



# **GUARDIAN**

## **WILLS & PROBATE**

**CLIENT ENGAGEMENT  
AGREEMENT  
TERMS & CONDITIONS**

This document constitutes an offer to the client to enter into a cost agreement (commonly known as an '**engagement agreement**') with the Law Practice and for the Law Practice to act for the client in relation to the services defined herein.

The Client may accept this offer by, clicking the confirmation and acknowledgement on the online booking portal found at <https://gregsonandassociatesappointments.as.me/schedule.php>, ('**online booking portal**') or by approving the online scope of work issued to them by email or SMS, or by the Client's conduct by continuing to give instructions to the Law Practice.

## B E T W E E N:

Guardian Wills & Probate

Gregson Empire Pty Ltd (ACN 625073618) as trustee for  
Gregson Family Discretionary Trust (ABN 37986332445)

Liability limited by a scheme approved under professional standards legislation

Level 4, 23 Barrack Street

Perth WA 6000

(“**the Law Practice**”)

-and- 

The person named in the online booking portal and/or the scope of works sent to the client (“**the client**”).

### 1. THE SUBJECT MATTER AND SCOPE OF WORK

- 1.1 This agreement sets out the terms and conditions upon which the Client retains the Law Practice to act for the client in relation to the matters outlined in the scope of work (“**the scope of work**”). The law practice is only contracted to provide legal services as set out in the scope of work. Should additional work be required beyond the initial scope and should that additional work be requested by the client, then an additional scope of work will be sent for that work.
- 1.2 The gross total set out on the scope of work to be provided to the client is the ‘single fee estimate,’ for the purposes of the law practices obligations under the *Legal Profession Uniform Law Application Act 2021 (WA)* (“**uniform law**”). The ‘single fee estimate,’ is affected by the matters set out in this
- 1.3 agreement in general, and in respect of the recoverability of those fees by clauses [3] and [4] of this agreement.

### 2. PROFESSIONAL COSTS AND DISBURSEMENTS

The Client acknowledges that they understand:

- 2.1 The costs the Client is to pay the Law Practice for work undertaken in relation to the scope of work will be charged as a fixed fee (unless expressly negotiated and agreed with the law practice) namely, at the amount set out in the scope of work. The fixed fees include office disbursements (such as printing, postage, and other sundries) but excludes the Goods and Services Tax (“**GST**”).
- 2.2 From time to time, the Legal Costs Committee constituted under the *Legal Profession Act 2008 (WA)*, makes legal costs determinations regulating the costs that may be charged by law practices. A legal costs determination is applicable to the subject matter (“**the costs scale**”). It is likely, that the fixed fee detailed in the scope of work, and the hourly estimates used to define the fixed fee, will exceed the costs provided for in the costs scale. The cost scales can be downloaded and reviewed (<http://www.legalcosts.wa.gov.au>).
- 2.3 The relevant cost scales detail the charge out rates of ~~practitioners and support staff~~ depending on the extent of that employee's experience.
- 2.4 The client acknowledges that in the conduct of their matter that a number of different practitioners and legal support staff may contribute to the work performed on their file. The client further acknowledges that the rate in any fixed fee scope of work is not an hourly rate, but a rate based on the value of the law practices services as a team. Any fixed fees agreed to by the client in a scope of work represent an overall value-based fee. The fees
- 2.5 have regard to the firm's use of technology and other efficiencies, the complexity of the matter, the experience of the firm, the cost sensitivity of the matter, and consideration for a loss of revenue which the firm incurs as a result of capping or fixing fees as opposed to charging on a time basis. The client acknowledges that these matters are a justification for paying any amount in excess of the cost scale. The client confirms that firstly, they have read and considered the relevant cost scale (mentioned above) and secondly, considers even if the law practice's costs exceed, or even significantly exceed, the items in the scale, the costs set out in the fixed fee scope of work are both fair and reasonable.

- 2.6 Occasionally a description in a fixed fee scope of work provided at the commencement of a matter may not precisely describe the work performed thereafter. A prime example is a 'letter of advice' which may end up being 'an email of advice'. Other examples may include an 'attendance at a case management hearing' which may actually end up being 'an attendance at a directions hearing' or 'an attendance at a special appointment'. Whilst the scope of works is intended to be as accurate as possible in its description, the client understands that where the work performed does not vary in substance but only varies in form or description, then the law practice can charge the same quantum for the item set out in the scope of works howsoever described.
- 2.7 Where a scope of work states that the fees will be charged on 'a time basis' or 'an hourly basis' then the hourly rates chargeable by this firm will be \$600.00 per hour plus GST for a senior practitioner (5 years or more post admission experience), \$400.00 plus GST per hour for a junior lawyer (1-5 years post admission experience) and \$250.00 per hour for paralegal work all of which are above the scale maximums expressed in the cost determinations.

