

PRIVATE & CONFIDENTIAL

BETWEEN

(The Client)

AND

KJV LAWYERS PTY LTD

(The Company)

COST AGREEMENT

COSTS AGREEMENT

This agreement is made on **Date** between **KJV Lawyers (Law Practice**, referred to in this Costs Agreement as we or us) and **Client**, referred to in this Costs Agreement as you).

Date: date of you accepting the terms of the Costs Agreement pursuant to Clause 2(b) below

Client:

The parties agree as follows:

1 Introduction

- (a) This document is a **Costs Agreement** and it is a contract between you and us.
- (b) This Costs Agreement is what determines, amongst other things:
 - (i) the work that we do for you; and
 - (ii) the fees that you pay us to do that work.
- (c) In this Costs Agreement, we provide you with a number of explanations, referred to as disclosures.
- (d) You have a right to negotiate with us about this Costs Agreement.

2 How you accept the terms of this Costs Agreement

- (a) By providing you this Costs Agreement, we are making an offer to act for you on the terms that it contains.
- (b) You may accept our offer by signing the Costs Agreement and returning it to us or if you continue to give us instructions after we have sent you the Costs Agreement and Letter of Engagement, you are taken to have accepted this Costs Agreement and the fees disclosed in the annexed Letter of Engagement.

3 What we will do for you

- (a) We will do the following work for you as set out in the attached **Letter of Engagement**.
- (b) We will not do any other work for you unless:
 - (i) you expressly instruct us to do so; and
 - (ii) we choose to accept your instruction.

4 Legal costs

4.1 How your legal costs will be calculated

- (a) We will charge you fees for the time that our professional staff spend doing work for you. In the rest of the Costs Agreement, we refer to this as time spent. Our hourly rates are calculated based on the following:

Principal: \$400+GST per hour

Associate: \$300+GST per hour

Lawyer: \$250+GST per hour

Paralegal: \$200+GST per hour

Please refer to the attached Letter of Engagement for a breakdown of our fee estimate.

- (b) Our fees are charged at an hourly rate for time spent and is calculated in 6 minute increments. At the same time that we do work for you, or shortly afterwards, we will make a record of the amount of time spent doing that work.
- (c) The time spent doing work for you includes, but is not limited to:
 - (i) attending meetings;
 - (ii) attending court;
 - (iii) briefing counsel;
 - (iv) considering issues;
 - (v) drafting file notes of telephone calls and meetings;
 - (vi) drafting letters;
 - (vii) drafting and preparing documents;
 - (viii) participating in telephone calls;
 - (ix) research; and
 - (x) waiting time.
- (d) GST will be added to all rates, charges and expenses stated in this Costs Agreement.
- (e) All expenses and disbursements that we pay to others on your behalf will be invoiced to you. You hereby agree to us incurring the expenses and disbursements on your behalf as listed in the **Letter of Engagement**. You authorise us not required to obtain your instructions before incurring expenses and disbursements on your behalf where the expense is:
 - (i) less than \$100; or
 - (ii) for a title search, company search, process server or courier.
- (f) The expenses and disbursements that will be invoiced to you include, but are not limited to:
 - (i) court filing fees;
 - (ii) counsel fees;
 - (iii) courier fees;
 - (iv) expert reports;
 - (v) inquiry fees;
 - (vi) medical reports;

- (vii) obtaining copies of records;
 - (viii) process server fees;
 - (ix) search fees;
 - (x) travel expenses;
 - (xi) transcripts; and
 - (xii) witness expenses.
- (g) You may ask us for a written progress report on the work that we have done. We will charge our normal hourly rates to provide you the written progress report.

4.2 How your legal costs would otherwise be calculated

- (a) Lawyers are regulated and there is a default method by which legal costs are calculated in the absence of a Costs Agreement.
- (b) Generally, costs under the default method are calculated according costs determinations that are issued by a government body from time to time. A costs determination establishes how much the lawyer can charge the client based on particular tasks and how much can be charged for doing each task.
- (c) The way in which we will charge you under this Costs Agreement and the way you could be charged under a costs determination are different. The main difference is we will charge you for time spent instead of by reference to the prescribed maximum fee that can be charged for a task.
- (d) Attached to this Costs Agreement is a copy of the costs determination that would otherwise apply for the work that we will do for you. You may compare the Costs Agreement and the costs determination to make an informed decision.

4.3 Invoicing

- (a) It is your right as our client to receive an invoice for your bill from us. Your bill will contain detailed information about our professional fees, sundry charges, expenses and disbursements.
- (b) We may send you an invoice every month. We may choose to send the invoices to you by:
 - (i) post to the mailing address in clause 11 of this Costs Agreement; or
 - (ii) email to the email address in clause 11 of this Costs Agreement.
- (c) Invoices must be paid within 7 days, starting from the date by which you are reasonably considered to have received the invoice.
- (d) In the event of a discount offered on an invoice, we reserve the right to withdraw the discount offered if the invoice is not paid by the due date.

