

**Generic litigation engagement/retainer letter
Updated 19/07/2022**

<Name of client>

<Address>

Dear <Client>,

<Insert description of Matter>

1. You have requested <VAR 1 - name of law practice> (**practice**) to act for <VAR 2 - name of client> (**you**).
2. This letter forms our engagement terms. Our engagement terms represent our offer to enter into a legal services and costs agreement with you.
3. A purpose of this letter is to assist you to make an informed choice about your legal options and the costs associated with pursuing those options in circumstances where the practice is under a statutory obligation to ensure the fees and expenses associated with your matter are:
 - a. fair and reasonable;
 - b. proportionately and reasonably incurred;
 - c. proportionate and reasonable in amount.
4. It is of utmost importance that you understand and give your consent to the way the practice proposes to manage the engagement and the fees and expenses the practice proposes to charge.
5. You must only accept our offer if you understand and give your consent to the engagement terms. The practice is unable to act for you in your matter unless it is satisfied that you do understand and consent. To assist you, <VAR 3 - name of dedicated legal practitioner> will discuss with you the contents of this letter and then provide you with the opportunity to further consider our engagement terms before you accept our offer.
6. At any time during the engagement, if you have a concern or are otherwise unhappy, please do not hesitate to contact <VAR 3 - name of dedicated legal practitioner> to discuss and resolve any issues.

Part 1

The work the practice will carry out (your matter)

7. The practice is engaged by you to provide you with legal services detailed in this section.
8. The work you are instructing the practice to carry out and the basis on which those instructions are given is as follows:

9. You have instructed the practice that:
<VAR 4 – adequately describe the instructions received>
10. Based on the information currently available to the practice, in carrying out your instructions, the practice will:
<VAR 5- adequately describe the legal services that are to be provided and in general terms the procedures that apply>.
11. In a separate letter the practice will detail what further documents and other materials the practice requires from you to enable the practice to provide you with a more informed advice about the merits of your **<VAR 6 - claim/defence>**. The practice will then provide you separately with the advice necessary to enable you to understand the legal issues relevant to your matter and the legal and other options that may be deployed to deal with your matter. In doing so the practice will also ensure that you are provided with advice about the merits of your **<VAR 6 - claim/defence>** and, where necessary, update that advice as your matter proceeds.
12. **<VAR 7 - insert when acting for a plaintiff/applicant>** *There are time limits that restrict a person’s ability to make a claim for compensation or other relief through the Courts. Based on the instructions you have given to the practice, the following time limit(s) are applicable in your matter:*

The last date on which Court proceedings can be issued is <VAR 8 - insert date>.
13. When a legal proceeding (commonly referred to as an action) issues there are time limits that apply to steps that must be done (called interlocutory steps) during the action. The practice will inform you of the time limits that apply to the interlocutory steps in your matter.

If you do not comply with those time limits, the Court can make orders dismissing your **<VAR 6 - claim/defence>** without a need to assess the merits of your **<VAR 6 - claim/defence>**. The Court also has the ability to make costs orders against you if you do not comply with these time limits.

In order to meet the time limits, you will need to promptly respond to all requests by the practice for instructions from you.
14. The practice will not, as part of its retainer by you, provide any advice on issues other than those directly arising from the **<VAR 9 – prosecution of your claim against/defence of the claim by>** **<VAR 10 - name of other party(s)>**.

In particular, the practice will not give advice with respect to the financial standing of any entity involved in your matter nor will it provide advice on tax and revenue law issues related to your matter. If you require such advice, you must seek it from independent organisations experienced in the provision of such advice.
15. If work that is not in the scope of this engagement is needed on your matter, there may need to be other agreements between the practice and you detailing the scope of that work and how the practice will charge you for that work. The practice cannot predict what other professional responsibilities it may have in the future, and it expressly reserves the right to not accept instructions for that work.
16. The practice will report to you on a regular basis in relation to the steps and likely timeframe involved with your matter.

