 17.2.3 No individual at any time contracts directly with you and that all work, including all legal duties that arise, exist only as between the incorporated law practice and you;
- 17.2.4 All work undertaken by any individual within the incorporated legal practice is undertaken by each person in their capacity as an employee of the incorporated legal practice and not in any other capacity; and
- 17.2.5 Regardless of any tortious, contractual, statutory or other right that you may have to take action or otherwise claim against any individual for anything they do or fail to do in their capacity as an employee of the incorporated legal practice, to the maximum extent that the law permits, you agree to not exercise such right against that individual. Nothing in this clause prevents you for exercising such rights against the incorporated legal practice itself.

18. QUALIFIED ADVICE

- 18.1 Sometimes the advice given by us will be based on assumptions or qualifications and those assumptions or qualifications will be stated or set out in the advice, if it is in writing.
- 18.2 If further information or events prove any of those assumptions or qualifications incorrect, we will not be liable for any part of our advice which was based on those assumptions or qualifications.

18.3 You must take reasonable care to protect your own interests and satisfy yourself as to the commercial and financial viability of all aspects of your matter, the taxation implications related to or arising out of your matter and investigating the bona fides of other parties involved.

18.4 You agree that you are solely responsible for these matters.

19. RELIANCE UPON ADVICE FOR FUTURE MATTERS

19.1 When we give advice or prepare documentation relevant to a particular matter or transaction then that advice and those documents are given in relation to that matter or transaction only and must not be relied upon by you in relation to any other matter or transaction unless we agree otherwise.

19.2 The advice and the documentation are also given to you as our client and must not be relied upon by any other person or entity.

20. COPYRIGHT

20.1 Where we give advice or prepare any documentation then copyright exists in that advice and those documents.

20.2 They remain our property subject to your right to use them for the matter or transaction that they were provided for.

20.3 Any advice or documentation must not be reproduced or used by you in relation to any other matter or transaction or given to any other person or entity without our consent.

20.4 We grant you an unrestricted licence to use them for the purposes of your instructions but not to reproduce them other than for the purpose of the work required to be performed by us under the Costs Agreement.

21. TAKING INSTRUCTIONS FROM MORE THAN ONE CLIENT

21.1 Where we are acting for more than one person on a particular matter, unless you tell us in writing otherwise, we may accept instructions in relation to work to be conducted for you from either one of you without confirming those instructions with the others.

21.2 Where the client is a company, unless you tell us in writing otherwise, we may accept instructions in relation to the work to be conducted and all matters in which we act on behalf of the company, from any one of its directors or any person we reasonably believe to be the chief executive officer, chief financial officer, general manager, in-house lawyer or its company secretary or a person we have been told (verbally or otherwise) has such authority without confirming those instructions with the other directors or the secretary of the company.

21.3 We are also entitled to assume that any person who has been a director or secretary of the company is still a director or secretary until we have been notified in writing otherwise by the company.

22. LIABILITY — MORE THAN ONE CLIENT

- 22.1 Where we are acting for more than one person on a particular matter each of you will be jointly and severally responsible for payment of all bills issued by us.
- 22.2 If you are a corporation or a body corporate, you agree that you sign this agreement for and on behalf of that corporation or body corporate and that you will personally remain jointly and severally liable for payment as principal debtor of all of our costs in this matter. You further warrant that you have the requisite authority to enter into this agreement on behalf of the corporation or body corporate and that both of you are bound by the terms and conditions of the Costs Agreement.

23. EMAIL COMMUNICATION

- 23.1 If you provide us with your email address then you authorise us to communicate with you by email (including sending you copies of documents, plans, sketches and photographs as attachments), unless you instruct us otherwise.
- 23.2 Email communications are likely to contain confidential and sensitive material.
- 23.3 We cannot guarantee the security of emails or attachments sent or received via the internet. We also cannot guarantee that any emails or attachments have not been interfered with during transmission.
- 23.4 If you do not want us to communicate with you by email or if there is material that you do not want sent by email then it is essential that you advise us so that we can organise an alternative means of communication.

