

# Michael Vassili

**Barristers & Solicitors**

Our Ref:  
Your Ref:

As at today's date

Sydney - Brisbane - Melbourne

*Advocates in all jurisdictions and areas of law including:*

- *Development & Planning*
- *Local Government*
- *Administrative*
- *Commercial*
- *Equity & Trusts*
- *Corporations*
- *Criminal (including environmental crime)*
- *Coronial*
- *Medical*
- *Employment*
- *Family Law*
- *Appeals and Advices*

*All courts and tribunals, Australia wide*

Dear

**RE:**  
**Cost Agreement**  
**Your Matter: Miscellaneous**

**Michael Vassili Barristers & Solicitors (ACN XXXXX)**

## **COSTS DISCLOSURE DOCUMENT, RETAINER & COSTS AGREEMENT**

### **1. The parties**

This document constitutes: -

- (i) A costs disclosure document as to the costs of legal services; and,
- (ii) A retainer and agreement as to legal fees (The Retainer) between (You, Your, Yourself) and Michael Vassili Barristers & Solicitors ACN 125 839 394 (The Firm), pursuant to the *Legal Profession Act NSW* (the Act).

10184

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**MICHAEL VASSILI LAWYERS**  
*Barristers & Solicitors*

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## **2. Instructions & engagement**

2.1 The Firm is instructed to advise and represent You in respect of the matter, including all necessary communication, conferences and court attendances. The Firm is instructed to engage a barrister on Your behalf, as and when necessary, in consultation with and by approval of, You.

2.2 You have the right to negotiate a cost agreement with the law practice and before the law practice is retained by You or as soon as practicable, The Firm must disclose its costs to You in writing. Notwithstanding that right, if You continue to provide instructions to The Firm then unless there is a variation to this Agreement You and The Firm agree that the work performed in accordance with those instructions will be defined by this Agreement.

*2.3 For the avoidance of doubt, if You permit The Firm to continue to work on Your behalf whether or not this Agreement is executed, in doing so the parties have agreed that the terms of this Agreement are the basis upon which The Firm performs the work for You.*

2.4 You have a right to:

- (i) Accept under a corresponding law a written offer to enter into an agreement with the law practice, or
- (ii) Notify under a corresponding law (and within the time allowed by the corresponding law) the law practice in writing that You require the corresponding provisions of the corresponding law to apply to the matter.

## **3. Retainer and costs agreement**

3.1 The Firm accepts the instructions and agree to be retained on the following basis: -

The Firm will charge You at the rate of: -

- (i) \$390.00 per hour plus GST for Solicitors of The Firm's Practice (other than The Firm's Principal) and \$550 per hour for The Firm's Principal (Michael Vassili) plus GST calculated on six (6) minute units, or part thereof (fees).

- (ii) Disbursements at Cost - The Firm will incur on Your behalf necessary charges incidental to the matter, such as court filing fees, bulk photocopying, barristers' and expert witnesses' fees (disbursements) and The Firm will account to You for these.
- (iii) Photocopying - The Firm will charge necessary photocopying at \$0.70 per page and for all faxes sent and received at \$0.70 per page.
- (iv) Administrative / File establishment Fee - a one-off fee of between one and three hours work at the start of the matter to open and prepare a case file which may include a chronology and memo of advice on the matter.
- (v) Archiving - fees and charges will be charged to You at the cost to The Firm of engaging FileMan Records Management (or other commercial storage facility) to retain Your completed file for a minimum of seven years, and unless otherwise stated by You, secure destruction of Your client file at the end of that statutory seven year retention period. The estimated storage cost for seven years is \$42.90 per file (up to 10cms), which will be charged at the start of the matter as a disbursement. The archive cost is GST-exclusive unless otherwise stated. Where applicable GST of 10% will be added and charged to You. A retrieval fee will apply if after Your file is stored, You request it to be retrieved and this will be charged to You in addition to a one hour charge for attending to retrieval - that charge being \$200 per hour plus GST.