The Team

17. <VAR 3 - name of dedicated legal practitioner> will be responsible for the conduct of your matter. Other lawyers and employees may assist from time to time. At present it is proposed that the following persons will assist: <VAR 11 - names and position held of all persons who will assist>.
18. If necessary, the lawyers and employees working on the matter may change, or more lawyers or employees may be required, depending upon the complexity and urgency of your matter. <VAR 3 - name of dedicated legal practitioner> will discuss this with you if there is a need to change or increase the personnel working on your matter.
19. It may be necessary for the practice to engage, for you, the service of another law practice to provide specialist advice or services, including advocacy services, or to act as the practice's agent. <VAR 3 - name of dedicated legal practitioner> will consult you as to the terms of that other law practice's engagement and the practice will provide further disclosure about that law practice's fees and expenses.

Part 2

Fees and expenses - introduction

20. You must pay the practice for the legal services it provides to you. These are called "Solicitor/Client costs".
21. The practice will only act for you on the basis of the engagement terms (that is the engagement terms which are set out in this letter). However, it is obliged by statute to provide you with the information contained in the following paragraphs 22 to 24. Nothing in those paragraphs should be taken to mean that the practice will act for you other than on the basis of the engagement terms.
22. If you accept our offer about the way the practice will charge you for the legal services it will provide, then you will enter into what is called a "costs agreement" with the practice. The costs agreement you will have entered is comprised of the engagement terms which are set out in this letter.
23. You have the right to negotiate:
 - a. a costs agreement with the practice; and
 - b. the billing method the practice will employ. For example, the practice's offer is to charge you by reference to the time spent on your matter whereas other law practices may charge you by reference to the tasks performed in acting on your matter.
24. If you did not accept the practice's offer to enter into a costs agreement and if the practice was prepared to act for you without a costs agreement with you then the practice would be obliged to charge you by reference to a statutory costs determination that applies to the work the practice is engaged to carry out. The Solicitor/Client costs that will be charged to you based on our offer will be more than they might otherwise be if our offer did not apply and the practice charged you in accordance with the relevant statutory costs determination. That is because:
 - a. the statutory costs determination:

- i. limits the number of hours and amounts that can be charged by a law practice for some services;
 - ii. may not permit some work or disbursements to be chargeable at all;
 - iii. applies different hourly rates; and
 - iv. applies different hourly rates and amounts for different services.
 - b. Relevantly, if you accept the practice's offer then you are agreeing that the practice can charge:
 - v. at a rate greater than provided for in the costs determination;
 - vi. for the services it provides no matter how long the work takes to complete;
 - vii. for routine work undertaken by a more senior practitioner irrespective of the fact that the work undertaken is complex or not.
25. The statutory costs determination relevant to your matter is **<VAR 12 - insert reference to the applicable determination>**. A copy of that determination is provided with this letter.
26. You may apply to the Supreme Court to have a costs agreement declared void. The Court will declare the costs agreement to be void if the Court is satisfied that the costs agreement contravenes or is entered into in contravention of any provision of Division 4 Part 4.3 or the disclosure obligations in Part 4.3 of the Legal Profession Uniform Law.

Fees and expenses – how the practice will charge you

27. The practice will charge you for the time spent by the practice's lawyers and employees in providing its legal services and for any expenses (commonly called disbursements) it incurs in doing so.
28. For the services of lawyers and employees of the practice spending time on your matter, the practice will charge fees based on an hourly rate calculated on a time cost basis of 6 minutes ("1 unit"). The minimum charge is 1 unit (even if actual time spent is less). The practice will charge the hourly rates below for all time spent performing the work but not limited to drafting, reviewing and completing documents, correspondence, advices, conferences, reading materials, telephone calls and court appearances including waiting time:
- a. Partner/Director: **<VAR 13 - insert hourly rate>**;
 - b. Senior practitioner being five years or more in practice: **<VAR 14 - insert hourly rate>**;
 - c. Junior practitioner being less than five years in practice: **<VAR 15 - insert hourly rate >**;
 - d. Restricted practitioner: **<VAR 16 - insert hourly rate>**
 - e. Clerk/Para-legal: **<VAR 17 - insert hourly rate>**.

