



Disclosure Notice
& Costs Agreement

Disclosure Notice and Costs Agreement

If a Work Schedule was not attached to this document then do not accept the offer to enter into this Agreement. Contact us so that we can send you a complete Disclosure Notice and Costs Agreement with the Work Schedule attached.

McKays Group
Trading as McKays solicitors
(or a derivative thereof)
BrisLaw Pty Ltd,
McKays NQ Pty Ltd,
Integrated Legal Holdings
Pty Ltd and
GF Clarke Pty Ltd.

This document constitutes a Disclosure Notice and Costs Agreement (“Document”) under the Legal Profession Act 2007 (Qld) between McKays Group and you. It forms a part of our contract with you for the provision of our services.

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 is to be ignored.

Interpretation

In this Document a reference to the following words has the meaning set out adjacent to them, unless the context in which the words are used requires otherwise:

- **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 these are set out in this Document;

- **Disclosure Notice** means this notice including the Work Schedule which is sent to you in conjunction with it;
- **Legal Costs** means your Professional Fees and Disbursements;
- **Professional Fees** means the fees charged for the performance of work of any one or more of our solicitors and staff on your matter or for any work that we undertake at your request; and
- **Work Schedule** means the document entitled Work Schedule which is or has been sent to you in conjunction with this Document and which forms part of this Document.

McKays Group is referred to in this notice as we, us or our. The client is referred to as “you” or “your”.

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

You acknowledge that McKays Group is an alliance of independently owned and operated law practices trading under the

name of McKays, McKays Solicitors, McKays Family Law and/or derivatives thereof (McKays Group).

This Document is a part of our Costs Agreement and Retainer with You

This Document includes any Work Schedule, email, letter or other communication that we send to you that refers to it. By accepting our offer to undertake work at your request, including providing instructions to us to undertake work, you acknowledge having received and read this Disclosure Notice.

In the event of any inconsistencies or conflict between the terms of this document and any Work Schedule or written communication with you over the terms of our retainer then:

- The terms of the Work Schedule or other written communication shall have precedence;
- This document shall be read down to be consistent with the Work Schedule or other written communication.

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.

Legal Costs – Your Rights

You have the right to:

- Negotiate a Costs Agreement with us;
- Receive a bill of costs from us;

- Request an itemised bill of costs after you receive a lump sum bill from us;
- Request written reports about the progress of your matter and the Legal Costs incurred in your matter;
- Apply for Legal Costs to be assessed within twelve (12) months if you are unhappy with our Legal Costs;
- Apply for the Costs Agreement to be set aside;
- Accept or reject any offer we make for an interstate costs law to apply to your matter;
- Notify us that you require an interstate costs law to apply to your matter; and
- Be notified of any substantial change in the matters disclosed in this notice.

This Document provides you with information about our legal services, the cost of those services and your rights. For more information about your rights, please read the facts sheet entitled 'Legal Costs – your right to know'. You can ask us for a copy, or obtain it from the Queensland Law Society or download it from their website at

www.qls.com.au.

The laws of Queensland will apply to the Costs Agreement and our retainer with you. You have the right to enter into a Costs Agreement with us on the basis that a corresponding law of another state or territory is applicable such as where the legal services are or will be completely or primarily provided in or

where the matter has a substantial connection with another jurisdiction.

However, unless otherwise agreed in writing to the contrary, the laws of Queensland apply to this retainer and you acknowledge and accept that you submit to that jurisdiction to deal with all matters of, and incidental to, this Costs Agreement and our retainer with you. Further, you agree and hereby consent to any proceedings related in any way to this Cost Agreement or retainer or the enforcement of any of the same being issued and conducted out of any court district within Queensland in which we have an office (regardless of your location or the location of where any work is performed at your request).

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 Legal Profession Act 2007 (Qld) in the event of a dispute in relation to Legal Costs:

- 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 Legal Profession Act 2007 (Qld));
- To apply to set aside the Costs Agreement within six years or other time as the law permits.

Office Hours

You may contact us at any time during normal office hours: Monday to Friday, 8.00 am to 5.00 pm. We are often at work outside those hours so please feel free to call us at any time.