### **3. COST RECOVERY ACKNOWLEDGEMENTS**

- 3.1 This clause relates to contentious matters, and in limited circumstances non-contentious estate administration matters. Party/party costs can be awarded by a court requiring one party (usually the unsuccessful party) to pay legal costs of the other party (usually the successful party). Alternatively, a costs figure may be negotiated by us as part of a settlement. In practical terms, party/party costs reimburse a party for legal costs they have paid, or are liable to pay, to their legal practitioner. However, even if you are successful in your action the party/party costs awarded to you may not cover all of your legal costs. For example, if you are successful, you may only recover from the unsuccessful party the maximum costs set out in the relevant cost scale (mentioned above). If you are unsuccessful, then subject to your right to apply for a taxation of this law practice's costs before a taxing officer, you are responsible for the costs of this law practice on an indemnity basis as set out in the fixed fee scope of work.

### **4. COST ESTIMATES IN LITIGATION AND CONTESTED MATTERS**

**A.** Taxation of costs may reduce your cost liability by 10% to 30% or more. In most fully defended succession law matters, each party is likely to spend at least \$100,000.00 plus GST and disbursements plus counsel's fees (if counsel is engaged) if the matter proceeds to a defended trial in the Supreme Court of Western Australia. This means in a contested litigation, if you are successful, you may only recover \$70,000.00 of your \$100,000.00 cost bill to this firm. If you are unsuccessful, you may be required to pay \$100,000.00 for your own costs to us (which may be reduced on a taxation) and \$70,000.00 - \$100,000.00 of the other party's costs.

**The** client acknowledges that clause [4.1] of this agreement constitutes 'a genuine estimate' concerning the effect of the costs on their matter. Should the client wish to know more precisely the cost and/or taxation implications on their matter, they may request the law practice to provide advice following a detailed review of their file.

### **GOODS AND SERVICES TAX**

#### **5.**

- 5.1 The Client agrees to pay the GST at the rate set by the Australian Federal Government (as amended from time to time) where applicable.
- 5.2 The GST rate is currently 10%.

### **6. ACCOUNT**

- 6.1 The Client has a right to receive an account from the Law Practice. The Law Practice will render an account
- 6.2 comprising the Fixed Fee ("the Account"), upon completion of each phase or item in the scope of work or on a fortnightly basis. The Client agrees to pay the Account within 14 days of the date of the Account, subject to the Client's right to dispute costs as outlined below. The
- 6.3 Account is a final account for the services referred to in the Account. The Account will be rendered in a lump
- 6.4 sum form unless the client requests an itemised bill. Any itemised bill rendered to the client will not show the
- 6.5 firms usual hourly rate, but rather will show a time figure only. It is irrevocably accepted by the client that should the matter proceed to taxation of costs or a dispute over costs that the propriety, adequacy, and reasonableness of the fixed fees shall be referable to the matters set out at 2.5 of this agreement.

### **7. PERSONAL GUARANTEES**

- 7.1 In circumstances where the client is engaging the law in a representative capacity, for example as executor of the estate of a deceased person, or as a director of a proprietary company, or as the trustee of a trust, then the individual (natural person) who approves the cost agreement and gives instructions to the law

practice personally guarantees the costs of the law practice and without creating an express or implied lawyer client relationship in their personal capacity, hereby agrees to be bound by the terms expressed in this agreement in their personal capacity.

## **8. DISBURSEMENTS**

- 8.1 The Law Practice will charge for third party disbursements which may include but are not limited to land titles office registration and search costs, death/birth/marriage certificate application costs, bank title-production costs, stamp duty, ASIC searches, court filing fees and the like, those costs are in addition to the fixed fee and will be passed on to the client.

## **9. TRAVEL COSTS**

- 9.1 The Client agrees to pay the Law Practice's reasonable travel expenses, to be agreed in advance with the Client, if it becomes necessary to travel intrastate, interstate or overseas.

## **10. COUNSEL FEES**

- 10.1 The Law Practice will obtain the approval of the Client to brief Counsel to provide written advice, draw documents and appear for the Client.
- 10.2 The Client authorises the Law Practice to negotiate the fees payable to the Counsel to be appointed on the Client's behalf, and the Law Practice will obtain the Client's approval before finalising any such arrangements.
- 10.3 The client understands that a brief to counsel is a contractual arrangement as between the law practice and counsel. It is not a contractual agreement as between the client and counsel. In the very unlikely event that a complaint is raised by the client over the propriety, adequacy, or reasonableness of counsel's fees, the client irrevocably authorises the law practice to immediately pay counsel on a full indemnity basis from any funds that they hold in trust and to indemnify the law practice from its liability to pay counsel's fees.

## **11. EXPERT COSTS**

- 11.1 The Law Practice will obtain the approval of the Client to instruct and engage experts necessary for the investigation, preparation, and presentation of the Client's case.
- 11.2 The Client authorises the Law Practice to negotiate the fees payable to the experts to be engaged on the Client's behalf, and the Law Practice will obtain the Client's approval before finalising any such arrangements.

