



Engagement Agreement

The **Firm** means Bruce Douglas Havilah & John Thomas Cope and as Trustees for the Perth Law Unit Trust trading as Recover-e-Solicitors.

The **Client** means _____ or _____ Pty Ltd
(Insert Full Name of Client)

of _____
(Insert Address of Client)

Trading as _____
(Registered business name)

The **Firm** agrees to provide legal services to the **Client** on the terms and conditions specified in this agreement.

Terms & Conditions

Client Contact Details for all Correspondence:

Contact Person: _____

Fax: (____) _____ Email: _____

Solicitor Contact Details:

Brian Havilah
Direct Line: 1300 123 729 (PAY)
Fax Number: (02) 9526 7539
Email: info@recoveresolicitors.com.au

Dear Client

COMMERCIAL DEBT RECOVERY MATTERS FOR YOU

Costs Agreement Commercial Matters - Costs Disclosure

- A.** This document is an offer to enter into a costs agreement with you.
- B.** The legal work we have been instructed to do is Commercial Debt Recovery work including demands, field calls and the issue of proceedings in the appropriate court jurisdiction where applicable and in accordance with your instructions to do so.
("the Work")
- C.** The costs disclosure requirements which we are required to provide you under the *Legal Profession Act 2004* are contained in **Annexure "A"** which forms part of this document.

D. Acceptance of Offer

If you accept this offer you will be regarded as having entered into a costs agreement. This means you will be bound by the terms and conditions set out in this document, including being automatically billed in accordance with it. Acceptance must be made by;

- signing and returning a copy of this document;
- signing the Direct Debit Request form (DDR) enabling us to deduct from your account at the conclusion of each month our agreed fees at the cost to you of 3% of the direct debit payment;

E. Costs-how calculated - Professional Fees

E1 We will charge you professional fees for the work we do on the following basis:-

Fixed Rates

Paywatch System

All work you instruct us to do by logging into the Recover-e-Solicitors website in your multiple recovery matters shall be charged to you at the rates set out in the selection box inclusive of GST and is subject to change in accordance with our reasonable notification to you in advance by fax or e-mail at the contact address you have nominated above.

E2 Litigation Rates

All charges, expenses and disbursements incurred and/or paid in relation to the Litigation Work commencing with the issue of Proceedings or Notices of Default will be calculated and paid in accordance with the Applicable Court Scale of Fees for Costs recoverable from the other party.

Where the applicable scale of fees does not include Litigation Work we must reasonably undertake on your behalf then our fees will be calculated in accordance with the hourly rates set out in Annexure "A"

F. Estimate of costs, charges, expenses and disbursements

The following estimate is based on the information available to us to date.

It is an **estimate, not a quotation** and is subject to change.

F1. We estimate the cost of the Work to be:

<u>Paywatch Fees</u>	
<i>Fees for Demand and Field Call</i>	\$90.00
<i>Charges:</i>	\$0.00
<i>Expenses & Disbursements:</i>	\$0.00
SUBTOTAL:	\$90.00
GST:	\$9.00
<i>GST Free Expenses & Disbursements</i>	<i>(Payment fee) \$3.00</i>

TOTAL (GST inclusive)	\$102.00

<u>LITIGATION FEES</u>	
As per the Applicable Court Scale of Fees excluding work completed on an hourly basis and Third Party Expert and Counsel Fees	
Note – disbursements are charged on litigation in accordance with rates below	

F2. These estimates are made on the information presently available to us and assume that there are no material changes to our instructions and the nature, scope and extent of the Work:-

G. Persons responsible for your matter and legal costs

Ms Eastman will be your contact and responsible for the day to day conduct of your matter under the supervision of Mr Brian Havilah, Solicitor. You may contact either of them regarding this matter. In the event the matter progresses past the initial stages of litigation an alternative solicitor may be nominated to conduct the day to day conduct of your matter.

H. Substantial changes to disclosure

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

I. Termination of Agreement

I1. We will not continue to do the Work: if you fail to pay our bills; if you fail to provide us with adequate instructions within a reasonable time; if you give instructions that are deliberately false or intentionally misleading; if you fail to accept an offer of settlement which we think is reasonable; if you fail to accept advice we (or counsel) give you; if you engage another law practice to advise you on this matter without our consent; if we, on reasonable grounds, believe that we may have a conflict of interest, or if you indicate to us that we have lost your confidence; or for other just cause.

We will give you at least fourteen (14) days' notice of our intention to terminate our agreement, and of the grounds on which the notice is based.

I2. You may terminate this agreement at any time by written notice communicated by fax or e-mail.