#### **4. Disclosure as to estimated fees and disbursements**

4.1 The Firm will charge You at the rate of: -

\$390 per hour + GST – *solicitor (excluding principal)*

\$550 per hour + GST – *Principal solicitor*

4.2 These fees are calculated on six (6) minute units, or part thereof (fees).

4.3 The Firm's fees for court appearances are as follow: -

(i) Half-Day rate (up to 4 hours)

\$2200 + GST - *Principal*

\$1,600 + GST - *Solicitor*

(ii) Full Day rate (up to 6 hours)

\$3,300 + GST - *Principal*

\$2,200 + GST - *Solicitor*

4.4 The Firm is required by law to disclose to You the fees and disbursements which You are likely to incur in the matter. This disclosure is an estimate only, not a quotation and is made on the basis of the information held by The Firm at the date of this retainer. This estimate may be revised at any time at The Firm's absolute discretion. In the event that any new or conflicting information comes to The Firm's attention, which will alter the amount of the estimate, The Firm will provide You with a new estimate.

4.5 The Firm's estimate of costs and disbursements in Your matter is: -.

**(i) General Disclosure** - Notwithstanding any other estimate provided in this Agreement below The Firm will charge You an hourly rate including the fees and charged outlined above on an ongoing basis whether or not The Firm have updated The Firm's estimate of total fees. You agree that You will ensure that You take an active interest in the charges which are accruing in Your matter and that You understand that the estimates below may significantly vary at any time.

**(ii) For general litigation (in any jurisdiction):**

If the matter settles (and The Firm is required by law to make concerted attempts to do so) and does not proceed to trial, the work required may be, but not limited to: a number (not yet determinable) of short appearances; document preparation; research; advices; negotiations, communications and discussions with the other side; multiple meetings with client; correspondences with and reporting to client; attending to the filing of court documents and disbursements,

in which case the fees in the matter will be in the region of **\$5,000 to \$55,000**.

The costs will ultimately depend on the complexity of the matter and the time and resources required to complete (including any settlement of the matter. The Firm will provide an updated estimated of costs when The Firm's more properly appraised of the requirements of the matter.

If the matter proceeds to trial, in addition to the above fees there may be, but not limited to: further advices, research, meetings, documents prepared, negotiations and communications with Yourself and the other side; filing of documents, costs of discovery and preparation of evidence, arranging witnesses and witness reports, reporting, disbursements and advocacy costs in the region of **\$5,000 to \$35,000** or in excess of this if the matter is protracted or complex.

If Counsel is required to be instructed at any time we will advise you of their disclosure but as a general disclosure we advise that a more senior Counsel will be charged at \$3,300 per day and \$390 per hour and a Junior Counsel will be charged at \$2,200 per day and \$290 per hour unless we specifically disclose otherwise. The effect of the engagement of Counsel will likely double the cost of your proceedings.

4.6 The Firm may incur expenses and disbursements (being money which The Firm pay or are liable to pay) to others on Your behalf. These may include, but are not limited to: search fees; enquiry fees; court filing fees; process servers; clinical records from hospitals; medical reports; experts' reports; witnesses expenses; travel expenses, transcripts; barrister's fees. The Firm will, on occasions, require those costs to be paid directly by You for some such costs.

4.7 The costs will ultimately depend on the length and complexity of the hearing and that will only be known closer to the time. The Firm will provide an updated estimate of costs when the works in Your matter is better known.

4.8 Other factors that may affect the duration of the hearing may include:

- (i) Any administrative delays or unforeseen requirements out of The Firm's control;
- (ii) Any failure by You to provide The Firm with expedient; accurate; and honest instructions;
- (iii) The nature of involvement and degree of cooperation of any parties.

4.9 Any amounts stated for The Firm's likely costs are The Firm's best estimates at this time and do not form part of The Firm's costs agreement with You. Neither is the higher estimate a cap on what You will be charged unless this is agreed to in writing. The actual amount may be less or more than the estimate. The Firm will give You a revised estimate if it changes but You agree as an essential term of this agreement to take an active interest in the fees and charges of The Firm to satisfy Yourself as to The Firm's ongoing charges in between any issuing by The Firm of our Bill of Costs in the matter and You do so as You understand that The Firm are often required to attend to works on Your behalf in an expedient manner without opportunity to appraise You of additional fees.

## **5. Billing and payment arrangements**

5.1 You have been advised that You are entitled under the Legal Professions Act to receive from the firm a Bill of Costs (tax invoice) that complies with the Act.