Appointments

Rather than risk our staff being unavailable when you visit, we urge you to telephone to make appointments. Please speak to the secretary of the person you wish to see for making appointments. You can schedule appointments during normal office hours, but we can always endeavour to make arrangements to see you outside those hours if required.

Scope of Work

The work to be conducted by us is set out in the Work Schedule under Scope of Work. 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.

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. You acknowledge and agree to this limit to our retainer when instructing us to do any work.

You agree by instructing us in future, that

this Agreement acts as a master retainer for all matters that we are instructed by you to undertake in the future. This is so even if we do not send to you a Work Schedule or other correspondence for that new additional work.

How are Your Professional Fees Calculated?

In general terms, your Professional Fees will either be calculated on the basis of a lump sum, fixed fee per stage or according to the time spent on the matter. If no method is set out in our correspondence with you then you agree to our usual time costing rates. The Work Schedule that we will send to you sets out the basis of our charging for each matter. If no Work Schedule is sent, and work is conducted under a master retainer, the time costing method is applied until otherwise agreed in writing.

What is a Lump Sum?

A Lump Sum fee or retainer is where we agree to perform specific work for a fixed Professional Fee which may be a fixed rate per day. This fee is based on information you give to us and upon us only being required to carry out the work specified. If we have to undertake additional work outside the scope of work for any reason there will be an additional charge for that work and it will be charged and calculated on a time basis.

The Work Schedule will specify whether or not a Lump Sum is applicable and the amount of the Professional Fee. The Work Schedule will also state whether a fixed amount is to be charged for the Disbursements to be incurred

by us or whether the amounts set out for Disbursements specified are just estimates.

What is Fixed Fee per Stage?

A Fixed Fee per Stage retainer or fee is where we reach agreement with you to fix the Professional Fee for specified stages of a matter as we go. The description of the first and possibly later stages and the Professional Fee associated with at least the first stage will be set out in the Scope of Work in the Work Schedule. This may be varied in writing as a matter proceeds provided both parties agree to the same in writing (which can include a communication by email followed by you instructing us to proceed after receiving such a communication).

If we have to undertake additional work outside the Scope of Work for any reason there will be an additional charge for that work and it will be charged and calculated on a time basis unless otherwise specified when we accept your instructions.

What is Time Charge?

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 work they carry out.

This includes work 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 practising 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.

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 Work Schedule provided to you. 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. We may send to you an updated Work Schedule 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. Should any change in rate increase by more than CPI - Consumer Price Index (All Groups Figures for the City of Brisbane), 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.

In the absence of any notice to the contrary, you agree that the rates notified to you will be automatically

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 chose not to charge you this increase each year.

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.

In some cases, we will charge a daily or half day rate for work that we anticipate will occupy such large amounts of time. This is applicable to trials and some court applications, including preparation for the same. You agree that in these instances that we can record a single time entry showing this activity rather than us trying to specify each task that we did whilst undertaking this work. The rate will be set out in our Work Schedule, and in default of any rate being set shall be four (4) hours for a half day and eight (8) hours for a full day.

Disbursements

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.

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

Conditional Costs Agreement

The Work Schedule or other communications that we send to you will specify if we propose that the Costs Agreement be a Conditional Costs Agreement. If so then this section of the Disclosure Notice applies.

If we do not expressly state in writing that we are entering into a Conditional Costs Agreement with you, then we both agree that our retainer with you is not a Conditional Costs Agreement.

If a Conditional Costs Agreement is to be entered into then you have the right in accordance with Legal Profession Act 2007 (Qld) to:

- Obtain independent legal advice before entering into the Costs Agreement; and
- A cooling off period of five (5) clear business days after we receive the signed Costs Agreement from you during which you may terminate the agreement by written notice to us.

Should you terminate the agreement,

we are still entitled to charge you for legal services performed on your instructions with your knowledge before that termination. We will charge you Professional Fees on a Conditional Costs Agreement upon the successful outcome of the matter. Any one of the events described in the Work Schedule as a successful outcome constitutes a successful outcome. We will also charge you Disbursements on the basis set out in the Work Schedule.

