

Schedule - Costs Agreement

1 Our Engagement Terms

This document together with the accompanying terms and conditions (Attachment I – Terms and Conditions) (“**Terms and Conditions**”) and disclosure statement (Attachment II – Disclosure Statement) (“**Disclosure Statement**”) form our engagement terms (“**Engagement Terms**”).

Our Engagement Terms represent our offer to enter into a legal services and costs agreement with you and set out the terms on which we propose to undertake work for you. You will accept our offer by paying the fixed fee for our service.

The Disclosure Statement contains information about the costs we charge for legal services and your rights in relation to those costs.

2 Scope

2.1 Scope of our legal services

We will provide telephone legal advice to you in relation to certain matters directly arising or relating to your Family Day Care business (“**Our General Services**”). Our General Services includes advice on matters such as:

- (a) Your obligations arising under the Family Assistance Law, as follows:
 - i) Business model compliance;
 - ii) Maintaining relevant approvals (service, provider and CCB);
 - iii) Obligations to maintain appropriate level(s) of insurance;
 - iv) Suitability to operate an approved child care service;
 - v) Employment arrangements of your staff;
 - vi) Suitability of the educators’ care environment;
 - vii) Quality of care;
 - viii) Issues relating to non-compliance of educators;
 - ix) Privacy issues;
 - x) CCMS reporting obligations;
 - xi) Charging of fees;
 - xii) Mandatory reporting of issues including child abuse and neglect;
and
- (b) Your obligations arising out of the Education and Care Services National Law, as follows:
 - i) Numbers of children in care;
 - ii) Safety of children in care;
 - iii) Record keeping;
 - iv) Privacy issues;

- v) Contractual issues arising with families/parents relating to the provision of care;
 - vi) Charging of fees;
 - vii) Invoicing and issuing of payment receipts;
 - viii) Reporting attendance(s);
 - ix) Providing care;
 - x) Child Swapping;
 - xi) Grandparent CCB;
 - xii) Special CCB;
 - xiii) CCB generally;
 - xiv) Recovery of debts arising from the provision of care or operation of your Family Day Care business;
- (c) At our ultimate discretion, other minor matters which fall outside the scope of General Services ("**Other Services**").

The scope of our General Services and Other Services does not include, except at our ultimate discretion:

- (d) Written advice or other correspondence;
- (e) The provision of any legal service(s) other than telephone legal advice;
- (f) Telephone legal advice in relation to:
 - i) personal issues or issues not directly arising or relating to your Family Day Care business;
 - ii) tax law issues;
 - iii) issues an educator is having with an FDC service;
 - iv) family law issues;
 - v) notices of non-compliance issued to services, including notices of intention to impose a sanction or notice of the imposition of a sanction;
- (g) advice on the laws of jurisdictions other than as stated in the scope of work in the Costs Agreement;
- (h) confirming or checking of information given to us by you in the context of the matter is current or accurate other than as stated in the scope of work in the Costs Agreement.

3 Other information

The other terms of our client services agreement with you are contained in the Terms and Conditions. Your rights and our obligations under the Law are contained in the Terms and Conditions and the Disclosure Statement. You accept our Engagement Terms by either signing them or continuing to instruct us.

4 Acknowledgement

Please note that this information is a term or condition of the agreement.

You accept this offer and ACKNOWLEDGE that you have:

- (a) received, read and understood our Engagement Terms; and
- (b) been advised of your right to get independent legal advice before entering into our Engagement Terms.

Attachment I – Terms and Conditions

1 Introduction

Our Engagement Terms represent our offer to enter into a legal services and costs agreement with you and sets out the terms on which we propose to undertake work for you. You have a right to negotiate these terms with us.

We are an unincorporated legal practice under the Law and Rules (defined below) because we provide both legal services and non-legal services. In accordance with our obligations as an unincorporated legal practice, we note the following:

- (a) the legal services which we will provide to you are set out in clause 2 in the schedule in our Engagement Terms titled Costs Agreement (“**Costs Agreement**”);
- (b) all services will be provided by an Australian legal practitioner unless otherwise set out in these Engagement Terms;
- (c) legal services will not be provided by a person other than an Australian legal practitioner;
- (d) where non-legal services are to be provided by a person who is not an Australian legal practitioner, information about those services and information about the status or qualifications of the person or persons who are to provide those services is set out in clause 3 of the Costs Agreement; and
- (e) the Law and Rules (defined below) apply to the provision of legal services but do not apply to the provision of non-legal services.

2 Engagement Terms

Our Engagement Terms replace any earlier agreement between us in relation to the matter described in these Engagement Terms. For any future matter or any other existing matter, our Engagement Terms will apply, unless otherwise agreed.