5.2 You waive Your right to an itemised Bill of Costs and You agree that The Firm:

- (i) May issue to You (and will generally do so) a lump sum tax invoice which may include a reference for billing of "*In excess of but say to You*" or otherwise in a general (that is, not fully itemised) form; or
- (ii) May issue to You a fully itemised tax invoice if You request it and it will endeavour to do so within thirty (30) days of Your request. If such an itemised tax invoice is requested The Firm will account for all works and

You are advised that it is The Firm's experience that this will be at least 25% higher than The Firm's lump sum invoice as The Firm's lump sum invoice will not include all works which have been performed and all charges incurred.

5.3 In the event that You seek a costs assessment then The Firm will issue a fully itemised account for assessment.

5.4 All tax invoices issued by The Firm will be payable in full within fourteen (14) days of issue and The Firm will charge interest on any invoices which remain unpaid for more than thirty (30) days at the cash rate target specified by the Reserve Bank of Australia (which is currently 6.5%), increased by 2% per annum.

5.5 If Your account remains unpaid past thirty (30) days The Firm may commence recovery proceedings against You for those unpaid fees. You will indemnify The Firm for all costs incurred (including legal and other fees and charges) which The Firm incurs in seeking to recover its fees from You.

5.6 The Firm requires an **initial deposit of \$1000 (unless otherwise agreed)** to be paid into The Firm's trust account (trust) at the time of Your acceptance of this retainer. However, acceptance by you of this Retainer is not conditional upon the receipt of Trust funds by the Firm and any work we do prior will be charged and billed. The Firm will, whenever necessary, request You to deposit further funds into trust once The Firm has reviewed the matter and has determined what further funds are required to be paid into The Firm's trust account in order to proceed. Should You not provide the funds requested by The Firm as payment into the firms trust account The Firm reserves the right to not proceed with the matter until such payment is made.

5.7 Where applicable, The Firm will, after rendering any tax invoice, seek Your authority to transfer funds held in trust in payment of such tax invoices and, where such authority is not given within seven (7) days and You have not notified The Firm of any dispute in relation to the tax invoice, You hereby

irrevocably authorise The Firm to transfer such available funds from trust in payment of The Firm's invoice(s).

5.8 In any other case You irrevocably authorise The Firm to:

- (i) Release from The Firm's Trust account any monies held on your behalf to satisfy any outstanding account which as been issues after thirty (30) working days from the issuing of such account; and
- (ii) Release from The Firm's trust account any monies held on Your behalf to satisfy any outstanding disbursement to any third party, which has been disclosed or otherwise advised to You after thirty (30) days' notice of The Firm's intention to do so in accordance with Your authority.

5.9 This is an essential term of this cost and retainer agreement and The Firm has relied upon Your irrevocable authority, which You have warranted that You have understood, having availed Yourself of advice independent to The Firm.

5.10 In the event that The Firm has applied a discount to any Bill of Costs it is conditional upon You accepting the discount by continuing to instruct The Firm in Your matter and not seeking further adjustment (either formally or informally to the Bill of Costs). In the event that You dispute The Firm's Bill of Costs either formally or informally then The Firm reserves the right to claim the discount as fees unbilled on the basis that any discount applied is discretionary on the part of The Firm and conditional upon:

- (i) The Firm's retainer not being breached; terminated; or otherwise ended for any reason other than the completion of the works (or frustration at law) provided for in the retainer; or
- (ii) You not placing further burden upon The Firm outside of the retainer including the answering of any complaint; the defence of any Costs Assessment; or the answering of any requisitions or enquiries outside of the works required within this Costs and Retainer Agreement such right agreed as not acting to restrict any such right You may have but in recognition that the discount is applied as a



gesture of goodwill by the Firm in return for your loyal custom in continuing to provide us with instructions.

5.11 Where the fees payable under this retainer are paid to a company other than a Solicitor Corporation then such fees are paid for the benefit of a Solicitor Corporation and You shall raise no objection to the payment as directed by The Firm to any Company or party. The payment to any other entity other than a Solicitor Corporation does not mean that fees have been charged by non-practitioner as such fees are paid to a third party only for the benefit of The Firm or Solicitor Corporation which is entitled to charge fees for legal works at law.

## **6. Your File**

6.1 The Firm shall release the file to You upon the reasonable satisfaction of security for any fees owing by You to The Firm. The parties agree that such security shall include:

- (i) A deed found to be in satisfaction to The Firm at The Firm's absolute discretion which acknowledges the debt by You and provides security which is in the absolute discretion of The Firm to be reasonable. The parties agree that what is reasonable security is that which is determined by The Firm at the time to be reasonable and You will raise no objection or claim that such opinion of The Firm is not reasonable or otherwise compliant at law.
- (ii) A charge over any asset (including real property or other asset capable of charge) in which You has an interest or is (or is entitled to be) the Registered Proprietor; or
- (iii) Any other security which in the absolute discretion of The Firm is reasonably required;

and the cost of provision of any such security including the drafting of any deed; the registration of any caveat or charge; or any other charge or expense shall be payable by You.