I3. Consequences of termination: If the agreement is terminated either by you or us, you will be required to pay our professional fees for the Work done, and for charges, expenses and disbursements incurred, up to the date of termination. In Court or similar proceedings you will be liable to pay our costs, charges, expenses and disbursements whether or not the other party to any such court or similar proceedings (eg arbitration) is ordered to pay your costs.

In addition, if we are required to bring a Court application to remove our firm from the record then the costs of bringing that application calculated on an hourly rate together with all court filing fees and service fees will be borne by you.

On termination, we are entitled to retain possession of your papers and documents while there is money owing to us for our professional fees, charges expenses and disbursements, unless and until security is provided for our costs.

J. Retention of your documents

J1. We will, on completion of the Work, retain any papers to which you are entitled, but leave in our possession (except documents deposited in safe custody) for no more than seven (7) years and on the undertaking that we have your authority to destroy the file seven (7) years after the date of the final bill rendered by us in this matter. If this offer is accepted in accordance with Part 'D' above we will assume the undertaking and authority has been given. You may be charged for any storage costs incurred by us and may be passed on to you as a one-off charge on completion of the matter in our final bill. Your authority in this regard is signified by acceptance of this offer unless that authority is withdrawn before the file is destroyed. You may also be charged for the retrieval of documents held in storage, but we will advise you of the charges prior to retrieving the documents. The documents are held in archive storage outside the office.

J2. We will not retain important documents in safe custody for you after your matter is concluded.

K. Privacy Protection

We will send all communications to the address nominated by you. It is important that any changes to name, address, telephone and facsimile numbers and email address, or any changes to any party relevant to Client's matters are notified to us promptly.

Internet Communications

- (a) You authorises us to communicate electronically notwithstanding electronically transmitted information cannot be guaranteed to be secure or error free and it can be adversely affected or unsafe to use.
- (b) The Firm will not accept any liability in respect of any loss, damage, error or omission arising from or in connection with the electronic communication of information.

- (c) The Client should advise the Firm in writing of a secure electronic address for communication to take place.
- (d) Personal information about you, provided by you and other sources, is protected under the *Privacy Amendment (Private Sector) Act 2000*. Disclosure of such information may be compelled by law (eg. under the *Social Security Act*). You also authorise us to disclose such information where necessary to others in order to carry out this work and in furtherance of your claim/matter (eg. within our legal practice, to the Court, the other party or parties to litigation, to valuers, experts, barristers etc).

L. Payment / Money on Account

Either:

We may ask you to pay us, in advance, some money on account of payments which will be made to others such as Court filing fees, third party expert fees or Counsels fees which will be required to be paid by cheque addressed to the third party.

OR

We will deduct by direct debit after the end of each calendar month our reasonably incurred fixed fees and litigation fees after we send you bills for these payments.

Each account is due and payable within 14 days after the date of the account. If for some reason you do not pay by direct debit (DDR) at the cost of 3% then a fee of an additional 3% of the total will be charged on all payments by credit card.

It is expressly agreed that the terms of paying by direct debit instalment arrangement will be 3% of the total paid in relation to any payment made by the Client.

M. Authorisation to Transfer Money from Trust Account

You authorise us to receive directly into our trust account (including any Controlled Monies Account opened on your instructions, eg, a Cash Management Account, Commercial Bill Facility or other deposit or investment account with a bank or other financial institution authorised by you) any judgment or settlement money, or other money received from any source concerning or which relates to the carrying out of the Work and which is the subject of your claim/matter, and to pay ourselves our costs, charges, disbursements and expenses in accordance with the provisions of clauses 88(3)(a)(i) and 88(3)(b) of the Legal Profession Regulation 2005.

N. ENFORCEABILITY OF THIS AGREEMENT

When YOU instructs US as an agent for another party in the absence of a written agreement to the contrary you will remain personally liable for payment of all of our Fees incurred in relation to those instructions. If any person gives instructions to us on behalf of a Company, **Partnership** or Trust that person accepts joint and several liability for all **Fees** incurred and by signing this agreement acknowledges that liability.

The **Client's** address on this agreement is the address at which you will receive service of all notices and court process on this agreement.

You acknowledge that your liability to us within the terms of this agreement and the enforceability of this agreement will not be affected by any changes to the constitution or any changes to our principals and whether caused by the retirement of existing principals, the admission of new principals or otherwise and this agreement will be deemed to have been concluded with us and our principals as it may be constituted from time to time.