## **12. ANOTHER LAW PRACTICE**

- 12.1 The Law Practice will obtain the approval of the Client to instruct another law practice on behalf of the Client. For example, the Law Practice may need to instruct another law firm on behalf of the Client.
- 12.2 The Law Practice will obtain the Client's approval before finalising any such arrangements.

## **13. ACCOUNTS**

- 13.1 The Client has a right to receive an account from the Law Practice. The Law Practice will render accounts
- 13.2 on the completion of the items in the scope of work. The Client agrees to pay such accounts within 14 days of the date of the account, subject to the Client's right to dispute costs as outlined below. Each account is a final account for the services referred to in that account. An account will be rendered in a lump sum form unless the client specifically requests an itemised account.
- 13.3 If the law practice or the client terminates their instructions part-way through a fixed fee component of work in the scope of work, then client will be billed on an hourly basis at the scale hourly rate set out in the applicable cost determination (as amended from time to time) and not for the full amount of the fixed fee.

## **14. INTEREST ON UNPAID ACCOUNTS AND DEFAULT**

- 14.1 The Law Practice may charge the Client interest on the amount of any rendered accounts, that remain unpaid for longer than 30 days after the Law Practice has given the account to the Client. The rate of interest payable is 6% per annum or the Reserve Bank of Australia (RBA) cash rate target plus 2% whichever is the greater.

- 14.2 Notwithstanding clause 14.1 of this agreement, if the law practice lawfully terminates this agreement and thereafter issues a letter of demand for payment of outstanding costs, the client agrees that the law practice has a contractual right to charge a default interest at a rate of 18.99% per annum, or such higher rate of interest for unsecured personal lending as set by the law practice's bank from time to time compounding monthly on unpaid balances from the date of the issuing the demand.

## 15. MONEY IN TRUST

15.1 The Law Practice may request that the Client pay money into the Law Practice's trust account to meet the Law Practice's anticipated professional costs, disbursements and/or expenses.

15.1.1 This is particularly applicable in cases of deferred fee agreements post mediation (Where the client instructs the law practice to turn down a reasonable offer of settlement to go to trial and where it is possible that the client will not receive any settlement or judgement funds). It would not be fair for the law practice to undertake thousands of dollars of work and then not get paid or have security for its costs. Once the scope of work provided to the client is completed the law practice may request money in trust for the original scope of work and any supplementary scope of work beyond mediation.

15.2 The Client authorises the Law Practice to withdraw funds, held from time to time in the trust account, for expenses reasonably incurred by the Law Practice in the conduct of the matter costs that may be due and payable by the Client to the Law Practice and any other expenses for which the Client is responsible or authorised the Law Practice to pay.

15.3 Notwithstanding the time limit set out in regulation 65 of the *Legal Profession Regulations 2009* (WA) and subject always to the client's rights to a taxation of costs under the *Legal Profession Act 2008* (WA) the client irrevocably authorises the law practice to pay any account it issues from the client's trust monies immediately following the law practice issuing an account to the client.

15.4 The client acknowledges that in the conduct of their estate planning matters that there are sometimes third-party disbursements that need to be paid. For example, conveyancing, stamp duty and land titles office ("Landgate") disbursements. For the sake of expediency and acknowledging that the client may not promptly be contactable for an individual written authority, the client authorises the law practice to pay Landgate and conveyancing disbursements without the need for a separate written trust account authority.

15.5 The client acknowledges that in the administration of deceased estates that there are testamentary expenses that need to be paid. For example, expenses may include but are not limited to funeral accounts, electricity accounts, water accounts, insurances, conveyancing disbursements, trustee and creditor notices. For the sake of expediency and acknowledging that the client may not promptly be contactable for an individual written authority, the client authorises the law practice to pay both testamentary and non-testamentary expenses of the estate without the need for a separate written trust account authority.

15.6 The client acknowledges that in the carrying out of estate litigation on behalf of the client that there are filing fees and service fees which need to be paid. For example, expenses may include but are not limited to; originating process filing fees, mediation appointment fees, fees associated with entering the matter for hearing, counsel's fees, process server fees and the like. For the sake of expediency and acknowledging that the client may not promptly be contactable for an individual authority, the client authorises the law practice to pay these expenses without the need for a separate written trust account authority.

15.7 The client agrees, subject to clause [29] of this agreement, that unless the law practice is expressly directed in writing to the contrary, the law practice is authorised and directed by this as to return client trust money to any account that they have nominated during the conduct of their matter without notice.

15.8 The client acknowledges and understands that:

15.8.1 All law practices in Western Australia are prohibited by law from earning interest on client trust money.

15.8.2 When the law practice receives and then holds client trust monies, unless the law practice is directed in writing by the client to invest that money, the client will not earn interest on that money.

