

RETAINER AGREEMENT

Between: Client

And: Schweizer Kobras Pty Ltd, Level 5, 23-25 O'Connell Street, Sydney NSW 2000, Australia

Date: 20 July 2011

RE:

1. The Work

The work you require us to do is:

a)

and all incidental and consequential matters.

2. GST

All fee rates, charges and expenses etc mentioned in this Retainer Agreement are exclusive of goods and services tax ("GST") unless stated otherwise. Where the service provided is subject to GST then GST at the current rate of 10% will be added and charged to you. If the rate of applicable GST is changed during the course of the provision of our services to you then the new rate of GST will be applicable as from the time when the rate change takes effect.

3. Costs – How Calculated

Professional Fee Rates

We will charge you professional fees for the work at the following rates per hour or proportionally for part of an hour, plus GST, for time reasonably spent by each of the following persons respectively in connection with your matter:

a) Partner	\$525.00 per hour (plus GST)
b) Special Counsel	\$475.00 per hour (plus GST)
c) Foreign Law Consultant	\$450.00 per hour (plus GST)
d) Consultant	\$450.00 per hour (plus GST)
e) Senior Associate	\$450.00 per hour (plus GST)
f) Associate	\$400.00 per hour (plus GST)
g) Solicitor	\$350.00 per hour (plus GST)
h) Graduate Lawyer	\$325.00 per hour (plus GST)
i) Senior Paralegal	\$275.00 per hour (plus GST)
j) Junior Paralegal	\$225.00 per hour (plus GST)

Minimum Fee Rates

Our fee rates are structured in minimum 6 minute units. The rates stated above will accordingly be proportionately charged for work involving shorter periods less than an hour. For example, the time charged for an attendance of up to 6 minutes will be 1 unit, and the time charged for an attendance between 6 and 12 minutes will be 2 units. Professional fees are accordingly calculated on 6 minute units at the following rates respectively:

a) Partner	\$52.50 (plus GST)
b) Special Counsel	\$47.50 (plus GST)
c) Foreign Law Consultant	\$45.00 (plus GST)
d) Consultant	\$45.00 (plus GST)
e) Senior Associate	\$45.00 (plus GST)
f) Associate	\$40.00 (plus GST)
g) Solicitor	\$35.00 (plus GST)
h) Graduate Lawyer	\$32.50 (plus GST)
i) Senior Paralegal	\$27.50 (plus GST)
j) Junior Paralegal	\$22.50 (plus GST)

Variations

The fee rates set out above may be increased from time to time. You will be given at least 30 days' notice of any proposed increases.

In addition, we may adjust our hourly rates to reflect new circumstances such as:

- a) unforeseen complexity;
- b) urgency;
- c) the value and significance of the matter; and/or
- d) the research and consideration of questions of law and fact involved.

4. Disbursements

Charges for Services

We will charge you for services we use or supply. They may include any of the following plus GST:

- a) photocopies @ 50 cents per page;
- b) facsimiles @ \$1.00 per page;
- c) \$50.00 for each bank attendance for transmission of funds overseas;
- d) \$50.00 file storage fee;
- e) \$50.00 per file retrieval fee from storage; and
- f) sundries, for items such as post and stationary, at the following rate:
 - i) \$15.00; or
 - ii) 2.5% of professional fees up to \$2,000.00 and 1% thereafter, whichever is the higher, per invoice.

Expenses

We will incur out-of-pocket expenses (being money we pay or are liable to pay) to others on your behalf. These expenses may include:

- a) search fees;
- b) enquiry fees;
- c) filing fees;
- d) registration fees;
- e) agency fees;
- f) courier fees;
- g) travel expenses;
- h) report fees; and
- i) barrister's fees.

We will inform you of these expenses as well as any other payments required to be made, as soon as is reasonably practicable.

5. Estimated Fees

We will provide you with an estimate of fees, charges and expenses or a range of estimated fees, charges and expenses once the ambit of the work and likely time involved is known. In the meantime, all work will be performed at the applicable professional fee rates set out in paragraph 3 of this Retainer Agreement.

6. Interest

If our costs are not paid within 30 days of us rendering a bill of costs, we will charge interest on the unpaid amount at the maximum rate prescribed in Regulation 110A of the Legal Profession Regulation 2005 (NSW). This rate is the Cash Target Rate specified by the Reserve Bank of Australia as at the date of an invoice (accessible at www.rba.gov.au) plus 2%.

7. Payments on Account

We may ask you from time to time to pay us, in advance, money on account of our professional fees, charges and/or expenses. We will also ask you to reimburse us the money paid to others on your behalf, as and when we send you bills for or including these amounts.

8. Assumptions

In accepting your instructions and making an estimate of likely costs involved in the matter, we have assumed that:

- a) no work apart from that described in this Retainer Agreement will be required;
- b) you have fully and accurately informed us of all relevant facts, circumstances, agreements and other relevant information within your knowledge, relating to the matter and the work required;
- c) the substantive commercial terms of any relevant transaction have been understood and agreed between the parties affected before we start work;
- d) we will promptly receive from you and all other relevant parties, all additional information, documents and records necessary for the work when requested;
- e) any other persons who act for any other party or who are engaged by us, will act diligently and competently;
- f) consents and approvals from third parties will be given promptly and will not involve protracted correspondence or negotiations;
- g) relevant regulators, government agencies and authorities do not adopt any unusual stances or unusual interest in the matter, and the matter proceeds smoothly;
- h) NSW is the only relevant jurisdiction unless stated otherwise; and
- i) no unforeseen circumstances will arise which affect our estimate.

