

COSTS AND RETAINER AGREEMENT

BETWEEN: **K M SPLATT & ASSOCIATES** ("the Firm")
AND: ADMINISTRATION CLIENT of 69 Amelia Street, Fortitude Valley, QLD 4006
("the Client")

This document is divided into two parts. Part 1: Costs Disclosure and Agreement; and Part 2: A Retainer Agreement.

Sections 308, 310 and 322 of the *Legal Profession Act 2007* require that a solicitor enter into a Costs Agreement with a client detailing how the Firm will charge the client for its fees and outlays.

The retainer agreement part of this document sets out the basis for the solicitor client relationship and is to provide for the work that the Firm is to perform for the Client.

PART 1: COSTS DISCLOSURE

1. Generally

This document is an offer to enter into a costs agreement. The client may negotiate the costs agreement with KM Splatt & Associates. This offer can be accepted by signing this document. The offer is deemed as accepted by conduct such as ongoing instructions or paying of accounts pursuant to the provisions of the *Legal Professions Act*. The law of Queensland applies to legal costs in this matter however the client may give notice in writing that he/she require the corresponding provisions of a corresponding law of other jurisdictions to apply to the matter.

The Client has the right to receive a bill from the firm. The client also has the right under the firm's ongoing obligation of disclosure of any substantial changes to matters disclosed in the costs agreement.

The client also has the right to request a reasonable progress report on the matter at any time. The progress report may request information in relation to (a) a written report of the progress of the matter for which the firm is retained; or, (b) a written report of the legal costs incurred by the client to date, or since the last bill. The firm may charge reasonable amounts for a request under heading (a) but not for a request under heading (b).

In all likelihood a Barrister will be retained on your behalf. The client expressly agrees that the Firm is entitled to engage a Barrister at it's discretion and in the best interests of the client and that such fees will be claimed as an outlay. For the client's comfort, the firm has arrangements in place with barristers and confirms that in circumstances where the firm reduces its fees the barrister will also proportionally reduce fees so as to ensure the client receives reasonable compensation. A copy of the Barrister's disclosure notice will be provided upon retaining the Barrister.

The client may contact Mr Kerry Splatt to discuss any matters relating to legal costs. If the client is not satisfied with the response from Mr Splatt the client can, in the event of a dispute, apply under division 7 of the *Legal Profession Act 2007* for an assessment of legal costs. The client must make the application within the 12 months after which the bill was given, or the request for payment was made to the client or from such time as when costs were paid when neither a bill nor a request was made. The client can also make an application for the costs agreement to be set aside under section 328 of the *Legal Profession Act 2007*. The client is referred to section 16(a) of this agreement in this regard.

The Firm agrees that only in the event of the claim being successful and obtaining damages the Firm will render an account for professional costs and outlays. The firm makes it clear that if the claim is not successful no professional costs and outlays will be charged by the firm unless in the event of fraudulent conduct by the client.

The client acknowledges the right to seek independent legal advice before entering into this agreement.

2. Professional Costs & Outlays —NO WIN NO FEE - when payable and how calculated

The firm agrees that only in the event of the claim being successful and obtaining damages the firm will render an account for professional fees and outlays. The firm makes it clear that if the claim is not successful no professional costs and outlays will be charged by the firm.

If a successful outcome is achieved, professional costs and outlays will be calculated and payable by the client in accordance with this Agreement. For the purposes of this Agreement, a “**successful outcome**” means Settlement or resolution of the claim in accordance with the client’s instructions or an award of damages made by a Court in the client’s favour. If the matter is not successfully concluded and this retainer has not been terminated then the firm will not charge any professional costs and outlays to the client.

The Firm charges its professional costs partly on an item basis and partly on a time basis, as set out in Schedule 1. Some of these charges may be different to those provided in the Court Scale, a copy of which is annexed. Professional costs will also provide for a litigation lending administration fee of \$250.00 per file (plus petties, postages, sundries and photocopying)

The professional costs will be assessed by an independent cost specialist according to the Item scale contained in this agreement in short form. It is agreed that the cost of this assessment will be borne by the client. The firm guarantees that if the assessment of Professional Costs exceeds the net sum client (ie settlement sum less statutory refunds and outlays) then the firm will reduce the amount of Professional Costs so that the Professional Costs will never exceed the net settlement sum to the client.