15.8.3 It is the responsibility of the client to direct the law practice to invest the money in interest bearing accounts or other investments which are permitted by law.

## 16. JOURNALLING OF TRUST MONIES

16.1 The client may have more than one file in the law practice. For example, they may have non-contentious estate administration work, estate planning work, or litigation work all performed simultaneously. The client hereby expressly authorises the law practice to journal or transfer trust moneys from one file (matter trust leger) to the another, for the payment of anticipated costs and disbursements. The law practice will endeavour to obtain instructions to journal monies between files on each occasion, however, the client acknowledges that is not always possible and for the sake of expediency gives this ongoing general authority without the need for a separate written trust account authority.

## 17. IRREVOCABLE AUTHORITY TO THIRD PARTIES

17.1 The client gives to the law practice an irrevocable authority (at common law and in equity) as security for the recovery of the law practice's unpaid costs and disbursements. The practice thereby may act as the

client's attorney to secure those costs from third parties irrespective of whether so acting creates a perceived or actual conflict of interest between the client and the law practice. The client will, if requested by the law practice, execute any instrument settled by the law practice, (to be provided to third parties) to give effect to this clause. Any instructions given by the law practice under this clause shall be regarded in priority to the competing instructions of the client as the donor of the power. This agreement may be pleaded as a bar to any proceedings seeking a revocation of this authority.

17.2 The terms of this agreement grant the third-party a full indemnity and release for the payment of any monies, or the transfer of any property, in satisfaction of monies owed under this agreement and this clause may be pleaded as a bar to any proceedings commenced against that third party payer.

## **18. DOCUMENT RETENTION – PAPERLESS PRACTICE**

18.1 The Law Practice is only obligated to retain electronic images or electronic copies of client documents for no more than seven (7) years.

18.2 Subject to clauses [18.1] and [22] of this agreement, an electronic copy of the client file must be provided by the law practice within a reasonable time of the client's written request to do so.

18.3 Apart from original wills, deeds and certificates, the Client irrevocably authorises the Law Practice to immediately destroy all hardcopy documents it receives from time to time and only to retain digital copies of those documents.

## **19. EMAIL SUBSCRIPTION**

19.1 The client agrees for the firm to add their email address to the law practice's mailing list. This is done with the primary objective of advising the client of any office closures, changes in office hours and changes in law which may materially impact the validity of their documents or ongoing matter with the law practice. The email list gives the client a means of regularly updating their contact details with the law practice. Updated contact details allow the law practice to contact you in the case of an emergency, to comply with our ongoing trust accounting and compliance obligations under the *Legal Profession Act 2008* (WA) or the *Legal Profession Uniform Law Application Act 2021* (WA) and to advise you if a family member has died.

19.2 The client understands that they can unsubscribe at any time.

## **20. COLLABORATE PRACTICE**

20.1 The client authorises the law practice, to discuss and share information regarding their matter with the client's financial planner, accountant, conveyancer, real estate agent, former lawyer (if any) and the like.

20.2 In the absence of the client electing these agents, the law practice may confer with their own usual agents to seek advice on behalf of the client.

## **21. CERTEGY EZI-PAY AND HUMM**

21.1 The Law practice, offers a referral to Certegy Ezi-Pay Pty Ltd | ACN 129228986 together with Humm Group Limited ABN 75 122 574 583 (Australian Credit Licence Number 247415) ("Humm") as a third-party merchant payment provider. This referral is made to assist our clients to pay for costs and disbursements if they do not presently have sufficient funds to do so. It also allows clients to have the flexibility for payment arrangements.

21.2 The client understands that the law practice has no financial relationship with Humm (beyond a right for Humm charging the law practice merchant fees) and the law practice is entirely independent. The law practice receives no financial incentive in exchange for the referral to Humm.

21.3 The client understands that the law practice is not offering credit in any way. The client shall satisfy themselves of the appropriateness of any Humm's financial products together with Humm's terms and conditions for lending. Humm terms, conditions fees and charges can be found at <http://humm.com.au>

21.4 The law practice provides no warranty or endorsement of the quality of the financial services offered by Humm.

## **22. LIMITATION OF LIABILITY FOR SAFE CUSTODY**

22.1 The client acknowledges and understands that in the use of the law practices safe custody services that:

22.1.1 They have obtained at least one copy of their original safe custody documents and will retain a certified copy in a safe place.

22.1.2 The law practice bears no responsibility for, or liability for consequences of, any loss or damage to the client's original will that occurs during the client's original will being transmitted to the law practice by the client in the post.