From time to time we review our Engagement Terms and we will send you any new version which will apply to you.

3 Acceptance

If you accept our Engagement Terms you will have entered into an agreement that can be legally enforced in the same way as any other contract.

This means you will be legally bound by our Engagement Terms. You should be certain that you understand our Engagement Terms. If you are uncertain about any clause of our Engagement Terms, we invite you to discuss its contents and put your questions to any professional you trust (such as your accountant) or even another lawyer. You are also welcome to discuss our Engagement Terms with our people. We will not charge you for any attendances relating to our costs disclosure and our Engagement Terms with you.

You will accept our Engagement Terms by paying the fixed fee for our service.

We reserve the right to not commence work until we have received full payment of our fees.

4 **Scope of our legal services**

Except for the following, the scope of our legal services we will provide you is described in the Costs Agreement.

Matters outside of scope

The scope of legal services does not include:

- (a) The provision of any legal service(s) other than telephone legal advice;
- (b) Advice, including telephone legal advice, in relation to any personal issues or issues not directly arising or relating to your Family Day Care business;
- (c) advice on tax issues;
- (d) advice on the laws of jurisdictions other than as stated in the scope of work in the Costs Agreement;
- (e) any non-legal services such as advice on financial or tax matters; and
- (f) confirming or checking of information given to us by you in the context of the matter is current or accurate other than as stated in the scope of work in the Costs Agreement.

Third party information

If any material or information is received from a third party and that material or information is incorporated in any manner into our work, we are not responsible for its accuracy.

5 **Our commitment to you**

We will:

- (a) provide you with professional legal services that are of a high standard, in an efficient and timely manner;
- (b) unless urgent and/or we are unable to contact you, send you copies of all important letters and documents for your consideration and instructions;
- (c) advise you regularly of the progress of the work; and
- (d) keep all information you give us in confidence unless you agree or have agreed otherwise or we are legally obliged to disclose it to someone else.

6 Termination

Circumstances in which we are entitled to cease acting for you

Without limiting the circumstances in which we are otherwise by law entitled to cease acting for you, we may cease to act for you if:

- (a) we have a conflict of interest;
- (b) you indicate to us or we reasonably form the view that you no longer have confidence in us;
- (c) you unreasonably refuse to act in accordance with our advice;
- (d) you do not, within 7 days, comply with a request to pay a disbursement under clause 2 or the money in advance under clause 9 of the Disclosure Statement;
- (e) there is another reasonable basis to terminate our Engagement Terms; or
- (f) in our absolute discretion we consider it is no longer appropriate to act for you.

Other circumstances in which we are entitled to cease acting for you

If we, on reasonable grounds, form the view that the necessary relationship of mutual trust, respect and confidence between you and us no longer exists, then:

- (a) we will not be obliged to take any further step in a conduct of the matter;
- (b) we will be entitled to cease acting for you upon reasonable notice; and
- (c) if we continue to act for you or take any further step on your behalf, we do so without affecting our rights under this clause.

If we intend to stop working for you, we will notify you in advance and also tell you the reason(s) why.

Your right to terminate and obligations on termination

You may tell us to stop doing work for you and terminate our Engagement Terms at any time.

You will not be entitled to a refund for any fee paid to us.

7 Conflicts

You agree that instructing us will not prevent us from acting for current or any future clients who may have, or have in the future, commercial interests adverse to you.

You acknowledge that there may be circumstances where one or more clients are interested or potentially interested in the same transaction as you are or a related transaction. You agree that we are free to accept an instruction to act for more than one client in relation to that transaction provided that we comply with the applicable professional rules, are able to act in the best interest of each client, keep the information of each client confidential and, if appropriate, use separate teams of lawyers and other fee earners.

8 Benefit of advice

Any advice is given solely for your benefit. This is due to you being the client to whom we owe our duty of care. This duty of care does not extend to third parties (including but without limitation, your employees). You may disclose our advice to persons who in the ordinary course of business have access to your papers and records, on the basis that we will not owe them any duty or be liable to them in any respect and they will not disclose the advice to anyone. If you do so you may be waiving any legal professional privilege which applies to the advice.

You agree that you must obtain our prior written consent if you want to disclose our advice to any other person. We suggest if you anticipate that you want to show our advice to any other person you should discuss this with us as soon as possible.

Any advice given by us only applies to the specific factual and legal matters it deals with and no others.

9 Lien

Without affecting any lien to which we are otherwise entitled at law over funds, papers and other of your property in our possession:

- (a) we are entitled to retain by way of lien any of your funds, property or papers which are from time to time in our possession or under our control until all costs, disbursements and interest due to us have been paid; and
- (b) our lien shall continue notwithstanding that we cease to act for you in accordance with clause 8 of these Terms and Conditions.