4.4 Our estimate of what you will pay

- (a) The table in our **Letter of Engagement** sets out our estimate of the total legal costs you will pay us to do the work covered by this Costs Agreement.

- (b) There is a lot of uncertainty about how much work we will need to do, the tasks that will need to be done and how much time it will take to do those tasks. This uncertainty comes from:
 - (i) whether the factual circumstances will turn out to be simple or more complex;
 - (ii) whether the legal issues will be easy or difficult to identify;
 - (iii) whether the evidence required to prove the facts will be difficult to identify and capture;
 - (iv) how the other party will deal with its own interests and how it assesses risks;
 - (v) if there is going to be a settlement of the matter;
 - (vi) whether a lot of work is required to reach a settlement;
 - (vii) when any settlement may happen;
 - (viii) the extent to which we need to advise you in order to satisfy our legal obligations to you, which may differ depending upon your experience and knowledge;
 - (ix) whether we need to engage any expert to provide an opinion;
 - (x) if court proceedings start, the way in which procedural matters are dealt with; and
 - (xi) if a decision is made by a judge, whether that decision is in your favour.
- (c) If you require us to perform additional work outside the reasonable scope of work set out in the **Letter of Engagement** or that changes in circumstances have resulted in additional hours being spent on completing the scope of work, we will charge you fees based on hourly rate set out under Clause 4.1.
- (d) We are required to provide you with an update of this estimate if there are changes in circumstances which affect it.

4.5 Trust money

- (a) Trust money involves you paying us money in advance that is kept by us in a bank account known as a trust account.
- (b) The trust money sits in the trust account and is not accessed by us until after we issue an invoice and you authorise us to use the trust money to pay that invoice. You are taken to authorize us to use the trust money if you do not dispute the invoice by the date when the invoice is due and payable.
- (c) We may:
 - (i) choose to not commence any work until you have paid us trust money; and
 - (ii) ask you for further trust money time to time, which you must pay us.
- (d) The usual procedure for trust money is as follows:
 - (i) during the middle of the month we will send you a letter asking for additional trust money in anticipation of future invoices and disbursements, depending on the balance of your trust account; and

- (ii) at the end of that month, when we issue our invoice, we will use that trust money and any remaining in your trust account to pay your invoice.
- (e) You authorise us to receive money in the trust account on your behalf for any of the following reasons:
 - (i) as payment of any judgment or settlement;
 - (ii) to do further do work for you; and
 - (iii) to pay our invoices.
- (f) We will send you a statement when we receive money into your trust account and what we have done with the money.
- (g) In the event of you becoming incapacitated, bankrupt, entering into external administration or otherwise in the process of winding up, all of our fees for work done for you and expenses and disbursements incurred up to that date shall become due and immediately payable and you are taken to have authorized us to use the trust money to pay for the invoice.

4.6 Interest, guarantee and security for payment

- (a) We may charge you interest if our invoice is not paid within 30 days of its date. Interest will be calculated at the benchmark rate of interest prescribed by the Legal Profession Uniform Law.
- (b) If you enter into this Costs Agreement as an agent of someone else, in the absence of a written agreement to the contrary, you accept personal liability for the payment of our invoices.
- (c) If you sign this Costs Agreement as a director or secretary of a corporation, in order for the corporation to execute this Costs Agreement you:
 - (i) accept joint and several liability with that corporation for payment of our invoices; and
 - (ii) guarantee to meet the obligations of that corporation,
 in consideration for which we will act for that corporation.
- (d) If there is more than one client, each of you accept joint and several liability for payment of our invoices and any costs arising from this Costs Agreement.
- (e) If you own any interest in real property solely or jointly with any other person, you agree to:
 - (i) charge that interest as security for payment of our invoices; and
 - (ii) allow us to lodge an absolute caveat on the title of any such property for this purpose.

This clause applies even if you are liable to us under clauses (b) and (c).

5 Termination

5.1 Termination by us

- (a) We may terminate this Costs Agreement and the contract between you and us if:

- (i) it would be unethical for us to continue to work for you;
 - (ii) you fail to pay our invoice by the date payment is due;
 - (iii) you do not provide us with adequate instructions within a reasonable time;
 - (iv) you do not pay us trust money when reasonably requested;
 - (v) you give instructions that are deliberately false or intentionally misleading;
 - (vi) you indicate to us that we have lost your confidence; or
 - (vii) for any other just cause from time to time.
- (b) We will give you at least 7 days' notice of our intention to terminate and our grounds.
- (c) During the time between us giving you 7 days' notice of our intention to terminate and us actually terminating:
- (i) we will not be obliged to do any work for you if it would be unethical for us to do so;
 - (ii) you have the opportunity to remedy any default; and
 - (iii) you may negotiate if you disagree with our grounds for the proposed termination.
- (d) It may be required to take any steps to cease being your lawyers on the court record, including drafting and lodging any documents. If this happens as a result of any failure by you to act after we gave you notice, we are entitled to charge you our reasonable fees for time spent taking these steps.