In addition to the professional fees, outlays will be payable by the client only upon the successful conclusion of the action. The firm will determine which outlays it is reasonable to incur in the case and will pay those outlays and seek reimbursement from the client upon a successful outcome. When a matter successfully concludes in addition to the professional costs set out in Clause 3(a), the Client will pay from the settlement sum all outlays properly incurred by the Firm in acting for the Client. Following are a number of examples of outlays:-

- Barrister's fees;
- Expert consultant's fees – e.g. Accountants, Safety Engineers, Specialists
- Court fees;
- Process servers' and Agent's fees;
- Travel and accommodation;
- Independent cost specialists fees;
- External consulting fees as prescribed in paragraph 3;
- Witness fees; and so on.
- Interest on outlays incurred by the firm in the conduct of the clients claim at the prevailing bank overdraft rate, currently a flat rate of 15%.
- Storage and archiving fees - \$25 per year for 7 years.

The amount that the Client must pay the Firm from any settlement sum in respect of each outlay will be the sum which the Firm has incurred on behalf of the Client.

The Client acknowledges that by reason of the enactment of the Goods and Services Tax Act 1999 ("the Act"), the Firm's fees and charges are subject to an additional levy reflecting the Goods and Services Tax ("GST") applicable to the provisions of services by The Firm. This tax is added to the Professional costs and is not an outlay.

3. Unusual expense – potentially not recoverable as a standard cost

In some cases, the Firm may recommend that the Client incur, or the Client may wish to incur an "unusual expense". Examples of such unusual expenses include briefing Senior Counsel; using more than one expert in the same specialised field; engaging an expert whose fees are exceptionally expensive but in

the opinion of the Solicitor are nevertheless justified but may which not be recoverable from the defendant in part or in full. You must consent to such expenses in the circumstance.

4. **Accounts**

All accounts rendered by the Firm will be in the form set out in Schedule 2 to this Agreement.

The firm will not charge an uplift fee but may claim an amount of up to 25% care and consideration as detailed in Item 1 of Schedule 1 of this Agreement exclusive of disbursement and payable upon the successful conclusion of this matter.

Each account will provide details of the fees charged for the work, together with details of outlays incurred on behalf of the Client.

- (a) The client may request an itemised bill if despite this section, the client receives only a lump sum bill.
- (b) The Firm will have its fees assessed by a recognised cost specialist, independent of the Firm.
- (c) The Firm will provide a copy of the independent costs assessment of the Firm's costs and outlays as prepared by the recognised independent cost specialist, if applicable.
- (d) The Firm's accounts will provide sufficient detail of the work done to enable the client to decide whether the costs and outlays in the account are reasonable.
- (e) The Firm and the client agree to abide by the decision of the recognised cost specialist as to the independent amount to be charged.
- (f) The costs and outlays will be deducted from the money recovered 30 days after delivery of the account to the client, or upon receipt of the client's prior written authority, unless the client disputes the account by lodging a complaint with the Legal Services Commissioner within that time. If the Client disputes the account, the client agrees that a sum equal to the amount of the account will be held by the Firm in its trust account until the dispute is resolved. The Firm agrees not to deal with such monies until the dispute is resolved.
- (g) The Client agrees that the settlement monies or judgement monies and costs recovered from the Defendants will be paid into the Firm's Trust Account at the conclusion of the matter. The Client agrees that the accounts will be paid by transfer of monies from the Firm's trust account following receipt of the settlement funds (including costs and outlays recovered from the defendant) as per the trust account authority signed at the beginning of the matter and/or as per the Settlement authority signed at settlement.

5. **(a) Professional costs and outlays**

- a) The firm will only charge for the work necessary to complete the claim and this will be determined by an independent recognised cost specialist according to the Item Scale referred to in this agreement.
- b) The firm estimates that the total legal costs payable may be in accordance with the damages example in subsection 5(c). However it is important to note that these are estimates.
- c)
 - (i) If damages recovered are less than \$30,000 the estimate of total legal costs is \$5,000 to \$15,000;
 - (ii) If damages are recovered in excess of \$30,001 but less than \$50,000 the estimate of total legal costs is \$15,000 to \$25,000
 - (iii) If damages are recovered in excess of \$50,001 that estimate of total legal costs is \$25,000 to \$75,000. The major variable being it is anticipated that those files will require a greater degree of legal input by professional staff as it is expected that those files will require longer to finalise or be determined by a court.