24. DISPUTES ABOUT BILLS

- 24.1 We will always attempt to resolve any problems you may have about our bills.
- 24.2 Where we only delivered to you a Lump Sum Bill that summarised the work we did for you and you request an Itemised Bill that lists each item of work that has been done and the amount charged for each item, then you agree that we may withdraw the original bill and deliver the itemised bill requested by you as a substituted bill for the full value of the work performed, notwithstanding that the substituted bill may exceed the amount of the original bill.
- 24.3 You may seek the assistance of the Legal Services Complaints Committee (LSCC) if there is a dispute between us and you about legal costs and disbursements or you may apply to the Supreme Court for an assessment of the whole or any part of an invoice for legal costs and disbursements even if the legal costs and disbursements have been wholly or partly paid. Your application for assessment must be made within 12 months after our final invoice on your matter was given to you.

If you have sought the assistance of the LSCC in relation to a dispute between us and you about legal costs and disbursements you cannot apply to the Supreme Court for a costs assessment except where the LSCC is unable to resolve the dispute and has notified you and us of the entitlement to apply for a costs assessment or the LSCC arranges for a costs assessment.

25. RETAINER AND INSTALMENT PAYMENTS

- 25.1 We may ask you to pay a retainer at the commencement of each matter.
- 25.2 The amount we ask you to initially pay will be specified in the Engagement Letter. This will be retained in our trust account while the matter progresses and can be used by us toward payment of any outstanding Legal Costs, payment of our final account and if not used, will be returned to you.
- 25.3 We may also ask you, from time to time, to make other payments into our trust account to go toward Legal Costs to be incurred in the matter. These funds can also be used for payment of Legal Costs as work progresses or on completion.
- 25.4 If we do request further moneys then you must pay the amount requested within seven (7) days so the work for you is not held up — it could prejudice your rights or delay matters. Any surplus funds of yours that are not needed to pay for Legal Costs will be refunded to you once the matter is finished.
- 25.5 You authorise us to draw on the money from trust for Professional Fees and Disbursement as they become due.

26. TRUST ACCOUNT AUTHORITY

- 26.1 You authorise us to deposit any moneys paid to us to hold on your behalf (whether alone or with others) in a trust account maintained with an Authorised Deposit-taking Institution ("ADI") under the Banking Act 1959. By accepting our offer to enter into the Costs Agreement, you are authorising us to withdraw any moneys held by us in our trust account on your behalf (or on behalf of any of you where there is more than one of you instructing us to act) to pay any Disbursement including any government or other statutory charges as and when they are incurred or paid by us and to pay our Legal Costs as soon as we send you a bill of a corporate entity or as trustee of any trust).
- 26.2 By signing any Engagement Letter, retainer or making any other communication by which you instruct us to undertake work you thereby irrevocably authorise, confirm and instruct us as follows:
- 26.2.1 To apply all funds that we may hold, or may hold in the future, in our trust account on your behalf, either jointly or severally with someone else, in payment of all fees and outlays billed by us seven (7) days after such account or accounts are sent to the nominated payer or you at that entity's last address, including e-mail address, advised to our office;
- 26.2.2 To apply all funds held by any entity of which you are a director, trustee or controller, to pay that or any other entity's account (including you) that may be outstanding at any time in such proportions and at such times as we may decide in our absolute discretion; and
- 26.2.3 That all funds that you have or will in the future pay, whether personally or from any company or other entity, are:
- 26.2.3.1 paid to us for the purpose of paying or securing your existing and future accounts issued on all matters for you and all other entities, in any respect, that we may be undertaking regardless of which entity is involved and which entity paid the relevant funds;

26.2.3.2 not paid, as far as you are aware, in breach of any trust or other obligation that may be owed to any other entity, any potential administrator, liquidator, receiver or controller; and

26.2.3.3 paid for the purpose of, and to secure the provision of our legal services, such that we are entitled to a lien over such funds for this purpose. To the extent necessary this document evidences the existence of enforceable lien over all such funds.

26.3 The above authority and direction is given by you in your personal capacity as well as in your capacity as the duly authorised officer of all corporate and other entities of which you are an office holder or agent.