Travelling time will be charged at 50% of the above rates.

The practice will charge fees at the rates set out in clause 28 for all work undertaken in the matter irrespective of the date upon which you accept the terms of our offer

29. The following practice charges will apply:

<VAR 18 - practice charges>

30. The practice is your agent and may incur expenses (such as fees charged by an independent barrister or expert witness or process server) on your behalf. You are responsible for any expenses the practice incurs on your behalf and you agree to it charging those expenses to you and if you do not pay them, recovering them from you. So far as reasonably possible, the practice must first obtain your consent before incurring such expenses on your behalf.
31. You agree to pay money in advance on account of the practice's fees and disbursements whenever reasonably requested. All money paid in advance will be deposited to the practice's trust account and will be transferred to the practice's general account in discharge of any invoice delivered to you.
32. The hourly rates stated are subject to change. Where the practice proposes to change the hourly rates that apply, it will notify you in writing of the proposed revised hourly rates that will apply and the date from which they are to apply. You may accept the amended hourly rates in writing or by your conduct by continuing to instruct the practice.

Estimate of total legal costs

33. The practice estimates that the total legal costs and disbursements that will be incurred in your matter until it is concluded is **<VAR 19 - insert estimate>**.
34. It is difficult in litigation to estimate total legal costs and disbursements as there are significant variables impacting upon the estimate. The practice provides you with the above estimate based on the information currently available to the practice. As and when necessary, the practice will update this estimate.
35. The practice is obliged to inform you that if the practice was prepared to act for you without a costs agreement so that the statutory costs determination applied then the practice estimates that the total legal costs that would be incurred in your matter until it is concluded is **<VAR 20 - insert estimate>**. Nothing in this paragraph should be taken to mean that the practice will act for you other than on the basis of the engagement terms.

Costs recovery

36. If you are successful in the action ordinarily the Court will make an order that you recover your costs in **<VAR 21 - prosecuting/defending>** your matter. These are called "Party/Party costs".
37. It is important to note that, while a Court may make an order that the other party(s) in the action pay your costs:
 - a. first, the other party(s) may not have the financial ability to pay your Party/Party costs;
 - b. second, you will not recover all the fees and disbursements paid to the practice because the Court will assess your recoverable costs by reference to the relevant statutory costs determination.
38. Even if the practice was prepared to charge you in accordance with the statutory costs determination (which it is not), you would still not recover all the fees and disbursements paid to the practice. The practice's estimate of the total amount of your legal costs and disbursements to which you may be entitled from your opponent if you are successful in the matter is **<VAR 22 - insert estimate of party/party costs>**.

Costs liability

39. If you are unsuccessful in the action, then ordinarily the Court will make an order that you pay your opponent's costs and disbursements of prosecuting/defending the action. If you are unsuccessful in the action your opponent will be entitled to recover costs and disbursements from you that the practice estimates to be <VAR 23 - insert percentage estimate>. of the costs we will charge you.