10 File retention and destruction of documents

- (a) Upon completion of the matter, we will return any personal papers to you.
- (b) Unless instructed otherwise, we will retain in our possession all other documents comprising your file for a period of 7 years after the final account rendered to you by us.
- (c) If the file is retrieved from the storage facility at your request, you agree to pay the storage retrieval fee.

11 Privacy protection

We will collect personal information from you in the course of providing our legal services. We may also obtain personal information from third party searches, other investigations and/or other parties to the matter.

We are required, pursuant to Rule 93 of the *Legal Profession Uniform General Rules 2015 (NSW)* ("**Rules**") to collect the full name and address of our clients. Accurate name and address information must also be collected in order for us to comply with the trust account record keeping requirements of Rule 47 of the Rules.

Your personal information is protected under the *Privacy Act 1988 (Cth)*. You authorise us to disclose such information to Mega Lines Pty Ltd ABN 68 122 341 191 at our ultimate discretion and to others where it is necessary for the work we do and/or, for instance within the law practice, to the Court, to the other party or parties

in litigation, to valuers, experts, barristers etc. In some cases we may be compelled by law to disclose that information (e.g. under the *Social Security Act 1991* (Cth)).

12 **Dispute as to costs**

If you have any questions, concerns, or issues with your legal costs, please contact Sindri Bergsson at first instance to address your questions or concerns.

In the event that you are not satisfied with the response, you may contact Daren Curry, Partner, on (02) 8289 5800.

13 **Mills Oakley and You**

In our Engagement Terms:

- (a) 'we', 'our' and 'us' mean Mills Oakley ABN 51 493 069 734; and
- (b) 'you' and 'your' mean the client. If there is more than one client, each client is jointly and severally liable under our Engagement Terms.

Attachment II – Disclosure Statement

1 Introduction

This statement contains information about the costs charged by us for legal services and your rights in relation to those costs. We must give you this information under the Law.

You may negotiate and enter into a costs agreement with us based on the information contained in the Engagement Terms.

2 Goods and Services Tax (“GST”)

All costs for legal services referred to in our Engagement Terms, including professional fees, rates, charges, expenses and disbursements, are exclusive of GST unless otherwise stated and represent the GST exclusive supply price. Apart from amounts we ask you to reimburse us as disbursements, if GST is payable in relation to any goods or services we supply, an amount of 10% (or such other rate as prescribed by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) will be added to the GST exclusive supply price and is payable by you at the time our bill is given to you.

We can also ask you to pay any GST which we may have to pay on reimbursement of disbursements in excess of any input tax credit which we are entitled to receive for the disbursement. We will advise you of the amount you have to pay for GST on disbursements when our bill is given to you.

3 Privacy

Your personal information is protected under the *Privacy Act 1988* (Cth).

You agree to us:

- (a) collecting (whether from you directly or from any other party) personal information and sensitive information about you (“**information**”) to enable us to perform the work and/or to protect your legal position;
- (b) using and disclosing to any party (whether within or outside Australia) such of the information as we consider necessary to perform the work and/or to protect your legal position; and
- (c) using the information to market our services and products to you (unless you request us to cease doing so).

We advise that you may seek access to the information by contacting our Privacy Officer, Roger Jepson on (03) 9670 9111, or email rjepson@millsOakley.com.au.

We advise that, if you are to be granted access to any of the information, an appointment will be made for you to attend personally at our offices for that purpose and we advise that you must pay our reasonable costs in providing that access to you.

We have the right to disclose any of the information referred to above to any party described above under the heading “Privacy”. The types of parties to whom we would usually disclose the information could include our staff, lawyers in other firms,

barristers, judges, court staff, relevant witnesses, accountants, parties providing expert advice to us and yourself, our agents, other persons or firms providing other services to us and any other party with whom we may deal on your behalf.

4 Disputes about legal costs

If you are unhappy about our fees, please contact one of the people responsible for your work first, stating why you are unhappy and what you would like us to do.

If we cannot satisfactorily resolve your concern, you also have the following options:

- (a) contact the Law Society of New South Wales on (02) 9926 0333;
- (b) seek a costs review under Division 7 of Part 4.3 of the Law within 12 months after the bill is given to you or we request payment or you pay the costs (whichever is the earlier or the earliest);
- (c) make an application to have the Costs Agreement declared void under Division 4 of Part 4.3 of the Law;
- (d) make a complaint to the NSW Legal Services Commissioner under Chapter 5 of the Law within 60 days after the legal costs were payable or, if an itemised bill was requested in respect of those costs, within 30 days after the request was complied with, if the total bill is less than \$100,000 or if the total costs in dispute is less than \$10,000; or
- (e) make a complaint to the NSW Legal Services Commissioner up to 4 months after the end of the period referred to. This is provided that you can satisfy the Commissioner that there was a reasonable cause for the delay in making the complaint, and legal proceedings have not been commenced for the recovery or review of the legal costs that are subject to the complaint.

5 Substantial changes to disclosure

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

6 Applicable law and invalidity

The law of New South Wales shall apply to our Engagement Terms and you irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waive any right to object to any proceedings being brought in those courts. You have the right to sign a costs agreement under a corresponding law or to advise us that you require the law of another jurisdiction shall apply.

In the event that that any of these terms are held to be invalid, or are otherwise not permitted in any jurisdiction, the remainder of the terms will remain in full force and effect.

Please note the Law does not apply to non-legal services.

7 Limitation of liability

We do not currently participate in the solicitors' limitation of liability scheme.

However, subject to any legal, regulatory or professional requirements which cannot be excluded or limited by agreement, you agree that the following limitations on our liability will apply:

- (a) our liability for any loss, damage, liability or costs and expenses ("**Loss**") or any claim, demand, action, proceeding or judgment made or threatened ("**Claim**") in connection with our provision of services to you is limited as follows:
 - (i) we will have no liability to any person other than you in relation to our provision of services;
 - (ii) liability for any Claim or Loss is recoverable only from us and not from any of our partners, members, employees, officers, representatives or agents; and
 - (iii) our liability is limited to such proportion of the Loss or Claim as is just and equitable having regard to the extent of your own responsibility for the Loss or Claim and that of any other person (regardless of any inability on your part to enforce a claim against such other person for any reason).
- (b) if the amount for which we are able to claim contribution against any other person in connection with any claim by you is reduced for any reason, including as a result of any exclusion and/or limitation of liability agreed by you with such person, our liability to you in respect of such claim shall be reduced by the amount by which the amount for which we are entitled to claim from such other person is reduced.
- (c) notwithstanding any other provision in this document, we will not be liable in any circumstances for any:
 - (i) Claim or Loss that does not arise naturally and according to the usual course of things from the event giving rise to the Claim or Loss, or that arises due to special circumstances of you or any other person that were not known to us;
 - (ii) loss of profit;
 - (iii) loss of goodwill, loss of opportunity or loss of anticipated saving;
 - (iv) special or punitive loss or damages;
 - (v) Claim to the extent that it relates to or includes a claim for any loss or damages set out in paragraphs (ii), (iii) or (iv) above; or
 - (vi) default or other act or omission on the part of any bank or other financial institution with which money has been deposited in connection with our services or otherwise on your behalf or at your direction.
- (d) The limitations of liability referred to in paragraph (a) to (c) above are subject to the following:

- (i) If a legal, regulatory or professional requirement which cannot be excluded or limited by agreement states a minimum amount below which liability may not be limited or prohibits or makes void the exclusion of liability (for example, liability for fraud or personal injury), then the limitations in paragraphs (a) to (c) above will be construed so as to not limit our liability below any prescribed minimum amount or, in the case of a prohibited or void exclusion of liability, shall be construed so that such limitation does not apply.
- (ii) Nothing in paragraphs (a) to (c) above applies if it would result in us, or any of our partners, members, employees, officers, representatives or agents, being in breach of any legal, regulatory or professional requirements which cannot under any relevant legal, regulatory or professional requirements be excluded or limited by agreement.

8 Immunity

As a matter of public policy, the law provides immunity from suit in relation to advocacy. Nothing in our Engagement Terms affects advocate's immunity from suit in relation to any advocacy conducted on your behalf.

9 Copyright and intellectual property rights

We will at all times seek to maintain the confidentiality of your information, however we may be permitted or required by law to disclose your confidential information. We may also provide your information to third parties where we consider it is appropriate.

We retain all copyright and other intellectual property rights in all legal works and other things created, developed, designed or generated by us in connection with the provision of services to you, including all copyright and other intellectual property rights in all letters, documents, reports, advice or other materials provided by us to you.

Our Engagement Terms do not constitute any transfer, assignment, licence or other right to use or reproduce any letters, documents, reports, advice or other materials we prepare as a result of our Engagement Terms.

10 Acknowledgements

You acknowledge and confirm by signing our Engagement Terms that:

- (a) you have received this Disclosure Statement pursuant to Division 3 of Part 4.3 of the Law;
- (b) you have read, understood and approved this costs agreement, including the Disclosure Statement;
- (c) we may be obliged to disclose to the court and other parties the contents of our Engagement Terms and the source of funds used to pay your costs; and

- (d) you have received written advice about the basis on which our costs will be charged.