27. AUTHORITY TO INVEST

27.1 If there are moneys held in trust on your behalf you authorise us to:

27.1.1 Invest any moneys held from time to time in our trust account on your behalf (or on behalf of any of you where there is more than one of you instructing us to act), with a bank, building society or credit union in our name as your trustee. We are to hold any interest earned on such investments on behalf of the persons entitled to the moneys on the same terms as the money which is invested;

27.1.2 Withdraw such moneys from the financial institution as may be required from time to time to meet any Legal Costs (including Disbursements); and

27.1.3 Report to the Commissioner of Taxation (if required) in respect of moneys invested on your behalf including advising him of full details of your tax file number, amount invested and interest earned (if required) and to withhold part of the interest earned on the investment and generally deal with such moneys as required by the Commissioner for Taxation and legislation.

28. RISK OF ADI FAILURE

28.1 You agree that:

28.1.1 Moneys held in our trust account or invested on your behalf are held at your risk;

28.1.2 We will not be liable to pay the moneys to you or any other party to the extent to which any part of them is lost through a failure of the ADI or other organisation you requested the moneys be invested in;

28.1.3 We will not be liable to pay the moneys to you or any other party to the extent to which the withdrawal of any part of the moneys is frozen by the ADI or other organisation until the withdrawal of the moneys are no longer frozen; and

28.1.4 We will not be liable for any direct or indirect or consequential loss, damage or expense (including loss of revenue, loss of profit, loss of financial opportunity or economic loss) suffered by you or any party arising from failure of the ADI or other organisation or the ADI or other organisation freezing withdrawals such that we are unable to withdraw any part of

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the moneys and account for it to you or any other party at the time that you or another party is entitled to it.

29. LEGAL COSTS OF HEARINGS AND TRIALS

- 29.1 If your matter is going to involve a hearing, like a trial or application in court or mediation or case appraisal, before we commence final preparations for such a hearing, we will ask you to pay the likely Legal Costs of that hearing into our trust account. We will tell you how much we estimate it will be and give you as much warning as time permits.
- 29.2 The payment must be made as soon as possible and we may not commence preparation for the hearing until it is received. If payment is not made on time, our policy is to not proceed with the hearing and this could severely jeopardise your case. Notwithstanding this policy, if we do commence preparation and attend the hearing on your behalf without the payment being received then you are still responsible for paying the Legal Costs. If you are concerned that payment will be a difficulty, please speak to us about it now.

30. SERVICE OF NOTICES

- 30.1 We may give a notice to you by:
- 30.1.1 Delivering it to you personally;
 - 30.1.2 Leaving it at or by sending it by courier or post to your address last notified to us;
 - 30.1.3 Sending it by facsimile to your facsimile number last notified to us; or
 - 30.1.4 Sending it by email to your email address last notified to us.
- 30.2 Notice by:
- 30.2.1 Hand delivery is deemed to be given at the time of delivery;
 - 30.2.2 Leaving it at an address or sending it by courier is deemed to be given at the time of delivery;
 - 30.2.3 Post is deemed to be given on the second business day after the document is put in the post, in a stamped envelope or other covering, addressed to you;
 - 30.2.4 Facsimile is deemed to be given when our facsimile machine indicates a successful transmission to the facsimile number unless you contact us within the hour to advise that a full copy of the notice has not been received; and
 - 30.2.5 Email is deemed to be given two (2) hours after the time the email is sent, unless a response to the contrary is received by us — such as "out of office" notification or our system indicates that the message is not deliverable or that there has been a delay in transmission.
- 30.3 For the purposes of this section, the term Notice includes any notice, demand, consent, approval, court proceedings or other communication and business day means a weekday when trading banks are ordinarily open in the place where the notice is deemed to be received.

30.4 Where we are acting for more than one of you then delivery of a notice to one of you is deemed delivery to all of you.

31. CAVEATS

31.1 On occasion clients ask us to sign or lodge caveats in the Land Registry on their behalf. This can render us personally liable for a damages claim if it is determined that the client has no right to lodge the caveat. For this reason, you agree that if you ask us to execute or lodge a caveat in the Western Australia Land Registry (or its equivalent in another jurisdiction) on your behalf then you shall accept personal liability in relation to the caveat and shall unconditionally and irrevocably guarantee and indemnify us against any and all claims, damages, liabilities and expenses which may be made or brought against or suffered or incurred by us in relation to the caveat.