Billing

40. You consent to receiving all invoices electronically at your usual email address. You must pay all invoices sent to you by the practice even though the legal services the practice will provide are not complete.
41. You agree to the practice rendering interim invoices for the work done on the matter as long as the interim invoices are at least <VAR 24 - insert period> apart. Each invoice sent to you will be signed by a principal of the practice and will contain a notification of your rights with respect to the costs charged in the invoice.
42. You agree to pay against each invoice issued to you by the practice within <VAR 25 - insert period> of the date the invoice is provided to you. If an invoice remains unpaid 30 days after the practice gives it to you, the practice may charge you interest at a rate not exceeding the Cash Rate Target, as fixed by the Reserve Bank of Australia, plus 2 per cent, at the date the invoice issued.
43. The practice will charge, and you agree to pay, GST on all fees charged and disbursements paid by the practice for which GST is by law required to be paid. You otherwise acknowledge that GST is payable in respect of each taxable supply made to you and that all charges for professional time shown are inclusive of GST.
- "GST", "taxable supply" and "tax invoice" have the meaning given in *A New Tax System (Goods & Services Tax) Act 1999*.
44. If the practice gives you a lump sum invoice (i.e. it does not itemise all the legal services provided to you and the cost of each of them) you are entitled to request the practice provide you with an itemised invoice. You must make any request to the practice to provide an itemised invoice within 30 days after the date on which the legal costs become payable. The practice must comply with your request within 21 days after the date on which your request is made. The practice cannot charge you for the preparation of an itemised invoice.
45. If you ask, the practice must provide you with details of the legal costs and disbursements incurred by you up and until the date of your request.
46. You acknowledge that the practice may receive on your behalf any payment for legal costs and disbursements awarded to you and use the money received to pay any unpaid or partly unpaid invoices issued to you.

Disputing costs

47. You may seek the assistance of the Legal Services Complaints Committee (**LSCC**) if there is a dispute between the practice and you about legal costs and disbursements or you may apply to the Supreme Court for an assessment of the whole or any part of an invoice for legal costs and disbursements even if the legal costs and disbursements have been wholly or partly

paid. Your application for assessment must be made within 12 months after the practice's final invoice on your matter was given to you.

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

Part 3

The practice's other obligations

49. The practice owes you, as the client (and where there is more than one client, each of you), a duty of care. The practice's objective is to advance your interests. In doing so the practice has to have regard to ensuring the procedures applicable to your matter and the cost of the procedures are proportionate to the level of complexity, novelty or difficulty of the issues involved in your matter.
50. Unless you request the practice to do otherwise, all written communication with you will be by email. You acknowledge and accept the risks that email communications may not always be secure, notwithstanding the security the practice has in place.
51. The practice will endeavour to respond to telephone calls and other communications promptly. If you require an urgent response, you must clearly highlight and detail that in your communication.
52. Your acceptance of our offer authorises the law practice to act for you. This includes complying with requirements of the *Court/Tribunal*. The practice is not required to ask for your consent for every action the practice takes. However, the practice will consult with you in advance about every material step the practice proposes to take on your behalf.
53. Any third party, including an entity or person related to you, which relies on the practice's advice, does so at their own risk, unless the practice agrees to anything to the contrary in writing.
54. If, during the course of your matter, you instruct the practice to provide advice to an entity or person that is related to or associated with you (and the practice is able to do so), then that entity or person must become a client of the practice by accepting an offer from the practice to provide legal services to that entity or person and the basis on which the practice will charge for those legal services.
55. The practice also owes a duty to you (and where there is more than one client, each of you) to represent your interests to the exclusion of the interests of others. At this stage, the practice is not aware of any other interest that precludes the practice from discharging this duty. However, if accepting some of your instructions in the course of your matter or continuing to act for you would present the practice with a conflict of interest, actual or potential, the practice may have to cease to act for you and terminate the engagement.
56. In acting for you in your best interests the practice is not required to do anything which is unethical or unlawful. Each lawyer in the practice owes a duty to the Court that is a paramount duty and applies in priority to any duty owed to you.

What the practice expects of you

57. The practice will take its instructions only from you. You do not authorise any other person to give instructions on your behalf.

<VAR 26 - alternatively>

The practice will take its instructions only from <VAR 27 - name of other person who will provide instructions>. You do not authorise any other person to give instructions on your behalf.

58. To ensure the practice is able to provide legal services to you, it requires the following from you:
- a. that you provide instructions as and when required. Ordinarily the practice will ask for instructions from you in writing and requests you provide instructions in writing. Pressure of time may however dictate that instructions are obtained orally. If that happens the practice will endeavour to subsequently confirm your instructions in writing;
 - b. that you provide good access to all relevant documentation. It is important that if you possess original documents then they be provided to the practice. If the documents are not in English then the practice is entitled, at your expense, to have them translated into English;
 - c. that you assist in ensuring the practice has good access to persons it will need to consult in order to advance your matter.