O. Special Conditions

[Complete if Applicable]

Signed: On behalf of Recover-e-Solicitors;

Solicitor: Date:

Signed : On behalf of the Client by;

Client: Date:

Client: Date:

Annexure 'A'

Costs Disclosure

This document discloses information about the costs of our legal services, and your rights, as required by the *Legal Profession Act 2004* NSW (the Act). You may negotiate and enter into a costs agreement with us based on the information contained in this document. A standard costs agreement is attached.

1. GST

All rates, charges, expenses etc in this document are GST exclusive unless otherwise stated. Where the service provided is subject to GST, GST of 10% will be added and charged to you.

2. Hourly Rates for Litigation where Costs are Not Itemised by Applicable Court Scale

- (a) an hourly rate of : \$380 (plus 10% GST) for a partner;
- (b) an hourly rate of : \$320 (plus 10% GST) for a senior associate;
- (c) an hourly rate of : \$290 (plus 10% GST) for an associate;
- (d) an hourly rate of: \$270 (plus 10% GST) for intermediate solicitor;
- (e) an hourly rate of: \$250 (plus 10% GST) for junior solicitor;
- (f) an hourly rate of: \$160 (plus 10% GST) for a licensed conveyancer;
- (g) an hourly rate of : \$130 (plus 10% GST) for a para-legal;
- (h) an hourly rate of : \$50 (plus 10% GST) for a law clerk;
- (i) an hourly rate of : \$40 (plus 10% GST) for secretarial services.
- (j) travelling time: in relation to travel within the Sydney Metropolitan Area at the above rates and if outside that area at rates to be negotiated beforehand (plus 10% GST).

These rates will be proportionately charged for work involving shorter periods less than an hour. Our charges are structured in 6 minutes units. For example, the time charged for an attendance of up to 6 minutes will be 6 minutes and the time charged for an attendance between 6 and 12 minutes will be 12 minutes and so on.

3. Charges on Litigation Matters

We note having provided an estimate of these in our covering letter.

We will charge you for services we use or supply. Our rates are:

3.2.1 photocopying (including collating, binding and checking: \$0.50 cents per page (plus 10% GST)

3.2.2 faxes: \$2.00 for the first page and \$1.00 for each following page (plus 10% GST)

3.2.3 Document lodgement (e.g. LPI of NSW, OSR and ASIC or at a Court or Tribunal) and title or other searches etc: at cost and any applicable service fees plus 10% GST

NOTE: We may (at our election) send out material for copying for external processing where there are very large copying runs or specialised copying services are required, the cost of which will be passed on to you at cost and any applicable service fees (plus 10% GST).

4. Expenses & Disbursements

We will incur expenses and disbursements (being money which we pay or are liable to pay) to others on your behalf. These may include barristers fees, experts fees, search fees and other fees payable to our appointed agents (if required).

We note having provided to you an estimate of these in our covering letter.

To the extent that any particular item is not estimated in our covering letter we will inform you of these expenses and disbursements as well as any other payments required to be made, as soon as is reasonably practicable.

5. Your right to a bill of costs

You are entitled to receive a bill of costs from us. If we send you a lump sum bill you may request an itemised bill within 30 days of receipt of the lump sum bill.

6. Billing arrangements

6.1 We will send you a bill of costs containing information of our professional fees and charges, disbursements and expenses, including GST, **either** after completion of the Work (generally for property and other transactions that are opened and completed within 4 to 6 weeks), **or** fortnightly or monthly at our discretion for other types of work, or at other times as agreed with you, when the Work is in progress.

6.2 Each bill of costs we provide to you will have, at least, the notations thereon as set out at paragraph 18 following.

7. Interest on unpaid costs

If our costs are not paid within 30 days of receipt by you of our bill of costs, we may charge you interest on the unpaid amount at the rate prescribed in Regulation 110A of the Legal Profession Regulation 2005. The current rate is 9% per annum.

8. Disputes as to legal costs

The Act gives you the right: to apply to the Supreme Court to have the bill of costs assessed for its fairness and reasonableness by a Costs Assessor; or the right to have the costs mediated if the dispute is less than \$10,000 (referral for mediation must be made before an application for assessment is accepted by the Manager, Costs Assessment); or a costs agreement set aside by the Costs Assessor on the basis that it is not fair, just or reasonable. Applications for assessment should be made before the expiry of 60days after receipt of the bill of costs, or request for payment of costs made by us, or full payment made to us, whichever is the earliest.

9. Progress reports

You are entitled to request, at reasonable intervals, written progress reports on your matter. Our normal charge-out rates will apply for this service. You are also entitled to request a written report on the legal costs incurred to date or since the last bill of costs was given to you, **WITHOUT CHARGE**.