Conditional Costs Agreement involving Personal Injuries Claim

If the Conditional Costs Agreement involves a speculative personal injury claim then, irrespective of our entitlement to Professional Fees under the Conditional Costs Agreement, the maximum that we can charge you at law for Professional Fees inclusive of GST (but exclusive of any Disbursements) is determined by the following formula:

$$M = ((O + C) - (R + D)) / 2$$

Where:

M = Maximum Legal Costs (including GST, excluding disbursements);

O = Amount awarded or recovered;

C = Costs due from other party;

R = Refunds required by law to any other entity; and

D = Disbursements incurred on your behalf in pursuing the claim.

This limit does not apply in the event of lawful termination by either of us prior to conclusion of the claim or if we obtain approval from the Queensland

Law Society to charge and recover an amount greater than the limit. Our entitlement to charge in the event of termination is explained below.

Conditional Costs Agreement involving Uplift Fees

The Work Schedule will specify if we propose to enter into a Conditional Costs Agreement with you and to charge an Uplift Fee. If so then this section of the notice applies.

If we propose to charge an Uplift Fee then upon the successful outcome of the matter we are entitled to charge and you agree to pay an Uplift Fee on the basis set out in the Work Schedule. If no rate is specified in the Work Schedule that we both agree the Uplift Fee will be an amount equal to 25% of our Professional Fee (subject to any reduction or cap that may apply, in which case our Professional Fees together with the relevant Uplift Fee will be reduced accordingly to that cap).

The reasons why an Uplift Fee is warranted is because we are agreeing to act for you on a speculative basis and to this extent we will be:

- Relying on you for accurate and proper instructions to base our assessment as to your likely prospects of a successful outcome in your claim;
- Funding your claim from our own financial resources;
- Taking on the risk of an unsuccessful outcome; and
- Carrying your claim by agreeing to only be paid in the event of a

successful outcome.

Estimating Legal Costs

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 Work Schedule will set out our estimate or range of estimates of the professional fees and disbursements.

The estimates are based on the information available at this time 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.

The major factors which will affect the estimates are: 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.

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 Work Schedule may also set out other factors specific to your matter that may affect the Legal Costs payable.

We therefore stress that, 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.

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.

GST

In this Disclosure Notice:

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

Unless otherwise specified, the Legal Costs described in this Document (including the Work Schedule) 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.

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.

Bills

Bills will be sent to you containing information on Professional Fees, Disbursements and GST at the times set out in the Work Schedule. For the purpose of this Agreement you will be deemed to have received our bill if it is:

- Given to you or to your agent personally – on the day it is given to you;
- Sent to you at the address above or to your agent by post – within two (2) business days of posting;
- 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 of the entire Bill; and
- 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.

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.

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.

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.

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 solicitor who is handling the matter or the person supervising the work as set out in the Work Schedule.

Failure to Pay our Bill

Our bills are payable on receipt. 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 section 321 (3) of the Legal Profession Act 2007.

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 account then we are entitled to exercise a solicitor's lien. The lien allows us to retain all your documents and trust funds until the account is paid.

You acknowledge that this is a genuine

pre-estimate of the amount that we have lost as a consequence of your breach of our retainer with you.

Barristers and Other Experts

In some legal matters it is necessary to engage an expert, separate contractor or engage another lawyer either within this jurisdiction or elsewhere in the world.

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.

In the event that you have not been provided with an estimate of this cost in a Work Schedule 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.

As a matter of public policy, the law provides immunity from suit in relation to advocacy.

When we undertake advocacy in accordance with your instructions we are subject to that immunity. 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.

Legal Costs Payable to or Recoverable from Another Party

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. Indeed, 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.

Regardless of any costs orders you are always liable to pay our accounts as and when they fall due.

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. Some Legal Costs required to be paid by you, but which are not normally recoverable from another party include:

- 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;
- 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;
- A portion of a Barrister's fees;

- File reviews – reviews of your file from time to time as is necessary and is a fundamental part of running a case diligently; and
- Legal Costs associated with providing you with updates and information regarding the matter.

The Work Schedule 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.

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% 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).

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.

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. 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 standard basis. The Work Schedule 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.

If settlement of your claim is being resolved by alternate dispute resolution, 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.

Substantial Changes to Disclosure

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

Who Will Do Your Work?

The name of the person primarily responsible for your matter is in the Work Schedule. Although one person is primarily responsible, any one of our staff may carry out work on your matter.