32. DUTIES

32.1 In all matters that we act for you, we will have a number of specific duties and so will you. These are in addition to those set out in the Engagement Letter.

33. OUR DUTIES

- 33.1 We will carry out the work with professional skill and diligence;
- 33.2 We will, as far as is reasonable, keep you informed of the progress of the work; and
- 33.3 We will, upon completion of the matter and payment by you of all Legal Costs, make a copy of your file available for collection. You agree that we own your original file and may retain or destroy it with the exception of original commercial or sensitive documents such as Wills, Leases, Settlement Deed and similar items.

34. YOUR DUTIES

- 34.1 You:
 - 34.1.1 are to provide us with timely, accurate and proper instructions, including all documents and other records relevant to the provided services;
 - 34.1.2 will be available to give unclear instructions in relation to the work to be carried out;
 - 34.1.3 are to act reasonably and take reasonable care to protect your own interests in respect to the matters the subject of this document;
 - 34.1.4 are to satisfy yourself as to the commercial viability of your matter and the financial and taxation implications related to or arising out of your matter (if any) and not rely upon us to advise you in that regard;
 - 34.1.5 are to investigate (where relevant) the bona fides of the other parties to the transaction, checking all financial matters and assessing the commercial soundness of the transactions and not rely upon us to advise you in that regard;

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- 34.1.6 will make arrangements to enable us to contact you if you anticipate being absent from your residence or business during a time when instructions will need to be given to us;
- 34.1.7 will notify us of any important time limits;
- 34.1.8 will question us about anything you are unsure of;
- 34.1.9 will pay all instalment payments when requested by us and pay all bills within the agreed time; and
- 34.1.10 will advise us of any change of address, telephone and facsimile numbers or e-mail addresses.

35. CONTINUATION OF COSTS AGREEMENT

- 35.1 If you accept the Costs Agreement then your rights under the Costs Agreement will continue for the benefit of your personal representatives and your obligations under the Costs Agreement will be binding on your personal representatives.
- 35.2 We have the right to assign our rights under the Costs Agreement to another legal practice on the basis that we give you notice of the assignment and the assignee agrees to be bound by the terms of the Costs Agreement.

36. TERMINATION OF COSTS AGREEMENT

- 36.1 You may terminate the Costs Agreement at any time.
- 36.2 We may suspend work and may cease acting for you and may terminate the Costs Agreement for any lawful cause or if you:
 - 36.2.1 Fail to pay our bills or deposit moneys to our trust account as required from time to time;
 - 36.2.2 Breach the Costs Agreement;
 - 36.2.3 Require us to act unlawfully or unethically;
 - 36.2.4 Are dishonest or misleading in your dealings with us;
 - 36.2.5 Fail to give us adequate instructions within a reasonable time;
 - 36.2.6 Give us instructions that are deliberately false or intentionally misleading;
 - 36.2.7 Indicate that you have lost confidence in us or are unhappy with the service provided;
 - 36.2.8 Engage another law practice to advise you on this matter without our consent;
 - 36.2.9 Lose legal capacity;
 - 36.2.10 Fail to agree in writing to any reasonable amendment to the Costs Agreement, such as a change to the personnel handling the matter or a change to the hourly charge out rates; or

36.2.11 Choose not to follow our advice, for example, to accept or not accept an offer of settlement contrary to our recommendation.

36.3 We may also terminate the Costs Agreement at any time. You agree that if we decide to exercise this right that we can do so without reason at any time and that you will pay to us all amounts, including work that we later bill for that was conducted prior to the termination of our retainer with you, in accordance with the terms of the Costs Agreement.

36.4 Further we may terminate our retainer with you if a conflict of interest or other matters arises which, in our absolute discretion, as the potential to prevent us from acting or continuing to act for you. We will give you notice of our intention to terminate the Costs Agreement and of the grounds on which the notice is based.

36.5 To remove any doubt, if the Costs Agreement is terminated either by you or us, you will be required to pay our Legal Costs to the date of termination. On termination, we are entitled to retain possession of your documents and trust money while there is money owing to us for our Legal Costs unless and until security is provided for our Legal Costs.