- (iv) If the matter becomes a litigious matter ¹the estimate of total legal costs will be no less than the estimates given above. It is estimated that approximately one half of the ranges of costs given here may be recovered from the defendant(s) if the client is successful and awarded standard costs. If the client is unsuccessful the client may be ordered by the Court to pay the defendant's costs personally.
- d) Maximum recoverable under LPA s347. (50/50 rule i.e. the solicitor cannot charge more than the client's nett settlement sum and recovered costs).

(b) Standard Costs and outlays

If the Client is successful in its litigation then, by order of the Court, or by agreement with the other party, the Client **may** recover some of the professional fees and outlays paid from that other party. These costs are called Standard Costs. An order by the court for standard costs will not necessarily cover the whole of the client's legal costs.

PART 2: RETAINER AGREEMENT

7. The Work

The client instructs the Firm to do all work necessary to recover compensation for personal injuries. Particulars of the injuries are as follows:-

Nature of injury:-

Date Injury Occurred:-

The firm is retained only in relation to the above matters. It is not retained in relation to any other injury nor any other person or entity. These are the client's instructions as understood by the Firm. The client should immediately contact the Firm if the Firm has misunderstood the client's instructions.

8. Persons who will perform the work and their rates

It is expected that the work in respect of the matter for which the Client has retained the Firm will be undertaken by one or more of the following persons (depending, among other things, on the complexity of the task in question). The main people involved:-

Kerry Splatt (Solicitor)
Pauline Smith (Paralegal)
Pauline Stalley (Paralegal)

Daniel Fitzgerald (Managing Law Clerk)
Bobbie Hughes (Paralegal)

From time-to-time external consultants associated with the firm may also contact the client. External consultants associated with the firm are specialists in particular areas of the law and will be retained when it is deemed necessary and beneficial to the client's claim. The tasks attended to by external consultants associated with the firm are various and include (but are not limited to), providing advice on preliminary prospects, completing notice of claim forms and statement of claims as well as appearing in court applications. Fees charged by external consultants are dealt with under paragraph 2.

Other Staff will have contact with the client as well.

9. What Happens If I Lose?

The client acknowledges that no lawyer can guarantee success and the client accepts the possibility of losing the claim. If the case cannot settle and the client instructs to issue proceedings and to proceed to trial and the case is lost, or the client discontinues the claim, the client acknowledges that the legal costs and outlays of the other party could be ordered to be paid by the client. These costs are not payable directly or indirectly by the Firm and are payable by the client. For an estimate of the costs that might be payable refer to paragraph 5(c)(iii). The Firm is very careful with all cases it is

¹ This is a matter that involves, or is likely to involve the issue or proceedings in a Court or Tribunal

retained in and to date has not yet been in the position of losing with any client having to pay the other side's costs where the firm's advice has been followed, but it could happen.

The Firm will give the earliest possible warning of any problems. A settlement conference is always held before any court proceedings are issued. Most matters settle at settlement conference. However, if the matter does not settle, the firm will only issue proceedings with the client's specific instructions. The client must bear this risk in mind when instructing to litigate. The firm will advise accordingly of all such risks.

10. The Client's duties

- (a) The Client is to give the Firm full, frank and timely disclosure of all information which might influence the Client's prospects of success in the case or the Firm's decision whether or not to continue with the case as the Client's legal representative and will not deliberately withhold information from the Firm.
- (b) The Client will fully and punctually co-operate with the Firm so as to assist it to diligently prosecute the legal work on the Client's behalf. At all times, the Client will keep the Firm advised as to any change of the Client's address or telephone number.
- (c) When the Client anticipates being absent from his or her residence or business during a time when instructions will need to be given to the Firm, the Client will make arrangements to enable contact between them.

11. The Firm's duties

- (a) The Firm will carry out the work required with professional skill and diligence.
- (b) The Firm will, as far as is reasonable, keep the Client informed of the progress and of risks in the matter.

12. Termination of Agreement

- (a) The Client may terminate this Agreement or change solicitors at any time by giving the Firm notice in writing to that effect. In such an event, the client shall pay K.M. Splatt & Associates for all outstanding work, pay all outstanding out of pocket expenses and discharge any other charge over damages before the Firm shall be obliged to hand over any files or documents relating to the client's case.
- (b) The Firm is entitled to terminate this Agreement if the Client:
 - (i) Breaches the Agreement;
 - (ii) Requires the Firm to act unlawfully or unethically;
 - (iii) Fails to give the Firm adequate instructions;
 - (iv) Indicates that the Client has lost confidence in the Firm;
 - (v) Loses legal capacity;
 - (vi) Provides new information or evidence to the Firm which in the sole opinion of the Firm significantly reduces the Client's prospects of success in the action;
 - (vii) Refuses to consent to making of an offer of settlement or accepting an offer of settlement made by or on behalf of the Defendant which, in the opinion of the Firm is a reasonable offer and one which should be made or accepted. The Firm shall obtain the written opinion of Counsel as to the reasonableness of such offer (if required by the client);
 - (viii) Fails to follow the Firm's legal advice.