6.2 Notwithstanding any other provision or operation of law, You authorise the disposal of Your file within twelve (12) months from the date of the works performed by The Firm. Such date is that date nominated by The Firm and You indemnify The Firm for any loss arising by reason of any destruction of the files of You after a period of twelve (12) months from the date of The Firm's works. In any other case where Your file is lost or otherwise destroyed unless that is intentionally lost or destroyed by The Firm, You shall indemnify The Firm for any loss arising over that loss or destruction of Your file.

**7. Authorisation to transfer money from trust account and consent to caveat for any unpaid fees.**

7.1 You authorise The Firm to receive directly into The Firm's trust account any judgment or settlement money, or money received from any source in furtherance of Your work, and to pay to The Firm its costs, disbursements and expenses in accordance with the provisions of clause 88(3)(a)(i) of the *Legal Profession Regulation 2005*.

You further authorise The Firm to register a caveat on title of any real estate in which You have an interest, and this consent is irrevocable and may be pleaded as a defence to any action which You take to seek to have such caveat removed. Annexed to this document is a Caveat which You will need to sign and which The Firm will hold with Your irrevocable authority for The Firm to lodge in the event that The Firm deem it necessary to secure The Firm's unpaid fees (whether billed or unbilled). Your consent to the caveat is your consent to granting to The Firm an equitable interest in the land in which you hold an interest in return for The Firm agreeing to not seek from You any other security such as a substantial sum in Trust.

7.2 You confirm that You have been advised to seek independent legal advice as to the meaning and effect of the lodgement of a caveat over Your property and that You have sought that advice acknowledging that The Firm has relied upon Your representation as to obtaining such independent legal advice.

7.3 You shall indemnify The Firm for any costs or losses it incurs in respect to the lodgement of any caveat and any action which You may take to remove it which is contrary to this authority.

## **8. Rights to have legal fees and disbursements assessed**

8.1 The Act gives You the right to have The Firm's fees and any disbursements assessed for their fairness and reasonableness by a court-appointed assessor.

8.2 That right may not be available where there is a fee agreement which complies with the Act, unless the agreement itself is determined to be unjust.

8.3 You hereby acknowledge and accept that, by signing this retainer, You may lose the right to claim that the rate charged, or the overall fee, is unreasonable.

8.4 You also acknowledge that there may be other law firms prepared to undertake the matter for a lesser hourly rate and/or on the basis of a lesser overall fee. The Act gives You the right to dispute any tax invoice (Bill of Costs) issued by The Firm. You may: -

- (i) Refer the dispute to the Legal Services Commissioner or to the Law Society of New South Wales for mediation, at any time before applying for assessment of the costs, if the amount in dispute is less than \$10,000;
- (ii) Apply to the Supreme Court of New South Wales for an assessment of the whole or any part of The Firm's legal fees, subject to the Act. Any application must be made within twelve (12) months after the tax invoice was given, or after the fees were paid in full (whichever is the earlier); and
- (iii) If an application for assessment is made, apply to have this costs agreement set aside, before the assessment is finalized.

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

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

## **9. Privacy Protection**

9.1 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 (e.g. under the Social Security Act). You also authorise The Firm to disclose such information where necessary to others in furtherance of Your claim/matter (e.g. within the law practice, to the Court, the other party or parties to litigation, to valuers, experts, barristers etc.).

## **10. Termination and variation of the retainer**

10.1 This retainer remains in force until the matter is finalised and is thereupon terminated. The retainer will otherwise be terminated at The Firm's discretion if: -

- (i) You fail to provide The Firm with adequate instructions within a reasonable time;
- (ii) It is illegal or unethical for The Firm to continue to represent You;
- (iii) Any of The Firm's tax invoices remains unpaid for more than thirty (30) days;
- (iv) The Firm's request for any deposit of funds into trust is not complied with;
- (v) You give instructions that are deliberately false or intentionally misleading;
- (vi) You fail to accept an offer of settlement which The Firm thinks is reasonable;
- (vii) You fail to accept advice The Firm (or counsel) give You;
- (viii) You engage another law practice to advise You on this matter without The Firm's consent;

- (ix) The Firm, on reasonable grounds, believes that The Firm may have a conflict of interest, or if You indicate to The Firm that The Firm has lost Your confidence;
- (x) The Firm (subject only to any professional conduct rules or rules of court) or You terminate the retainer in writing.