Each person in our practice has their own level of skill, experience and training in certain areas of the law

and those with the higher levels have a higher hourly charge out rate than those at the lower levels. We therefore try to ensure that each task needed to complete your matter is carried out by the most suitable person in order to keep the Legal Costs to a minimum. All work we do for you will either be conducted by or supervised by a principal, senior associate or associate but it is likely that your work or parts of it will be delegated to other solicitors and staff in order to ensure that it is completed as cost effectively and expeditiously as possible.

For day-to-day matters, you should speak to the person actually handling the matter but remember that you are always free to talk to the principal or other supervisor at any time and we encourage you to do so should you believe there is any difficulty with your matter.

Throughout the course of your matter there may well be changes in our staff. Therefore there may be persons not named in the Work Schedule who may conduct work on your matter. We will always let you know if the solicitor who has overall responsibility for your matter cannot continue and needs to pass on the overall responsibility to another solicitor. However you agree that we do not need to keep you advised of every change in the makeup of the support staff in the practice. Where a new employee of the practice conducts any work on your matter their hourly rates will be commensurate with the position they hold as set out in the Work Schedule.

Incorporated Status of this Practice

You acknowledge that we are an incorporated legal practice. You further agree that:

- All services that are provided are provided by the incorporated legal practice and not by any individual or other entity;
- 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 retainer with you;
- 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;
- 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
- 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.

Qualified Advice

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.

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. 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.

You agree that you are solely responsible for these matters.

You agree that 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 our retainer with you.

When written advice is given, it does not mean that we have agreed to advise you more generally in relation to the commercial viability or the financial or taxation implications and we encourage you to always seek independent advice from an appropriate advisor for all financial matters. Where we do discuss with you the commercial viability or the financial or taxation implications of a particular matter, it is not expert advice and is not intended to be relied on, but merely forms part of a general commentary relating to your matter.

Reliance Upon Advice for Future Matters

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.

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.

Copyright

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

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

Taking Instructions From More Than One Client

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.

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.

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.

Email Communication

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.

Email communications are likely to contain confidential and sensitive material.

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. 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.

Liability – More Than One Client

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.

Disputes About Bills

We will always attempt to resolve any problems you may have about our bills. If that cannot be done, we each have the rights set out in the fact sheet entitled “Your right to challenge legal costs” available on the Queensland Law Society website www.qls.com.au.

Where we only delivered to you a 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.

Retainer and Instalment Payments

Our policy is to ask clients to pay a retainer at the commencement of each matter. The amount we ask you to initially pay will be specified in the Work Schedule. 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.

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.

If we do request further moneys then you must pay the amount requested within seven 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. You authorise us to draw on the money from trust for Professional Fees and Disbursement as they become due.

Trust Account Authority

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.

You further agree that any moneys held in our trust account at any time on any file can be used by us toward payment of any outstanding amounts on any and all matters that we conduct for you, or at your request, for any entity (whether personally, in your capacity as a director

of a corporate entity or as trustee of any trust).

By signing any Work Schedule, retainer or making any other communication by which you instruct us to undertake work you thereby irrevocably authorise, confirm and instruct us as follows:

- 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;
- 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
- That all funds that you have or will in the future pay, whether personally or from any company or other entity, are:
 - 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;
 - 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

- 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.

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.

Authority to Invest

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

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

Risk of ADI Failure

You agree that:

- Moneys held in our trust account or invested on your behalf are held at your risk;
- 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;
- 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
- 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 the moneys and account for it to you or any other party at the time that you or another party is entitled to it.

Legal Costs of Hearings and Trials

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.

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.

Service of Notices

We may give a notice to you by:

- Delivering it to you personally;
- Leaving it at or by sending it by courier or post to your address last notified to us;
- Sending it by facsimile to your facsimile number last notified to us; or
- Email to your email address last notified to us.

Notice by:

- Hand delivery is deemed to be given at the time of delivery;

- Leaving it at an address or sending it by courier is deemed to be given at the time of delivery;
- 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;
- 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
- Email is deemed to be given two 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.

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. 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.

Caveats

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 Queensland 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.

Duties

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 letter which accompanied this document.

Our Duties

- We will carry out the work with professional skill and diligence;
- We will, as far as is reasonable, keep you informed of the progress of the work; and
- 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.