The above provisions of this clause shall apply to entitle the Firm to recover costs and outlays from the client even if the Firm had previously agreed to act on a "No Win No Fee" basis. In this event all fees which were otherwise contingent on success in the case shall become due and payable by the client.

- (c) In addition to Clause 12(b), the Firm is entitled to terminate this Agreement for good cause if the Firm's initial investigations lead the Firm to form the opinion that:
 - (i) the Client's action is unlikely to be successful; or
 - (ii) the Client's claim is of such a nature that the Firm is unable to fully and effectively carry out the work required under this retainer.
 - (iii) The Firm will give the Client written advice as to whether this retainer continues or whether the Firm wishes to terminate pursuant to this Clause (12(c)) as soon as possible after the completion of the Firm's initial investigations. If the Firm elects to terminate the Agreement pursuant to this Clause (12(c)), the Client will not be liable to pay any costs to the Firm.
- (d) In the event of termination of the retainer for any reason, the Firm is entitled to retain possession of the file until all costs and outlays owed to the Firm by the Client have been paid.

13. Limitation period

The client acknowledges that the firm has advised them that the client must commence Court proceedings within three (3) years from the date of the accident or incident and if the client fails to do so the client will lose all rights to recover damages/compensation in relation to the injuries sustained as a result of the said accident or incident. The client further acknowledges the firm will not take any steps on their behalf or institute proceedings until such time as this agreement is signed.

14. Goods and Services Tax ("GST")

The firm may charge the client an additional amount to cover the firm's liability for GST in respect of the fees charged to the client. This amount will not exceed 10% of the total fees charged to the client.

15. Assignment of Rights

In the event of the firm being sold, or incorporated, it will have the right to assign any rights of the proprietor of the firm contained in this agreement to the purchaser of the firm or the new incorporated entity.

16. Confidentiality

In order to ensure Solicitor/Client confidentiality, we should only communicate with the client. However, if you wish us to communicate with an agent (eg. Spouse) please provide that person's details:-

.....

17. Other matters

- (a) The Client has been informed to seek independent advice in relation to this Agreement;
- (b) The Client understands that some other solicitors might charge lower fees than are provided for in this Agreement;
- (c) The Client hereby authorises the Firm to destroy the client's files not less than seven (7) years after the completion of the work to which this Agreement applies.

18. Taxation, Medicare & Centrelink

The client agrees to provide their Income Taxation and Medicare Card Numbers below to enable the firm to proceed with the claim.

Tax File No.Medicare Card No.

Centrelink Ref:.....

19. **Acknowledgement**

1. The client has read, understands and agrees to be bound by the terms of this Agreement.
2. There is a 7 day cooling off period after the signing of this document wherein the client may revoke instructions in writing given to firm.
3. The client has not retained or instructed the firm until such time as both the client and the firm's authorised representative have signed this document.
4. The client also acknowledges that the *Civil Liability Act* has dramatically limited the amount of damages in certain claims. As to whether or not the client's claim falls within this category of claim will depend upon the specialist medical reports and other evidence yet to be obtained.
5. The client has received and will retain its own copies of this Agreement.

The client agrees to all the terms contained in this Agreement and the client acknowledges receipt of THE SCHEDULES containing the Scales of Costs referred to in Clause 4 hereof.

.....
ADMINISTRATION CLIENT **Date**
Client

The Firm agrees to act on behalf of the Client in accordance with the abovementioned terms of this Agreement.

.....
K.M. SPLATT & ASSOCIATES **Date**
Solicitors

SCHEDULE 1 - COSTS SCHEDULE

SCALE OF COSTS

EXCLUDING GST

General care and conduct

In addition to an amount that is to be allowed under another item in this schedule, the amount that is to be allowed for a solicitor's care and conduct of a proceeding in the amount the cost assessor considers appropriate having regard to the circumstances of the matter – in this case not more than 25%,

- (a) the complexity of the proceeding; and
- (b) the difficulty and novelty of any question raised in the proceeding; and
- (c) the importance of the proceeding to the party; and
- (d) the amount involved; and
- (e) the skill, labour, specialised knowledge and responsibility involved in the matter on the part of the solicitor; and
- (f) the number and importance of the documents prepared or perused, without regard to the length of the documents; and
- (g) the time spent by the solicitor; and
- (h) research and consideration of questions of law and fact.