- 22.1.3 By accepting my documents for storage, the law practice does not check or express any opinion as to the wording, operation, or validity (except where the document was prepared by our office).
- 22.1.4 It is the client's responsibility to keep their documents and the contact details provided to the law practice up to date if their circumstances change.
- 22.1.5 If the law practice is named as executor of a client's last Will and Testament, it has the right (subject to any requirement under law) to renounce.
- 22.1.6 Whilst the law practice will endeavour to take reasonable steps in each case, in the event that the law practice is notified of the client's death, or other circumstance (as the case may be), the client releases the law practice from liability for loss by any person arising from its failure to notify, in a timely way or at all, the person(s), or the appropriate person(s), appointed to act under my will (as the case requires) of such circumstances.

22.2 In very limited circumstances, a third party may request a copy or withdrawal of a Will. In those circumstances a letter of authority signed by the testator or appropriate proof of authority and reasons for the request must be provided.

- 22.2.1 If Letter of Authority is provided, we require the third party to provide current identification for the testator.
- 22.2.2 If documents are sent by mail, current photographic identification must be certified by a person authorised under the *Oaths, Affidavits and Statutory Declarations Act 2005 (WA)*.

22.3 The client consents to the law practice:

- 22.3.1 Using the personal information, that the client provides in data matching so that their personal situation can be confirmed and, where appropriate, the executor contacted or confirmed.
- 22.3.2 Releasing the original documents as follows and (subject to any requirements under law) only as follows:
  - 22.3.3 To the client, or to a person authorised in writing by the client to collect the document(s);
  - 22.3.4 To a person or persons who provide to the law practice evidence that satisfies the law practice that they are entitled to commence to act as:
    - i) Executor or co-executor; or
    - ii) Applicant for a grant of 'letters of administration with the will annexed'.

### **23. CLOUD STORAGE THIRD PARTY APPLICATIONS AND MATTER MANAGEMENT SOFTWARE**

23.1 The law practice utilises Actionstep, Bioverify (VixVerify), Settify, The Prepared Company/BePrepared, Xero, Acutiy, Squarespace, Mailchimp, Zapier, Squarespace/AcuityScheduling, DocuSign and ESN group as cloud-based identification, matter management software, and data backup providers ("the software provider"). Cloud based matter software means that the client's documents and data are stored on external servers owned or under the control of the software provider. Information about the relevant data security policies can be found at [www.actionstep.com](http://www.actionstep.com), <https://bioverify.app/home/privacy>, [www.xero.com](http://www.xero.com), [www.esngroup.com.au](http://www.esngroup.com.au), <https://thepreparedcompany.com>, <https://www.settifycom.au>, <https://mailchimp.com>, <https://www.acuityscheduling.com/>, [www.docusign.com](http://www.docusign.com) and [www.zapier.com](http://www.zapier.com).

23.2 There are risks associated with the storage of digital information. Although unlikely, and despite backing-up and protecting your data, it is hypothetically possible for documents and data to become lost, corrupted, damaged, or hacked.

23.3 In respect of Items 23.1 and 23.2 of this agreement the client:

- 23.3.1 Irrevocably authorises the law practice to provide documents and data to the software provider.
- 23.3.2 Indemnifies the law practice from any loss or damage because of data loss by the software provider. The client agrees that this clause may be pleaded as bar to any claim.

23.4 The law practice utilises several third-party cloud-based software providers for the efficient management of the practice. The client acknowledges and expressly authorises the law practice in its unfettered discretion to provide such of the client's information as the law practice considers necessary to third-party software providers.

### **24. CONSENT TO ELECTRONIC COMMUNICATIONS AND SERVICE**

24.1 The client universally accepts the email address and or mobile telephone number provided to them can be and will be used by the law practice as the address for service of notices, invoices, correspondence, and any other information.

24.2 The client acknowledges that they will regularly and promptly attend to electronic correspondence and accept liability stemming from a failure to update the address for service of notices.

24.3 The client accepts that short message service displayed as 'Gregson Asc' (or any other email address which states words to the effect that it is not monitored) cannot receive reply messages and is un-monitored.

## 25. QUERYING LEGAL COSTS

25.1 The Client should not hesitate to contact the Law Practice and/or the Lawyer Responsible, at any time, if the Client has any query in relation to the Agreement and/or the Client's legal costs.

25.2 If an account is rendered in a lump sum form, the Client may request, by notice in writing, that the Law Practice provide an itemised account of the services referred to in that account. The Law Practice recommends that if the Client requires an itemised account, that the Client make the request within 30 days after being given an account.

25.3 The following avenues are available to the Client, in the event of a dispute in relation to the Agreement and/or the Client's legal costs:

25.3.1 Within 12 months after being given an account, the Client may apply to a taxing officer of the Supreme Court of Western Australia for an assessment of the whole or any part of the costs charged in that account. The Client may apply to the Supreme Court of Western Australia to have

25.3.2 the Agreement set aside. The Client may make a complaint about a legal practitioner at the Law

25.3.3 Practice, to the Legal Profession Complaints Committee within the time expressed by the uniform law (*Legal Profession Uniform Law Application Act 2021 (WA)*).