10.2 If any of the above occurs The Firm will issue a final tax invoice and You will then be liable for immediate payment of all fees and disbursements (on a fully itemised basis relying upon its right to recover discounts applied and works not fully itemised at the time of the termination) up to the date of the termination. The Firm will retain a lien over Your file until The Firm's tax invoices are paid in full or an alternate agreement reached.

10.3 This retainer is subject to variation in the event of any new or conflicting information coming to The Firm's attention regarding the matter, in the event of any appeal being lodged at the conclusion of the presently contemplated proceedings, and otherwise, at the absolute discretion of The Firm.

## **11. Representation & responsibility**

11.1 Mr Michael Vassili, Principal of The Firm will be responsible for Your matter and he may at his absolute discretion direct, delegate or assign the works and responsibilities to any solicitor of The Firm or any other firm or agency.

11.2 You may contact Michael Vassili (or any other person who he may from time advise You in writing to contact) regarding Your matter and Your legal costs.

11.3 Other persons may assist the above-named solicitors from time to time with the conduct of Your matter. Please see The Firm's disclosed charge out rates.

## **12. Confirmation of Independent Legal Advice**

12.1 In entering into this agreement or having continued to provide instructions You are aware that The Firm has acted in reliance on Your warranty that You have sought independent legal advice on the rights and obligations under this Agreement.

### **13. Costs in court proceedings**

13.1 If court proceedings are taken on Your behalf, the court 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 The Firm. 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 The Firm.

13.2 If You are unsuccessful in the litigation the following is the range of costs that may be recovered by the other party. The sums given below are merely estimates.

Prior to hearing: \$10,000 - \$100,000

Up to and including a single day's hearing: \$15,000 - \$150,000

### **14. Applicable law**

14.1 The law of NSW applies to legal costs regarding this matter except where You have agreed to an express waiver of Your rights at law.

### **15. Works other than legal works**

15.1 The Firm has provided You with information in respect to Your rights pursuant to the Legal Professions Act in relation to any legal works which The Firm will provide and The Firm have advised You to seek (and You have advised The Firm that You have sought and obtained) independent legal advice in respect to such rights. Not all works provided will necessarily be legal works. For example, Town Planning or Human Resources Consultancy works provided by The Firm are specifically intended to be excluded from the category of works referred to as legal works and while such works may be

provided by legal practitioners of The Firm such works are not necessarily performed in their capacity as lawyers.

## **16. Indemnification for Loss**

16.1 The Firm has told You that You must provide The Firm with accurate and timely instructions. Should You fail to provide accurate and timely instructions and You suffer loss then You provide a full indemnity for any loss suffered.

## **17. Acknowledgement and acceptance**

17.1 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 billed in accordance with it. Acceptance may be by any one of the following ways:

- Signing and returning a copy of this document;
- Oral acceptance;
- Giving The Firm instructions after receiving this document.

17.2 Such representation shall be deemed by The Firm to be acceptance of this cost agreement, and The Firm relies on Your representation to be bound by this agreement.

17.3 Failure to accept The Firm's offer within 7 days of dispatch of this document can result in the immediate withdrawal of The Firm's offer to act on Your behalf.

17.4 Acknowledgement of disclosure and acceptance of retainer & cost agreement:

I, The Client

Hereby: -

- (i) Agree that I have received and understood the above information about the costs of these legal services and my rights under the Legal Profession Act 2004; and

- (ii) Accept the above terms and now freely enter into this retainer & costs agreement;
- (iii) Forward payment of \$1000 to be placed into trust (details below).

Trust Account Details are as follows:

Ezylegal Pty Ltd Law Practice Trust Account

BSB: 062 231

Account number: 1037 0991

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Date: \_\_\_\_\_

**Michael Vassili Lawyers**  
ACN 125 839 394

Liability limited by a scheme approved under Professional Standards Legislation.  
Legal practitioners employed by Michael Vassili Lawyers are members of the scheme.

Yours faithfully  
**Michael Vassili Lawyers**