Drafting Documents

- | | | |
|----|--|----------|
| 2. | Drafting a document – for each 100 words | \$ 28.00 |
|----|--|----------|

Producing or typing

- | | | |
|----|---|---------|
| 3. | Producing any necessary document – for each 100 words | \$ 7.00 |
|----|---|---------|

Preparing exhibit certificates

- | | | |
|----|---|---------|
| 4. | Preparing an exhibit certificate - each exhibit | \$ 5.25 |
|----|---|---------|

Copies and printing

- | | | |
|----|---|---------|
| 5. | Copying and printing each page of the total number of pages in a matter that the Assessor considers necessary | \$ 0.90 |
|----|---|---------|

Perusing documents

- | | | |
|----|--|---------|
| 6. | Perusing a document – for each 100 words | \$ 8.40 |
|----|--|---------|

Examining or comparing documents

- | | | |
|----|--|--|
| 7. | Examining a document or comparing documents, if perusal is unnecessary as per the Table of Rates at Item 13(a) | |
|----|--|--|

Serving documents

- 8. Serving one or more documents as required whether personally,
By post, fax or email \$28.00

Attendances

- 9. Attendance to search, or something of a similar nature \$28.00
- 10. Attendance on Counsel to deliver or uplift documents \$28.00
- 11. Attendance by telephone that does not involve the exercise
of legal skill or knowledge \$31.50
- 12. Attendance by telephone involving the exercise of legal skill or
knowledge , up to and including 6 minutes duration \$31.50
- 13. All other necessary attendances including attendances on the client
and others whether in person or by telephone:

13 (a). TABLE OF RATES		
For each quarter hour: if by a :		
a)	Partner	\$110.00
b)	Associates	\$96.25
c)	Solicitor	\$82.50
d)	Managing Law Clerk	\$70.00
e)	Paralegal	\$70.00
f)	Clerk	\$27.50

Correspondence

- 14. A short letter of a formal nature, written or received, or forwarding
a document without comment \$21.00
- 15. An ordinary letter, written or received, including a letter between
principal and agent \$42.00
- 16. A special letter (claimed at drafting and producing rate) – refer to
Items 2 and 3 above.

Transmission of documents

- 17. Sending documents by facsimile:
 - For the first page \$1.00
 - For each additional page \$1.00
- 18. Receiving documents by facsimile, for each page \$1.00
- 19. Sending documents by email \$0.50
- 20. Printing an email \$0.50
- 21. Electronically scanning a document \$0.50

SCHEDULE 2

RELEVANT ACCOUNT SAMPLE

TRUST ACCOUNT STATEMENT -

To our Professional Costs	-	
To our Postage and Petties		
To our Litigation Lending Administration Fee		
TOTAL PROFESSIONAL COSTS	<hr/>	
GST Payable 10%		
To our Outlays inclusive of GST	-	
		-
Settlement Monies		- ****
Party/Party Costs		-

STATUTORY REFUNDS

**** HIC	****	-
Centrelink		
WorkCover		

SETTLEMENT FUNDS to or on behalf of client

Interest on Litigation Lending		
Payment of Creditors	-	
Private Health Insurer	-	
Non Attendance Fee	-	
Settlement Monies		
Less Advance of Settlement Monies	-	
Balance Settlement Monies	<hr/>	
	-	-

**** You will note from the Statement that an amount of \$
was paid to the Health Insurance Commission (Medicare) being
10% of settlement money. As the amount to be reimbursed
to HIC is \$, you should receive a cheque
in the sum of \$ directly from Medicare giving you a
net settlement sum of \$

FORM 2

FORM OF NOTIFICATION OF CLIENT'S RIGHTS Your rights in relation to legal costs

The following avenues are available to you if you are not happy with this bill:

- Requesting an itemised bill
- Discussing your concerns with us
- Having our costs assessed
- Applying to set aside our costs agreement

There may be other avenues available in your State or Territory (such as mediation).

For more information about your rights, please read the fact sheet titled *Your right to challenge legal costs*. You can ask us for a copy, or obtain it from your local law society or law institute (or download it from their websites).