## 26. TERMINATION – CLIENT

26.1 The Client may terminate the Agreement at any time, by providing the Law Practice notice in writing.

26.2 If the Client requests that the Law Practice cease acting for the Client, the Client acknowledges that the Law Practice's costs will become due and payable immediately upon receipt of the Client's written request that the Law Practice cease acting (this is especially the case with deferred fee agreements).

## 27. TERMINATION – LAW PRACTICE

27.1 The Law Practice may stop acting for the Client if:

27.1.1 The Client has not performed any of the obligations required under the Agreement.

27.1.2 The Client has not given adequate instructions within a reasonable time of being requested to do so.

27.1.3 The client behaves in an offensive, intimating or emotionally abusive manner towards the staff of the law practice.

27.1.4 In the Law Practice's reasonable opinion, it appears that mutual confidence and trust no longer exists between the Law Practice and the Client.

27.1.5 Where the client insists upon the Law Practice advancing argument that the Law Practice reasonable believes are 'hopeless', 'doomed to disaster', 'bound to fail' or which are 'not properly arguable'.

27.1.6 Where the client refuses to accept a reasonable offer of settlement (for the avoidance of doubt a reasonable offer of settlement is defined by the discretion of the Law Practice based on their experience in succession law).

27.1.7 In accordance with clause 26.2 of this agreement, where the client disregards the advice of the Law Practice and attempts to pursue an action and/or proceedings that may reasonably be deemed frivolous and/or vexatious (for the avoidance of doubt a frivolous and/or vexatious argument, action or proceeding is based on the Law Practice's experience in succession law).

27.1.8 In the Law Practice's reasonable opinion, continuing to represent the Client may place the Law Practice in breach of the *Legal Profession Conduct Rules 2010 (WA)* or ethics governing legal practice in Western Australia.

27.2 The client understands and acknowledges that the Law Practice has a duty to abstain from initiating vexatious, or frivolous, or unmeritorious actions and/or proceedings within the court that may constitute and abuse of the court's processes.

27.2.1 The client understands and acknowledges that the Law Practice will only provide advice that

is in the best interest of the client and advice that is designed to bring about a resolution to the client's matter and/or dispute as soon as reasonably practicable.

27.2.2 The Law Practice will ensure their duty owed to the court, to abstain from prompting initiating actions and/or proceedings that may constitute an abuse of court process, by reason of the action and/or proceedings reasonably being regarded as that if frivolous or vexatious.

27.2.3 The client understands and acknowledges that the Law Practice reserves the right to abstain from advancing arguments that the Law Practice believes are not reasonably necessary or are going to produce an outcome more favourable to the client, or arguments that may be reasonably regarded as constituting that of frivolous and/or vexatious to a reasonable person.

27.3 If the Law Practice ceases to act for the Client in any of the above circumstances, the Law Practice will give the Client written notice to that effect.

27.4 If the Law Practice informs the Client that the Law Practice will cease acting for the Client, the Client acknowledges that the Law Practice's costs will become due and payable immediately upon receipt of the Law Practice's written notice that the Law Practice has ceased acting. To the extent that the law practice has agreed to defer their fees for the benefit of the client, if the law practice ceases to act for any reason the law practices costs become due and payable, and this clause supersedes any collateral agreement.

## 28. LIEN AND ADDITIONAL COSTS

28.1 The Law Practice may retain possession of any of the Client's documents including any documents that are not related to the subject matter until the Client has paid all outstanding legal costs (including expenses), due by the Client to the Law Practice.

28.2 If the Law Practice is required to take any steps to recover any outstanding legal costs due to the Law Practice the Law Practice is contractually entitled to recover those costs from the Client on an indemnity basis in accordance with the terms of the Agreement. The Client (or any guarantor as defined by clause [4]

28.3 of this agreement) irrevocably charges their estate or interest in any real or personal property owned by them, whether now or in the future, against any unpaid legal costs, disbursements, or interest. The client grants to the law practice a lien over any unpaid award,

28.4 settlement sum, inheritance owing to the client, judgement debt and the like. That lien and or the payment of any settlement sum have priority over any other payment of costs or lien granted by the client to any other subsequent law practice ('subsequent law practices') following the date of acceptance of this agreement. The client acknowledges that they are responsible for drawing any subsequent law practice's attention to the existence of this lien prior to engaging the subsequent practice.

## 29. ESCROW AGREEMENTS

29.1 From time to time, the client's money, or other property, may become held '*in escrow*,' pending the settlement of a dispute or the administration of an estate. For example, the client may undertake to a third party (though the law practice) that they will not deal with the money or property until the conclusion of the action or some other future time. In the past, despite the existence of an escrow agreement the client may change their mind and later instruct the law practice to return trust money to them (this creates a divided interest conflict (not breaching a promise versus breaching our obligations to our client). The other issue is where we cease act for a client, but the dispute remains on foot. In the latter situation we simply don't want to be stuck holding client money for years whilst not instructed.