5.2 Termination by you

You may terminate this Costs Agreement at any time by giving written notice to us by email to the relevant solicitor's contact email address or by letter.

6 Lien over your documents

Subject to our legal and professional obligations, we may keep all of your:

- (a) documents;
- (b) files; and
- (c) personal property,

that we possess which relates to the work we do for you, until you pay all our invoices that are payable by you. This is known as a lien.

7 Applicable law

- (a) The law of New South Wales applies to this Costs Agreement and the contract generally between you and us.
- (b) If the work we are doing for you has a substantial connection with a different state or territory, you may enter into a costs agreement and contract with us on the basis of that law. If you wish to do so, please inform us before signing this Costs Agreement. We are entitled to withdraw our offer to act for you if we do not want to enter into a costs agreement and contract with you on that basis.

8 Things you need to know

8.1 Recovering your legal costs from the other side or being required to pay the other side's legal costs

- (a) There are a number of risks that go along with being involved in a legal dispute, including that you may be ordered to pay all or some of the other party's legal costs. This usually happens if you lose but in some instances it happens if you win.
- (b) If you win the dispute, the court may order the party to pay all or some of your legal costs.
- (c) The sum that is paid by one party to another in the event of an order from the court is determined either by agreement between the parties or costs determination. Costs determination is an additional court procedure to decide the amount of costs that should be ordered to be paid.
- (d) Based on our costs estimate above at clause 4.4, we estimate that if you win and the court orders the other party to contribute to your legal costs, you will recover approximately the amount set out in the **Letter of Engagement** (if your matter involves litigation)
- (e) Based on our costs estimate above at clause 4.4, we estimate that if you lose and the court orders you to pay the other party's legal costs, it will be approximately the amount set out in the **Letter of Engagement** (if your matter involves litigation)

8.2 Getting advice about this document

- (a) You should take the time to read this document carefully.
- (b) You are welcome to ask us questions about this document, but we will not provide you legal advice about it. If you wish to receive legal advice, you should approach another lawyer.
- (c) More information about the relationship between lawyers and their clients in New South Wales can be found by you looking at the Office of the Legal Services Commissioner website.

9 Other terms

- (a) This Costs Agreement may only be varied in writing.
- (b) At any time, you may contact our principal, [*principle name*], to discuss your legal costs. We will not charge you fees for doing so or providing you information about:
 - (i) the legal costs and disbursements you have incurred;
 - (ii) our estimate of the total legal costs you will pay us to do the work covered by this Costs Agreement;
 - (iii) our estimate of what you will have to pay to the other party, in the event that you lose.
- (c) You have a right to:
 - (i) apply for a costs assessment;
 - (ii) apply to have this Costs Agreement set aside; and
 - (iii) make a complaint about us to the Office of the Legal Services Commissioner.

10 Statutory disclosures: Legal costs — your right to know

You have the right to:

- (a) negotiate a costs agreement with us;
- (b) negotiate the billing method we use to calculate our fees to you (for example, by reference to timing or task);
- (c) receive a bill of costs from us;
- (d) request an itemised bill of costs after you receive a bill from us that is not itemised or is only partially itemised; and
- (e) seek the assistance of the Office of the Legal Services Commissioner in the event of a dispute about legal costs.

11 Your contact details

- (a) Your name and contact details are as set out under the **Letter of Engagement**.
- (b) Within 7 days of your contact details changing, you must provide us with the new details in writing.

12 Financial Advice Not Given

- (a) We are not qualified to give you financial advice (as distinct from legal advice and we will not do so.
- (b) If you require financial advice throughout the course of your matter, we will recommend that you seek financial advice from an accountant or financial planner.

13 Instructions

- (a) We will only act on instructions provided by yourself, or in the case of a corporate client, the directors or other authorised officers of the company and their assigned agents.
- (b) If you require us to take instructions from another person other than yourself, we will require evidence that you have appointed that person as your attorney, or in the alternative, you and your appointed individual must sign the forms that we prepare to the effect of consenting to that individual to act as your proxy and for us to accept those instructions from your proxy.

14 Insurance and Limitation of Liability

- (a) We are insured for legal liability under a compulsory professional indemnity policy insurance administered by LawCover.
- (b) Our firm is a member of the Solicitors Limitation of Liability Scheme established by the NSW Law Society under the *Professional Standards Act 1994* (NSW)

I confirm I have read and understood
the terms of engagement and instruct
you accordingly.

CLIENT DETAILS

Full Name:

.....

Signature:

Residential Address:

Phone Number(s):

Email:.....