36.6 If the matter involves a fixed Professional Fee (whether for the entire scope of work or just a stage of the work), you must pay the part of that fixed fee that we reasonably estimate has been incurred in respect of the legal services provided to you up to the date of termination, plus Disbursements, subject to your right to a costs assessment. You will be liable to pay our Legal Costs whether or not the other party to any court proceedings has to pay your Legal Costs of the proceedings.

37. LIMITATION OF LIABILITY

37.1 We are a member of the Solicitors (Limitation of Liability) Scheme approved un the Professional Standards Act 1997 (WA). Our liability for damages claimed in a cause of action, to which the Scheme applies is limited to the amount it prescribes and for which we are insured.

37.2 Our agreement to act for you is also subject to the "limitation of liability' provisions expressed in the Engagement Letter.

38. PRIVACY ACT AND INFORMATION STORAGE

38.1 We will collect personal information from you in the course of providing our legal service. We may also obtain personal information from third party searches, other investigations and, sometimes, from adverse parties.

38.2 We are required to collect the full name and address of our clients by the Uniform General Rules. Accurate name and address information must also be collected in order to comply with the trust account record keeping requirements of the Uniform General Rules and to comply with our duty to the courts.

38.3 Your personal information will only be used for the purposes for which it is collected or in accordance with the *Privacy Act 1988* (Cth). For example, we may use your personal information to provide advice and recommendations that take into account your personal circumstances.

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- 38.4 If you do not provide us with the full name and address information required by law we cannot act for you. If you do not provide us with the other personal information that we request our advice may be wrong for you or misleading.
- 38.5 Depending on the nature of your matter the types of bodies to whom we may disclose your personal information include the courts, the other party or parties to litigation, experts and barristers, the Office of State Revenue, PEXA Limited, the West Australian Land Information Authority and third parties involved in the completion or processing of a transaction.
- 38.6 We do not disclose your information overseas unless your instructions involve dealing with parties located overseas. If your matter involves parties overseas we may disclose select personal information to overseas recipients associated with that matter in order to carry out your instructions.
- 38.7 We manage and protect your personal information in accordance with our privacy policy (which can be found on our firm website or a copy of which we shall provide at your request). Our privacy policy contains information about how you can access and correct the personal information we hold about you and how you can raise any concerns about our personal information handling practices. For more information, please contact us in writing.

39. STORAGE OF DOCUMENTS

- 39.1 On completion of your instructions any papers to which you are entitled, but left in our possession (except documents deposited in safe custody) will be retained electronically for no more than seven (7) years and on the authority of the Costs Agreement to be destroyed seven years after the date of the final bill rendered by us in this matter.
- 39.2 You agree that we have your authority to destroy any papers, documents, plans, photographs or written records (including any electronic copies) we hold on your behalf any time seven (7) years after the date of the final bill rendered by us in the matter pertaining to them.
- 39.3 We store your documents at your risk. We will make reasonable endeavours to protect the same from unauthorised access, loss and theft and from destruction by fire, adverse weather event or other acts of God but are not responsible for the cost or damage suffered by you or the costs of replacement of the same in the case the documents are accessed, lost, stolen or destroyed. You agree to indemnify us against any claims made against us for any such cost or damage.

40. NO SET OFF

- 40.1 Where the matter in which we are retained is litigious, you are not entitled to set off against our fees, costs the other party has been ordered to pay to you, nor are you entitled to suspend payment of our fees until those ordered costs are paid by the other party.
- 40.2 In clause 15.1 we have disclosed to you what costs you might recover from the other party should you be successful. Any amount so ordered does not bear upon the basis, nor the rate by which our costs to you are calculated.

- 40.3 Should you be ordered to pay costs to the other party, then the amount so ordered cannot be set off against our professional fees, fees, disbursements and expenses that have been or may be billed to you.

41. INSTRUCTION TO ACT ON

- 41.1 You acknowledge and understand that you have instructed us to act on your behalf as your lawyers and that we may make such submissions, communications or representations on your behalf as we think fit in order to undertake the proper carriage of this matter.
- 41.2 You authorise us to make decisions on your behalf which are necessary for the efficient conduct of the matter and in urgent situations without reference to you.
- 41.3 You authorise us to obtain and receive all information and documents whatsoever in whatever form from whatever source in relation to the subject matter of the Costs Agreement.
- 41.4 All information received is confidential between you and us in accordance with normal professional requirements as between solicitor and client.