Your Duties

- You are to provide us with timely, accurate and proper instructions, including all documents and other records relevant to the provided services;
- You will be available to give us

clear instructions in relation to the work to be carried out;

- You are to act reasonably and take reasonable care to protect your own interests in respect to the matters the subject of this document;
- You 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;
- Where relevant, you are to investigate 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;
- When you anticipate being absent from your residence or business during a time when instructions will need to be given to us, you will make arrangements to enable us to contact you;
- You will notify us of any important time limits;
- You will question us about anything you are unsure of;
- You will pay all instalment payments when requested by us and pay all bills within the agreed time; and
- You will advise us of any change of address, telephone and facsimile numbers or e-mail addresses.

Continuation of this Agreement

If you accept this agreement then your rights under the agreement will continue for the benefit of your personal representatives and your obligations under this agreement will be binding on your personal representatives. We also have the right to assign our rights under this 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 this agreement.

Termination of Agreement

You may terminate this agreement at any time. We may suspend work and may cease acting for you and may terminate the Costs Agreement for any lawful cause or if you:

- Fail to pay our bills or deposit moneys to our trust account as required from time to time;
- Breach this Costs Agreement;
- Require us to act unlawfully or unethically;
- Are dishonest or misleading in your dealings with us;
- Fail to give us adequate instructions within a reasonable time;
- Give us instructions that are deliberately false or intentionally misleading;
- Indicate that you have lost confidence in us or are unhappy with the service provided;
- Engage another law practice to advise you on this matter without our consent;

- Lose legal capacity;
- Fail to agree in writing to any reasonable amendment to this agreement, such as a change to the personnel handling the matter or a change to the hourly charge out rates, or
- Choose not to follow our advice, for example, to accept or not accept an offer of settlement contrary to our recommendation.

We may also terminate the 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 this Agreement.

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 agreement and of the grounds on which the notice is based.

To remove any doubt, if the 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.

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. If this Costs Agreement is a Conditional Costs Agreement whether with or without an Uplift Fee then in addition to the circumstances above, we may cease to do the work and may terminate the agreement if we cannot retain Counsel of our choice on a Conditional Costs Agreement in a litigation matter

Professional Standards and Limitation of Liability Scheme

As part of our commitment to high standards, our solicitors participate in a professional standards scheme administered by the Professional Standards Council. As a larger practice, our solicitors are class 1 members of the scheme which also varies the limitation of liability under the scheme. For more information you can contact us, and you can also contact the Professional Standards Council in your state or territory.

You acknowledge that this scheme applies to our relationship with you.

Referrals

If we confirm in writing that you were referred to us by another law practice under a referral arrangement, then your agreement to this Costs Agreement is also your authorisation of the referral arrangement. To facilitate the referral

arrangement, you authorise us to notify the law practice referrer:

- That you have entered into a Costs Agreement with us;
- Of our standard fees and costs for this kind of legal matter; and
- Of financial status summaries of your matter comprising our fees invoiced and paid.

You acknowledge that as a member of the McKays Group, we may receive payment, commission or other remuneration or benefit from other members of the McKays Group or entities related to a member thereof including in relation to referrals of clients like you or of certain work for clients like you to other members of the McKays Group.

You also acknowledge that:

- Other law practices may be prepared to act for you without reference to a referral arrangement; and
- You are entitled to take independent legal advice before entering into this Costs Agreement.

Privacy Act and Information Storage

The Privacy Act 1988 (Cth) ('Privacy Act'), Privacy Regulation 2013 ('Regulations'), Credit Reporting Privacy Code ('CR Code') and registered privacy codes govern the way in which we must manage your personal information (including your credit related personal information).

Our obligations under Australia's privacy laws are reflected in our Privacy Policy

and Credit Information Management Policy. These documents explain how we handle your personal information and are available on our website or through requesting a copy from our office.

If you do not provide the personal information we request from you, we are not likely to be able to provide legal services to you. We are conscious of the importance of maintaining the confidentiality of your personal information. You can be assured that we only collect personal information that is necessary for us to provide legal services to you or provide information to you. We also take all possible steps to ensure that your personal information is not disclosed to, or accessed by, unauthorised persons.

Excepting the limited circumstances provided for in the Privacy Act, you are able to gain access to any personal information which we may hold about you. Should you wish to obtain access to such information please either telephone us or provide us with a written request by writing to us. Our contact details are listed in this Agreement.