29.2 To avoid any divided interest conflict, or any regulatory trust account breaches and the like, stemming from escrow agreements, the client acknowledges that it has read the strict conditions upon which we will hold any money or property in escrow and further agrees to be bound by those conditions. The escrow conditions can be found at <https://guardianwillsandprobate.com.au/escrow-agreement-terms/>

## 30. COMPLAINT RESOLUTION AND SERVICE STANDARDS

30.1 The client acknowledges that it has read and considered the law practice's complaint resolution policy and submits to following the policy. The complaint resolution policy and process can be found at <https://guardianwillsandprobate.com.au/complaint-resolution> and client dissatisfaction must be sent to [reception@guardianwills.com.au.com.au](mailto:reception@guardianwills.com.au.com.au) for them to be properly acted upon.

30.2 The client agrees that it has read and considered the law practice's service standards and submits to that policy. In addition, the client agrees that if the service standards are substantially complied with any compliant made in relation to service delivery is considered as unmeritorious. The law practice's service standards can be found at <https://guardianwillsandprobate.com.au/service-standards/>

### **31. ALTERNATIVE DISPUTE RESOLUTION**

- 31.1 The client agrees that subject to the client's rights in respect of practitioner conduct, costs and trust fund matters. The client agrees to resolve such other dispute which they have with the law practice (if any) firstly by following the complaint resolution policy and secondly, if the complaint is not satisfactorily resolved, by way of arbitration.
- 31.2 If arbitration becomes necessary, the client shall provide notice of the client's intention to arbitrate to the law practice, the law practice shall thereafter in their sole discretion select a suitably qualified arbitrator.
- 31.3 The costs of the appointed arbitrator shall be paid by the client.
- 31.4 This agreement may be pleaded as a bar to any proceedings commenced by the client which have not yet satisfied the conditions of dispute resolution contained herein.
- 31.5 The complaint or dispute shall remain confidential except as required to provide legal advice from an Australian legal practitioner.

### **32. INDEMNITY FOR CONSEQUENTIAL LOSSES**

- 32.1 The law practice will fight as hard as possible to get the client the outcomes they want. However, the client acknowledges that litigation is risky and the law complex. Some examples of consequential losses considered by this agreement include, but are not limited to:
  - 32.1.1 The costs and time associated with making an application to be removed from the court record where the client refuses to take action to change solicitors or file a notice of self-representation.
  - 32.1.2 Being called to give evidence (for example on an estate planning, estate administration, or litigation matter).
  - 32.1.3 Defending a claim made by a third party against the law practice.
- 32.2 The client shall indemnify, defend and hold harmless, the Law Practice, and any of its respective directors and employees from all liabilities, obligations, penalties, claims, judgements, demands, actions, disbursements of any kind and nature, suits, losses, costs and expenses (including, without limitation to reasonable lawyer's fees) arising out of or in connection with acts or omissions for which the indemnified Law Practice otherwise would be strictly liable, in connection with:
  - 32.2.1 The client's negligence or wilful misconduct; and
  - 32.2.2 The client's breach of its representations or warranties under this Agreement.
- 32.3 The client will indemnify the Law Practice, its directors, and employees from and against all claims, losses, damages, liabilities, and expenses (including reasonable lawyer's fees) arising from the client's breach of any of the client's obligations under this Agreement. The client's obligation for indemnification will be predicated upon:
  - 32.4.1 The Law Practice providing the client with written notice upon becoming aware of any such claim and the client will co-operate with the Law Practice's requests that reasonable mitigate and/or hinder the extent of damages and/or losses that the Law Practice may suffer or are reasonably likely to suffer if not for the client's reasonable co-operation.
  - 32.4.2 The client not being relieved of its obligation for indemnification as a result of the Law Practice's failure to provide such notice unless the client is prejudiced in defending such a claim as a result of the Law Practice's failure to provide such notice.
- 32.5 The client agrees to indemnify and hold the Law Practice, its directors and employees harmless from and against any and all loss, liability, cost, damage or expenses (including reasonable lawyer's fees) and disbursements resulting from:
  - 32.5.1 Harm and/or consequential damage that occurs as a result of the Law Practice taking on the client's matter.
  - 32.5.2 Misrepresentations on the part of the client in regard to any and all disclosures made to the Law Practice, that was relied upon in administering advice to the client and/or relied upon in proceedings;
  - 32.5.3 Punitive and/or exemplary damages where the Law Practice advocated for the client but strongly advised that the client forego and/or avoid formal proceedings due to the Law Practice's anticipation of such proceedings producing an adverse outcome that includes but is not limited to punitive and/or exemplary damages as a result of instituting and/or proceeding with formal proceedings in the Supreme Court of Western Australia.