42. CLIENT WARRANTIES

- 42.1 If the Client is a corporation then you warrant:
- 42.1.1 the execution and delivery of the Engagement Letter has been properly authorised by all necessary corporate action of the Client.
 - 42.1.2 the Client has full corporate power and lawful authority to execute and deliver the Engagement Letter and to consummate and perform or cause to be performed its obligations under the Cost Agreement.
 - 42.1.3 the Engagement Letter constitutes a legal, valid and binding obligation on the Client and enforceable in accordance with its terms.
- 42.2 If the Client is acting as a trustee of any Trust or settlement (“the Trust” and reference to “the Trust Deed” means the Trust Deed of the Trust), you covenant with us that:
- 42.2.1 You have full power under the Trust Deed, as trustee of the Trust to enter into, exercise your rights and perform your obligation under the Cost Agreement.
 - 42.2.2 All conditions and things required by the Trust Deed to be fulfilled or done (including the obtaining of any necessary consent and authorisations) are in order and have been fulfilled or done:
 - 42.2.2.1 to enable you lawfully to enter into, and exercise your rights and perform your obligations under the Cost Agreement; and
 - 42.2.2.2 to ensure that the Cost Agreement constitute its legally binding obligations enforceable against you in accordance with their terms.

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- 42.3 You are the sole trustee of the Trust.
- 42.4 You have not been removed from office as trustee of the Trust and have not ceased for any other reason to act as trustee of the Trust.
- 42.5 You are not in breach of any of your obligations under the Trust Deed or otherwise as trustee of the Trust.
- 42.6 Your powers under the Trust Deed have not been revoked.
- 42.7 No property of the Trust has been resettled or transferred to any other person, as trustee or otherwise.
- 42.8 The Trust has not terminated, nor has the date, or any event, for the vesting of the property of the Trust occurred.
- 42.9 Your rights of indemnity against the assets of the Trust to satisfy any liability to us incurred as trustee are not restricted and have not been modified, released or diminished in any way.
- 42.10 You are entering into the Cost Agreement as part of the proper administration of the Trust for the benefit of the beneficiaries of the Trust.
- 42.11 You know of no fact or reason whereby:
- 42.11.1 the Trust might be wound up, whether voluntary or otherwise;
 - 42.11.2 the trustee may be removed;
 - 42.11.3 the assets of the Trust may be or are vested in any other person; or
 - 42.11.4 the Trust might cease to operate or be deprived of funds before the termination of the Costs Agreement.

43. GENERAL

- 43.1 Unless otherwise agreed in writing to the contrary, the laws of Western Australia apply to the Costs Agreement and you acknowledge and accept that you submit to that jurisdiction to deal with all matters of, and incidental to, the Costs Agreement and our agreement to provide legal services with you.
- 43.2 Each provision of the Costs Agreement is separate and severable from the other provisions. If any whole or part provision of the Costs Agreement is found to be invalid or unenforceable, it shall be severed from the Costs Agreement and the rest of the Costs Agreement will remain effective.

44. ACCEPTANCE OF OFFER

- 44.1 This Document is an offer to enter into a Costs Agreement with you. If this offer is accepted then you will be regarded as having entered into the Costs Agreement. This means you will be bound by the terms and conditions set out in this Document, including being billed in accordance with it.

- 44.2 Acceptance of the offer may be by any one of the following ways:
 - 44.2.1 By signing and returning a copy of this Document;
 - 44.2.2 By signing and sending us a copy of the signed Document by facsimile or electronic transmission;
 - 44.2.3 By verbally telling us you accept the Costs Agreement; and
 - 44.2.4 By conduct such as giving us instructions after receiving this Document from us or by failing to advise us within a reasonable time of the offer that you do not agree to the terms of the Costs Agreement.
- 44.3 Failure to accept our offer within seven (7) days of the date of the Disclosure Notice accompanying this Document may result in the immediate withdrawal of our offer to act.

45. URGENT WORK

- 45.1 If you have asked us to do any urgent work before your acceptance of the Costs Agreement is received, you are still liable to pay our Legal Costs unless they are incurred after you instruct us to cease acting.