You authorise us to disclose any information we hold about you at our discretion in connection with the provision of legal services to you, as well as additional products and/or services that we may think to be of benefit to you.

Disclosure of such information may also be compelled by law and you authorise us to disclose this information where we are lawfully obliged to do so.

You acknowledge that notwithstanding anything else in this agreement or otherwise, we may, with your consent and authority (which is hereby given), release or disclose information including

confidential information and/or personal information about you and/or matters in relation to which you have sought legal advice from us, to other members of the McKays Group which without this authority we would not otherwise be entitled to do.

Further, in certain circumstances, where you fail to meet your payment obligations to us, we may report or disclose your credit related personal information to a credit reporting body, such as Veda. You acknowledge you consent to us doing so.

By accepting this agreement you agree that we may give information about you to Veda Advantage in order to obtain a consumer credit report about you, and/or allow Veda Advantage to create or maintain a credit information file containing information about you. The information however is limited to:

- Identity particulars – your name, sex, address (and the previous two addresses), date of birth, name of employer, and driver's licence number;
- The fact that you have applied for credit and the amount (which will be our estimate of the likely Legal Costs);
- The fact that we are a current credit provider to you;
- Details of any accounts which are overdue by more than sixty days, and for which debt collection action has started;
- Advice that an account is no longer overdue in respect of any default that has been listed;
- Dishonoured cheques – cheques drawn by you for \$100.00 or more that have been dishonoured more than once.

We may also use your contact details to advise you of updates in the law through

our newsletters (including by email) or other issues or services we believe you may be interested in and may ask you randomly to respond to surveys, to ensure we meet your requirements. You acknowledge you consent to the use of your details for these purposes. You may, however, at any time, unsubscribe from any of these communications by following the unsubscribe procedure detailed in the communication.

We may store or provide to third parties your personal and confidential information, including to overseas recipients who are not bound to observe the *Privacy Act*. You acknowledge that you consent to us doing so and release, discharge and hold us indemnified against or in respect of any claims, actions or liability together with any costs on an indemnity basis arising therefrom.

If you are a member of a professional, business or trade association or organisation and it has referred you to us for the provision of legal services, you agree that we may disclose to it the fact that we are acting for you in a matter or give it other information relevant to your membership.

Official Enquiries

We may be required to participate in an inquiry, commission or proceeding because we have acted for you or have received documents or information in acting for you. This may involve us producing documents or seeking to claim or defend your privilege to resist inspection or disclosure or even giving evidence at an inquiry, commission or proceeding. We will seek your instructions at the time, if we are permitted by law to do so, but

you agree that we may produce the documents or make the disclosure where we are lawfully obliged to do so. You also agree to pay our Legal Costs and disbursements covering the time we spend in that regard on a time basis at the rate set out in our latest Costs Agreement with you.

Storage of Documents

On completion of the work on each matter we may retain any papers to which you are entitled but you leave in our possession. 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 three (3) years after the date of the final bill rendered by us in the matter pertaining to them or at any earlier time as agreed in writing by you (including by email).

This does not include documents which you deposit in safe custody with us. We may agree or may be required to retain and store documents on your behalf in safe custody. In that case you agree that we may give possession of them to a professional document management service which is a member of Records Management Association of Australia or is accredited under ISO 9000/90002 or to a separate law practice pursuant to an agreement between that law practice and us under which such documents are required to be stored in a similar manner and on terms and conditions no less favourable to you. You also agree we may charge you a fee of up to \$100.00 for each safe custody packet we hold on your behalf for each year or part thereof in which we do so. We may also store

other documents on your behalf with third parties such as commercial operators of storage facilities or an employee or director of us.

You further agree that 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.

Feedback

In order to provide the highest standards of service we welcome your feedback. If you are concerned about the way your matter is being handled please mention it first to the person looking after your matter. If you are still unhappy (or feel you are unable to discuss the problem with the person looking after your matter) please contact one of the principals who will investigate your concerns and contact you to discuss the problem. This will be at no cost to you.

To ensure we meet your requirements we randomly invite our clients to respond to surveys. This is to assist us to provide a better service to you and other clients. The answers are confidential. Please do not be threatened by the survey, as it is not part of the billing process and will not be charged to your account.