### **33. CONFLICT MANAGEMENT IN ESTATE PLANNING MATTERS**

33.1 Perceived conflicts of interest may occur when planning as between husband and wife and/or for other family members. For example, a law practice may prepare a will for both parents and on a later date for their children. In those kinds of circumstances, whilst it is our usual practice to obtain *ad-hoc* express consent to any conflict as it arises, this clause is a general and express consent for the law practice to prepare estate planning for other family members of the client. The client agrees further that this consent will endure the scope of their work unless the said consent is expressly withdrawn by the client by notice in writing to the law practice.

### **34. NEGOTIATION AND INDEPENDENT LEGAL ADVICE**

34.1 The Client acknowledges that the Law Practice informed the Client that the Client may:

- 34.1.1 Negotiate the terms of the Agreement with the Law Practice.
- 34.1.2 Seek independent legal advice in relation to the meaning and effect of the Agreement and that it is in the Client's interest to do so.

34.2 The Client acknowledges that the Law Practice expended time and resources or has offered to expend time and resources, to ensure the Client understands the meaning and effect of clauses [1] to [42] of this agreement before asking the client to sign unless:

- 34.2.1 The Client waived their right under this Agreement to an explanation as to the meaning and operation of each clause within this Agreement.
- 34.2.2 The Client informed the Law Practice that they would be seeking independent legal advice in relation to the meaning and effect of this Agreement and that they would waive their right under this Agreement to be explained the meaning and effect of this Agreement.

### **35. VARIATION OF THE AGREEMENT**

35.1 The Law Practice will inform the Client in writing of any substantial change to anything included in the Agreement, as soon as reasonably practicable after the Law Practice becomes aware of that substantial change.

### **36. PRIVACY**

- 36.1 The *Privacy Act 1988* (Cth) applies to the collection, use and disclosure of the Client's personal information.
- 36.2 The Law Practice acknowledges the importance of maintaining the confidentiality of the Client's personal information. The Law Practice will only collect personal information that is necessary. The Law Practice will also take all reasonable steps to ensure that the Client's personal information is not disclosed to, or accessed by, unauthorised persons.
- 36.3 The Client authorises the Law Practice to disclose any information it holds about the Client to others where it is necessary. For example, disclosure may be compelled by law, and it will be necessary to disclose certain information about the Client to the Court and to Counsel (if Counsel is engaged).

### **37. COPYRIGHT**

The Client acknowledges:

- 37.1 The Law Practice's copyright in all documents prepared by the Law Practice for the Client.
- 37.2 That any document prepared by the Law Practice must not be reproduced, adapted, or communicated,
- 37.3 except as permitted under applicable copyright law, without the prior written consent of the Law Practice. This is subject to the Client's right to use those documents for the purposes for which they are provided.

### **38. ACADEMIC / EDUCATIONAL USE**

- 38.1 The client permits the law practice to use de-identified materials or submissions for academic use, professional education, training, or publication.
- 38.2 The law practice agrees not to include any identifying particulars of the client.

### **39. SEVERABILITY**

39.1 Each provision of the Agreement is separate and severable from the other provisions in the Agreement. If any provision in its entirety, or part of a provision is found to be invalid or unenforceable, it shall be severed from the Agreement and the remainder of the Agreement will remain effective.

### **40. JURISDICTION**

- 40.1 The law of Western Australia will apply to the agreement.
- 40.2 The Client has the right to accept or reject any offer from the Law Practice that an interstate costs law applies to the Agreement.
- 40.3 The Client has the right to require that an interstate costs law apply to the agreement.

#### **41. HOW THIS AGREEMENT CAN BE ACCEPTED**

- 41.1 By clicking on the confirmation found on our booking site, acknowledging that the client has read and considered the terms and conditions for acting.
- 41.2 This agreement can be accepted by clicking the “accept button” sent to you in the online scope of work by email or by short message service (SMS).
- 41.3 This agreement can be accepted in writing (whether by email or digital signature care of DocuSign or any other digital signature).
- 41.4 Notwithstanding the clauses hereinbefore stated this agreement can be accepted by conduct. For example, by continuing to instruct the law practice to act after having been sent a copy of this agreement.

#### **42. CONCLUSION**

- 42.1 The Client acknowledges that the Client has read, understood, and received a copy of the agreement.
- 42.2 The Client agrees to be bound by all terms and conditions outlined in agreement.
- 42.3 The Client agrees that the agreement applies from the date that the agreement is accepted.



# **GUARDIAN**

## **WILLS & PROBATE**

Telephone: +61 8 9300 1708

(ABN 379 863 324  
45)  
GUARDIAN WILLS & PROBATE

E23, 35 Boas Avenue  
Lakeside Shopping Centre

JOONDALUP WA 6027

[reception@guardianwills.com.au](mailto:reception@guardianwills.com.au)

**guardianwillsandprobate.com.au**