9. Authorisation to Transfer Money from Trust Account

You authorise us to receive any judgement, settlement money and money paid from any source in furtherance of your work, directly into our trust account. You also authorise us to deposit any moneys received from you on account of costs into our trust account.

You further authorise us to pay ourselves our professional fees, charges and expenses out of money received into our trust account in accordance with the provision of clauses 88(3) and (4) of the Legal Profession Regulation 2005. This includes the right to withdraw money for payment of costs owing to us if you have not objected to the withdrawal within 7 days after we have given you a bill relating to those costs.

10. Personal Guarantee and Indemnity

If in this matter we are acting for a company of which you are a director or a shareholder, or for a firm of which you are a member, and the company or firm fails to pay any account from us for professional

fees, charges and/or expenses by the due date for payment for any reason whatsoever, then you agree that:

- a) you are personally liable for the unpaid amount;
- b) you guarantee payment of the unpaid amount; and
- c) you indemnify us against all losses suffered as a result of the company's or firm's failure to pay by the due date.

This guarantee and indemnity will be a principal obligation. It will also apply irrespective of the name in which any invoice or account is issued. If this Retainer Agreement is signed by two or more people, you each will be liable under this clause, individually and together.

11. Merchant Service Fee for Credit Card Payments

If payments are received from you by credit card then our bank's Merchant Service Fee (currently 1.15% including GST) will apply in addition to the amount paid.

12. Termination of Retainer Agreement

We will not continue to do the work if:

- a) you fail to accept the advice that we or counsel give you;
- b) you fail to pay any costs or other money requested by us within the time requested by us or otherwise in accordance with this Agreement;
- c) you fail to provide us with adequate and proper instructions (including information) within the time specified by us or otherwise within a reasonable time;
- d) you give information or instructions that is or are false or misleading;
- e) you intentionally fail to disclose any material facts or circumstances;
- f) you fail to accept, contrary to our advice, an offer of settlement which we think is reasonable;
- g) you fail to co-operate with us including failing to attend a court hearing or any other hearing where we consider our attendance would be beneficial without what we consider is good reason;
- h) you engage another law practice to advise you or otherwise change representation without our informed consent;
- i) you fail to provide funds to cover our anticipated or actual costs if and when requested;
- j) you indicate to us that we have lost your confidence;
- k) a conflict of interest arises or is discovered or we consider that we have a conflict of interest;
- l) we consider that you require us to conduct the matter in an improper or unreasonable manner;
- m) we consider your interest would be better advanced by other representation;
- n) we consider that it is not in our interests to continue to act for you; or
- o) we believe there is other just cause.

We will give you at least 14 days' notice of our intention to terminate this Retainer Agreement, and the grounds on which the notice is based.

You may also terminate this Retainer Agreement at any time, either with or without cause, by writing to us.

If this Retainer Agreement is terminated by you or us for any reason, you will nevertheless be required to pay our professional fees for work done and for our charges and expenses incurred (plus GST) up to the date of termination. For lump sum fee matters, you must pay the part of our lump sum that we reasonably estimate has been incurred in respect of the legal services provided to you up to the date of termination, plus charges and expenses, subject to your right to a costs assessment. You will also be liable to pay our costs whether or not the other party to any court proceedings has to pay your costs or any part of your costs of the proceedings.

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 and/or expenses, unless and until these are paid or adequate security, in our view, is provided for these.

13. Limitation of Liability

Our liability is limited by a scheme approved under Professional Standards Legislation.

If you suffer loss or damage in connection with any matter that we are acting on, and the cause of that loss or damage is:

- (a) partly due to our negligence; and
- (b) partly due to your, your company's and/or your firm's negligence or the negligence of others,

then our liability (if any) for the loss or damage is also limited to the extent of our negligence.

14. Transfer of File

If you wish us to transfer our file to you or to a third party, either on termination of this Retainer Agreement or completion of the matter then you authorise us, at your expense, to make a copy of all documents in the file for our retention before doing so. We will also be entitled to retain possession of the file until our expenses incurred in connection with the copying and transfer of the file have been paid.

15. More than One Client

If there is more than one of you:

- a) we will assume that each of you has authorised the other to give instructions on behalf of or all of you; and
- b) you will be liable for our costs individually and together.

16. Applicable Law

This Retainer Agreement and the legal costs referred to in this Agreement are exclusively governed by the laws of the State of New South Wales and the Commonwealth of Australia.

Signed for and on behalf)
of Schweizer Kobras)

I/We have read and agree to be bound by this Retainer Agreement

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Client Client

Date: Date:

(July 2011)

Form of Disclosure of Costs to Clients

(Clause 109A of the *Legal Profession Regulation 2005* (NSW) – Form 2)

Legal Costs – Your Right to Know

You have the right to:

- Negotiate a costs agreement with us
- Receive a bill of costs from us
- Request an itemized bill of costs after you receive a lump sum bill from us
- Request written reports about the progress of your matter and the costs incurred in your matter
- Apply for costs to be assessed within 12 months if you are unhappy with our costs
- Apply for the costs agreement to be set aside
- Accept or reject any offer we make for an interstate costs law to apply to your matter
- Notify us that you require an interstate costs law to apply to your matter.

For more information about your rights, please read the **facts sheet** titled *Legal Costs – your right to know*. You can ask us for a copy or obtain it from your local law society or law institute (or download it from their website).