Queries and Independent Advice

If you have any questions about this

agreement you should ask us before you sign it or obtain independent advice from another solicitor as to its legal and practical nature and effect and as to whether or not it is in your interests. If you wish to seek such advice and you need help to find a suitable independent solicitor, we can provide you with a selection of solicitors or you can obtain a reference from the Queensland Law Society as they can assist you.

General

The laws of Queensland will apply to this Costs Agreement. Each provision of this Costs Agreement is separate and severable from the other provisions. If any whole or part provision of the agreement is found to be invalid or unenforceable, it shall be severed from the agreement and the rest of the agreement will remain effective.

Acceptance of Offer

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 this 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.

If the Work Schedule describes this agreement as a Conditional Costs Agreement or incorporates uplift fees, this offer can only be accepted by signing and returning a copy of this Document. In all other cases, acceptance of the offer may be by any one of the following ways:

- By signing and returning a copy of

this Document;

- By signing and sending us a copy of the signed Document by facsimile or electronic transmission;
- By verbally telling us you accept the agreement; and
- 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 this Costs Agreement.

Failure to accept our offer within seven days of the date of the Disclosure Notice accompanying this Document may result in the immediate withdrawal of our offer to act.

Urgent Work

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

Your Legal Costs – and How to Keep Them Down

In most matters the Legal Costs we charge involves using hourly rates for the members of the team working on the matter. As mentioned above, each team member has his or her own rate of charge depending upon his or her level of experience and efficiency. Generally the more skill and knowledge a team member has the greater the charge.

By delegating the work to the most appropriate person we are able to keep the total Legal Costs to a minimum.

We take great care to ensure that we spend no longer than is necessary to

carry out your work properly and that the appropriate team member does the appropriate work. Keeping your Legal Costs down does not stop there, as you too can help to minimise the time we spend working for you.

Here are some ways you can help:

- Keep a file of all documents and correspondence you receive from us that relate to the work we are doing for you. If you have the file with you whenever you communicate with us by telephone or in our office, you will have all the information you need to get the most from our discussions;
- Keep the length of telephone calls to us to a minimum. Having your file with you at the time can help;
- Consider if your solicitor's secretary can answer any question you have;
- Bring your file with you when attending our office to ensure the interview is as productive as possible. Any information that you can give us that avoids the necessity to obtain that information ourselves will reduce your Legal Costs. Particularly for first interviews, it is important that you bring all possible documents and information you have available; and
- If during an interview or a telephone call you are asked to gather any information or document or asked to take any action, make a list of what needs to be done and attend to it as soon as possible. This not

only avoids delay but also avoids us having to take follow up action that can increase the Legal Costs.

Working together to keep your Legal Costs down helps us to help you, and makes us more efficient. The last thing we want to do is give you a bill that is more than you think is reasonable or which is more than you had budgeted for.

Our Services with a Unique Focus

McKays Solicitors is a proactive legal practice focused on the real needs of our clients.

Our people are experienced in their diverse fields and are passionate about what they practise.

We provide our clients with practical advice for real results.

Business Focus

Banking & Finance
Business Structuring & Risk
Building & Construction
Commercial & Business
Commercial Disputes
Commercial Property
& Development
Credit Management
Employment
& Workplace Safety
Government
Insurance
Intellectual Property
Maritime & Ports
Mining & Resources
Planning & Environment
Reconstruction & Insolvency
Rural & Farming
Self Managed Super Funds
Taxation

Personal Focus

Asset Protection
Bankruptcy
Challenging Wills
Collaborative Law
Court & Litigation
Credit Management
Criminal
Family Law
Reconstruction & Insolvency
Residential Conveyancing
Rural & Farming
Self Managed Super Funds
Taxation
Town Planning & Property
Development
Wills & Deceased Estates

➤ Our focus, we will...

- Always **listen** to you properly
- Speak to you in **plain English** so you know exactly where you stand
- **Explain** to you clearly and upfront, how much you will need to invest in any service you require help with
- Ensure that there is a **certainty** of exactly what it is we are to do for you and always confirm that in writing
- Ensure you **know how long** the work we are to do for you should take
- Always explain what is **involved** and how things work
- Keep you **informed** every step of the way



Mackay

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