Ending the retainer

59. You may terminate the engagement at any time by written notice to the practice. You remain responsible for all fees and disbursements which the practice may properly charge up to the time of receipt by it of your notice terminating the engagement.
60. The practice may terminate the engagement in writing and stop acting for you if:
- a. you do not comply with the terms and conditions set out in our offer including a failure by you to comply with your obligation to pay the practice's costs and disbursement as provided for in this offer; or
 - b. within 21 days of the practice notifying you of the changed hourly rates (see clause 32 above), you reject the amended hourly rates; or
 - c. the practice forms the opinion, on reasonable grounds, that mutual confidence and trust do not exist between you and it; or
 - d. the practice considers on reasonable grounds that by continuing to act for you it may breach professional conduct rules.
61. Upon termination, the practice is entitled to retain all files, documents and personal property relating to your matter(s) until all invoices rendered to you by the practice are paid in full or a court otherwise orders.

Other Rights and Obligations

62. If you provide documents to the practice, the practice will, on completion of your matter, return to you those documents to which you are entitled. The practice will retain other papers for no more than seven (7) years, and on the understanding that the practice has your authority to destroy those papers seven (7) years after the date of the final invoice rendered in the matter.
63. The terms and conditions of our offer are binding on you and the practice. They may not be varied except in writing.
64. The terms and conditions of our offer apply even if the amount which is successfully claimed is within the monetary jurisdiction of the Magistrates Court (currently \$75,000).
65. You acknowledge the practice's copyright in all documents prepared by it and that they must not be reproduced without prior written permission of the practice.
66. If, at any time, you are not completely happy with the service you are receiving, then you should tell the practice of your concerns. Any concern that you raise will be addressed courteously and expeditiously and hopefully to your complete satisfaction.
67. You have the right to seek the assistance of the Legal Practice Board in the event of a dispute about costs.
68. The law of Western Australia applies to the agreement constituted by your acceptance of this offer.

Part 4

What you must do next

69. You can accept our offer by <VAR 28 – insert 'providing a deposit for costs of \$xxxx and"> any of the following actions:
 - a. by initialling each page of this letter, by signing the letter on the last page and then returning one copy to <VAR 3 - name of dedicated legal practitioner>; or
 - b. by sending an email or letter to the practice stating that you accept; or
 - c. by continuing to provide instructions on your matter to the practice.
70. If you do not accept within 28 days, the practice shall assume that you do not wish to engage the practice and the practice will:
 - a. take no further action in your matter;
 - b. if the practice is on the record as the law practice representing you in any legal proceedings before a Court or Tribunal, take steps to obtain an order from that Court or Tribunal that it is no longer acting for you;
 - c. invoice you for the legal costs and disbursements that have been provided to you calculated in accordance with the statutory costs determination;

d. upon payment of the invoice, return any documents provided to the practice by you.

71. Where you accept our offer after the practice has already provided legal services to you in connection with your matter (for example because of urgency) you do so on the basis that the agreement constituted by your acceptance of our offer applies to the work the practice has already performed.

Your acknowledgement

72. If you accept our offer, you acknowledge that:

- a. it will confer a financial benefit on the practice;
- b. by this letter you have been informed that:
 - i. there are law practices in Western Australia who may be prepared to perform the work that you have engaged the practice to perform on the basis of charges at a lower cost or who may not require you to enter into a costs agreement;
 - ii. it is in your interests to obtain independent legal advice from a different law practice about what acceptance of the terms and conditions offered to you in this document means for you.
- c. you understand and give your consent to our offer.

Yours faithfully

Signed

<VAR 3 - name of dedicated practitioner>

<VAR 2 - name of client> accepts the offer:

Signed:

Date: