

THIS AGREEMENT is made the _____ day of _____ 2019

B E T W E E N:

THE TRUSTEES of the LAW AID TRUST of 205 William Street, Melbourne, Victoria
(Law Aid)

AND

of (the **solicitors**)

AND

of (the **client**).

WHEREAS:

1. Law Aid is a non-profit charitable trust established by the Law Institute of Victoria and the Victorian Bar for the purpose of providing funds to legal practitioners for payment of disbursements necessary for the conduct of litigation by those practitioners on behalf of assisted clients.
2. The client has retained the solicitors to act on behalf of the client in the **Litigation**, and the retainer provides inter alia that the solicitors shall not require payment of their professional fees (or those of counsel briefed by the solicitors on behalf of the client) unless or until there is a Successful Outcome to the Litigation
3. The client has instructed the solicitors to seek funds from Law Aid for the purpose of paying disbursements incurred by the solicitors in the conduct of the Litigation.
4. The solicitors wish to act for the client in the Litigation on a no win/no fee basis so that in the event of a Successful Outcome, the solicitors may receive payment for their professional costs.

NOW IT IS AGREED between Law Aid, the solicitors and the client:

1. **Definitions and Interpretation:**

- (a) **Fund Fee** means 5% of the amount due to and received by the client as a consequence of a Successful Outcome, calculated in accordance with cl. 7

of this agreement. The Fund Fee is “the fee” referred to in s. 40C of the *Legal Aid Act 1978 (Vic)* (the **Legal Aid Act**);

- (b) **Litigation** means civil proceedings, including contemplated civil proceedings, commenced or to be commenced:
- (i) by the client who is a resident of Victoria; or
 - (ii) falling within the legal jurisdiction of Victoria;
- (c) **Successful Outcome** includes:
- (i) in the event of the settlement of the Litigation, the achievement of a result which includes the obtaining of some or all of the relief that was sought;
 - (ii) in the event of verdict or judgment in the Litigation, the achievement of a finding in favour of the client which includes the obtaining of some or all of the relief that was sought.
- (d) **Business Day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the state of Victoria;
- (e) **Legal Profession Act** means the Legal Profession Uniform Law Application Act 2014 (Vic); In this agreement the following rules of interpretation apply unless the contrary intention appears:
- (i) the singular includes the plural and vice versa;
 - (ii) words that are gender neutral or gender specific include each gender;
 - (iii) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
 - (iv) the words ‘such as’, ‘including’ and similar expressions are not used as, nor are intended to be interpreted as, words of limitation;
 - (v) a reference to:
 - a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;
 - a party includes its agents, successors and permitted assigns;

- a document includes all amendments or supplements to that document;
 - a clause, term or party is a reference to a clause or term of, or party to this agreement;
 - a law includes a statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
 - a statute includes any regulation, ordinance, by-law or other subordinate legislation made under it;
 - an agreement other than this agreement includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing
- (vi) an agreement on the part of two or more persons binds them jointly and each of them severally;
- (vii) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it;
- (viii) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.

2. (a) Law Aid agrees to provide assistance by way of payments to or on behalf of the solicitors to be used solely for the purposes of paying the disbursements which are incurred in contemplation of, or in the conduct of, the Litigation on an on-going basis as is necessary and as is authorised by Law Aid (the **Assistance**).
- (b) The amount provided by Law Aid will be in its absolute discretion. Without prejudice to the generality of the foregoing, Law Aid may:
- (i) fix a dollar limit on the amount of Assistance to be provided;
 - (ii) agree to fund certain disbursements only; and/or
 - (iii) terminate the Assistance at any time, without being obliged to provide any reasons.

3. In consideration of Law Aid agreeing to provide the Assistance, the solicitors undertake to Law Aid that:
 - (a) notwithstanding any provision of Part 4.3 of Schedule 1 of the Legal Profession Act, they will not charge the client (or anyone else) any professional fees at all in respect of the Litigation, except in the event of a Successful Outcome.
 - (b) they will not brief counsel to undertake any work on behalf of the client on any basis other than one in which counsel agrees to waive all professional fees, except in the event of a Successful Outcome .
 - (c) they will provide a report as to progress in the Litigation to Law Aid every 3 months. The first report is to be made 3 months after the solicitors have been informed in writing that the Assistance has been granted.
 - (d) they will promptly provide to Law Aid such information regarding the Litigation or the client insofar as it relates to the Litigation as Law Aid may from time to time require.
 - (e) they will ensure that any terms of settlement, deed of release or other document evidencing a Successful Outcome entered into by or on behalf of the client does not prevent disclosure of all relevant information to Law Aid.
 - (f) notwithstanding anything contained in this clause, the total professional fees that may be charged by the solicitors and all counsel in respect of the Litigation shall not exceed the amount actually recovered by the client in the Litigation less any monies payable to Law Aid under this agreement.

4. In consideration for Law Aid's agreement to provide the Assistance, the client agrees to provide all such information to the solicitors as is necessary to enable the solicitors to respond to any request from Law Aid for information concerning the client and the Litigation, and instructs the solicitors to provide that information to Law Aid.

5. The parties to this agreement acknowledge that in accordance with s.40F of the Legal Aid Act, any communication between Law Aid and the solicitors or the client, and any document in the possession of Law Aid concerning the affairs of the client, is

privileged from production or disclosure in the same way and to the same extent as if it were a privileged communication between legal practitioner and client.

6. In consideration of Law Aid agreeing to provide the Assistance, the solicitors and the client agree that unless otherwise prohibited by any Act or Regulation, the solicitors will ensure that all the proceeds of verdict or judgement or settlement are paid to them and further, the solicitors shall:
 - (a) retain a sufficient amount of those funds to enable the amounts required to be paid to Law Aid pursuant to this agreement to be so paid; and
 - (b) pay those amounts to Law Aid.

7. In further consideration for Law Aid's agreement to provide the Assistance:
 - (a) in the event of a Successful Outcome, the client instructs the solicitors to deduct from any amount received and to forthwith repay to Law Aid all sums provided by Law Aid by way of Assistance. Any such sums shall include any tax liability that may be incurred by Law Aid with respect to any monies repaid to it pursuant to this sub-clause;
 - (b) in the event of a Successful Outcome, the client instructs the solicitors to deduct the Fund Fee from the proceeds of any amount received net of any disbursements incurred by the client and net of any legal costs reasonably incurred by the client and statutory repayments due by the client in respect of the Litigation , which sum is to be paid forthwith by the solicitors on the client's behalf to Law Aid;
 - (c) in the event that a Successful Outcome includes a non-monetary component (for example, an order for the transfer of specific property or an order for weekly payments), then for the purposes of this clause, the reasonable value of that non-monetary component shall be reasonably determined by the trustees of Law Aid and this component shall be considered part of the quantum of any verdict, judgment or settlement for the purposes of determining the Fund Fee;
 - (d) in the event of a Successful Outcome comprising or including a verdict, judgment or settlement inclusive of costs, the client agrees to abide by a determination made by the solicitors and Law Aid jointly as to the apportionment of the amount received as between damages and costs;
 - (e) in the event of a Successful Outcome in circumstances where:

- any Act or Regulation prevents the deduction by the solicitors from any verdict or judgment in or settlement of the Litigation of any of the amounts referred to in sub-clauses (a) to (d) above; or
- if, for any reason, those amounts are not deducted from any verdict or judgment in or settlement of the Litigation, then

the client agrees to pay all such amounts to Law Aid as soon as funds are received by the client or paid to a third party on the client's behalf;

- (f) in the event that there is nothing to preclude the solicitors from deducting any amounts due to Law Aid in accordance with this agreement from any judgment in or settlement of the Litigation but they do not do so, and the client fails to make any payment in accordance with cl. 6(e) above, then the solicitors agree to pay those amounts forthwith to Law Aid.

8. In the event that the Litigation consists of preliminary proceedings including but not limited to seeking leave to extend time to commence a proceeding or seeking leave to commence a proceeding, then the Fund Fee is payable from and/or in respect of any amount or non-monetary compensation recovered as a consequence of a Successful Outcome in the ultimate proceeding for damages or other relief.
9. Where the nature of the proceedings is such that court approval is necessary to effect a compromise, the parties agree to inform the court of the terms of this agreement and abide by the orders of the court. The litigation guardian in such proceedings, as a party to this agreement, undertakes to consent, if required by the court, to the payment out of court to Law Aid the total sum payable under this agreement.
10. In the event that the client decides to dispense with the services of the solicitors, the client agrees:
- (a) that the solicitors shall inform Law Aid within 14 days of the client's decision to dispense with the services of the solicitors; and
 - (b) that the client shall retain the conduct of proceedings on the client's behalf until new solicitors have been appointed and the client and the new solicitors

enter into a new agreement, but on terms that the Assistance provided under this agreement is considered Assistance provided under the new agreement.

11. Notwithstanding the provisions of clause 10, if the client decides not to appoint new solicitors, the terms of this agreement shall continue to have effect but all obligations and requirements imposed on the solicitors shall be assumed by the client directly.
12. The solicitors shall immediately inform Law Aid in the event that the solicitors advise the client that an offer of settlement should be accepted as being in the client's best interests, but the client rejects that advice and the matter is not settled. In addition to any other rights Law Aid has under this agreement, Law Aid shall thereupon be entitled to terminate this agreement, and the client shall on demand by Law Aid forthwith reimburse to Law Aid any amounts actually expended or committed to be expended by Law Aid pursuant to this agreement. Notwithstanding Law Aid's termination of this agreement and demand for reimbursement, this clause, and clauses 3, 4, 7 to 11 and 14 of this agreement shall continue to have effect.
13. The solicitors acknowledge that they have disclosure obligations to the client pursuant to ss. 174 and 175 of Schedule 1 of the Legal Profession Act. In accordance with the terms of this agreement, Law Aid is a third party payer as defined in that Act. The solicitors and the client acknowledge that they have agreed that:
 - (a) the solicitors will act for the client in the Litigation on a no win/no fee basis and shall not require payment of their professional fees (or those of counsel briefed by the solicitors on behalf of the client) unless or until there is a Successful Outcome; and
 - (b) the solicitors will recover disbursements incurred in the conduct of the Litigation at cost.

The solicitors will inform Law Aid of any other details or matters disclosed to the client pursuant to ss. 174 and 175 of Schedule 1 of the Legal Profession Act that are, given the terms of this agreement, relevant to Law Aid and relate to costs that

are payable by the solicitors in respect of legal services to be provided to the client in respect of the Litigation.

14. This agreement is entered into in the State of Victoria and shall be governed by and construed in accordance with the laws in Victoria. The parties submit to the jurisdiction of the courts of the State of Victoria.

SIGNED for and on behalf of)
Law Aid)
in the presence of:)

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SIGNED for and on behalf of)
the solicitors)
in the presence of:)

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SIGNED for and on behalf of)
the client)
in the presence of:)