10. Engagement of another law practice and third party retainers

It may be necessary for us to engage, on your behalf, the services of another law practice or for example a barrister or expert in a Court/Tribunal matter, or a building consultant or surveyor in a property matter to provide specialist advice or services, including advocacy services, or to act as our agent. We will consult you as to the terms of that engagement. However, you may be asked to enter into a costs agreement directly with that law practice or other service provider. The law practice or service provider engaged by us will be requested by us to disclose costs in a similar manner and we will disclose those costs to you.

11. Costs in court proceedings

11.1 If court or similar proceedings (eg arbitration) are taken on your behalf, the court (or other tribunal) may order the other party to pay your costs of the proceedings. This sum will not necessarily cover the whole of your legal costs due to us. It is possible that the court may make an order that you pay the other party's costs (if, for instance, you lose the case). These costs are payable by you to the other party in addition to the costs payable to us.

11.2 If **settlement** of your claim/matter is being negotiated, we will provide you before settlement with:

11.2.1 a reasonable estimate of our costs, charges, expenses and disbursements payable by you on settlement;

AND

11.2.2 a reasonable estimate of the costs, charges, expenses and disbursements you could obtain from the other party on settlement if the settlement is favourable to you;

OR

11.2.2 a reasonable estimate of the costs, charges, expenses and disbursements you may have to pay the other party (eg, if your case is weak, etc.)

12. Applicable law

The law of NSW applies to legal costs regarding this matter. You are, however, able to enter into a costs agreement with us on the basis that the corresponding law of another State or Territory is applicable if this matter has a **substantial connection** with that State or Territory. In that event, we will disclose costs as they

are applicable in that State or Territory. You have the right to contract with us that the costs assessment scheme in NSW is applicable, in the event of any dispute as to costs arising with us.

13. Legal Aid

13.1 Our agreeing to act for you is on the understanding that:-

13.1.1 you have satisfied yourself that Legal Aid is not available in respect of the work to be undertaken, or you are not eligible for Legal Aid; and/or

13.1.2 you have declined to make an application for Legal Aid

14. Taxation

14.1 In particular matters, even if not part of the substantive matter, taxation and its consequences can often be a relevant consideration.

14.2 We are not in a position to give advice relating to the application of any taxation laws in respect of the Work to be done and its outcomes. Often the application of tax considerations very much depends on a client's particular financial circumstances and affairs apart from the particular matter to which the Work relates.

14.3 You should obtain such advice from an accountant or other taxation law specialist. If you require assistance in this regard, please do not hesitate to contact us and we can refer you to an appropriate person for that advice to be given.

15. Lien/Return of files/Papers

15.1 Subject to the lien we have on all your files, paper and documents in our possession, whilst ever our fees and/or charges, expenses and disbursements are outstanding, we will, at your request, return all documents except the following which will always remain our property:-

15.1.1 original letters from you to us;

15.1.2 duplicates or file copies of letters and memoranda of fees and disbursements from us to you and from third parties to us;

15.1.3 our own diary notes of attendances and conferences;

15.1.4 draft documents and notes thereon prepared by us; and

15.1.5 all accounting and financial records relating to our retainer and the Work.

16. Solicitors Limitation of Liability Scheme

The Professional Standards Council has approved a scheme limiting the liability of solicitors and this firm is part of that scheme

17. Independent Advice

If you wish, you may obtain from another solicitor independent advice as to the legal and practical nature and effect of this retainer and as to whether or not it is in your best interests to enter into it. The Law Society of New South Wales may be able to assist with the names of suitable firms that could give that advice.

18. Notification on Bills of Costs

The Legal Profession Act 2004 requires that the following advice be given on a bill of costs:

- Interest may be charged at the current rate of (presently 9%) prescribed by regulation 110A of the *Legal Profession Regulation 2005* on any bill of costs which remains unpaid after 30 days.
- You may apply to have this bill of costs assessed under Division 11 of the *Legal Profession Act 2004*. Any such application must be made within 60 days after this bill has been given to you. You may also apply under section 336 of that *Act* to have a costs dispute mediated where the amount in dispute is less than \$10,000. Referral to mediation is not permitted after an application for assessment has been accepted by the Manager, Costs Assessment.
- You may apply under Section 328 of that *Act* to set aside any costs agreement entered into between us on the basis that it is not fair and reasonable.
- If a lump sum bill is given to you, you have the right to ask for an itemised bill. An itemised bill might include items of costs not taken into account in the lump sum bill thereby increasing costs. If an itemised bill is required. We reserve our right to rely on the itemised bill as our final bill.