**CONTINGENCY FEE AGREEMENT**

The Law Offices of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(“Attorney”)

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_

**I. The Client**.

In consideration of acceptance by the Attorney, this Contingency Fee Agreement (“Agreement”) signed by the Client, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Client”), on the date hereof has agreed that this Agreement shall entitle the Attorney to be paid fees based on the contingency fee arrangement mentioned in Section IV.

**II. Legal Matter**.

The undersigned Client hereby retains the Attorney in regard to the following:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**III. Retainer**.

As part of this Agreement, the Client: (check one)

- Shall pay a retainer in the amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. In such case a retainer is paid, it shall be deducted from any contingency fee paid by the Client per Section IV of this Agreement.

- Shall not pay a retainer.

**IV. Contingency Fee**.

It is understood and agreed that the Client will pay to the Attorney the following fee for the Legal Matter to be rendered:

\_\_\_\_% of any and all sums recovered by way of settlement prior to instituting a lawsuit; or

\_\_\_\_% of any and all sums recovered either as a result of a trial or by way of settlement after a lawsuit has been filed; or

\_\_\_\_% of any and all sums recovered if any judgment is appealed, either on behalf of the Client or by any adverse party, or if garnishment or any proceeding after judgment has to be brought to collect the judgment or any portion thereof; or

\_\_\_\_% of any and all sums recovered if the matter is the subject of a retrial as ordered by a trial or appellate court.

**V. Attorney Removal**.

In the event that the Client at any point desires to change attorneys or otherwise requires the Attorney to withdraw from the case, the Attorney shall be entitled to fees from the Client on the percentage (%) basis set forth in this Agreement based upon any settlement offered by the opposing party prior to the date of withdrawal; or, if no settlement offer has been made, the Attorney's hourly rate of $\_\_\_\_\_\_\_\_\_\_/Hour shall be paid. The Client directs the Attorney not to withdraw from this matter unless he has been paid the larger of the two (2) possible fees or arrangements for the said payment has been made to their satisfaction.

**VI. Lien**.

The Client agrees to give the Attorney a lien on the claims or causes of action and on a sum recovered by way of settlement and on any judgment that may be recovered thereon to the extent of the amounts herein provided as the Attorney's fees and other fees, charges, and expenses incurred. It is further agreed that the Attorney shall have all general, possessory, or retaining liens, and all special or charging liens known to the common law or available under law.

**VII. Client’s Decision**.

The Client has the ultimate right to decide whether or not an offer of settlement is satisfactory. It is agreed that the primary purpose the Client has agreed to the services of the Attorney is that the Client believes the Attorney's background and experience offer the best chance to reach a fair and equitable settlement. It is therefore agreed that if, at any time, the Client and the Attorney cannot agree as to the settlement of the case, then in that event, the Attorney may withdraw from the case and will be paid their fees to the date of withdrawal as is provided herein. Said fees shall be a lien on the case and any party at interest may be so informed.

**VIII. Attorney’s Recommendation**.

In the event a settlement proposal is made to the Client with the affirmative recommendation of the Attorney, the Attorney shall have the right, if such settlement proposal is rejected by the Client, to be paid for all services rendered by the Attorney, calculated on the basis of actual work hours expended at the hourly rate mentioned in Section V and for all other fees, charges, and expenses incurred.

**IX. Client Notification**.

The Attorney agrees to notify the Client whenever an offer of settlement or compromise is received by the Attorney, and to inform the Client of the amount of that offer, and the recommendation of the Attorney as to the acceptability thereof. In addition, the Client agrees to make no compromise or settlement in the matter without the approval of the Attorney. The Client agrees to notify the Attorney whenever an offer of settlement or compromise is received by the Client, and to inform the Attorney of the amount and the terms of any such offer.

**X. Client Authorization**.

The Client hereby authorizes the Attorney to thoroughly investigate the facts and laws relative to the Legal Matter. Upon the conclusion of such investigation, the Attorney shall have the discretionary right to determine that it is not feasible to pursue the Legal Matter, and upon notification to the Client of such determination the Attorney shall be entitled to withdraw from any further representation of the Client pursuant to this Agreement. In such an event, no legal fees shall be payable to the Attorney, but the Client agrees to promptly pay the Attorney for all other fees, charges, and expenses incurred pursuant to the above prior to the date of such withdrawal.

**Client’s Signature** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_Print Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Attorney’s Signature** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_Print Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Appendix for legal drafters**

**Optional contingency fee calculations** **for exceptional situations**

[You may incorporate the optional passage below into Section 7 if you anticipate that:

* this case could result in a lengthy and complex hearing, **and**
* a contingency fee percentage of the combined award and costs may not adequately compensate your time.

Insert the passage right after you state your contingency fee percentage (or percentages, if graduated).

**Note:**These options are not available for small claims court matters and tribunals that do not award costs on the basis of partial, substantial and full indemnity.]

**[Full or substantial indemnity]**

**Extra charges if the case goes through a hearing**

If you receive money for **all or almost all** of your costs on a full or ‘substantial indemnity’ basis (80% or more), we will charge you either:

* a contingency fee of [\_\_%] of the total award, including the costs

**or**

* an amount equal to all of the costs, but none of the rest of the award.

We will charge the amount that is the greater of these two options.

**[Partial indemnity]**

If you receive money for **part**of your costs on a ‘partial indemnity’ basis (typically between 60% and 80% of the actual costs), we can choose to charge you either:

1. a contingency fee of [\_\_%] [Insert agreed contingency fee agreement % of the total award including the costs.]

**or**

1. an amount equal to all of the costs received,     
   **plus**

an additional amount of up to 2/3 of the costs. This amount may not exceed one half of the amount of **A**.

**[Adjustments for mixed cost awards**

In cases where costs are awarded on a mixed basis of full, substantial and partial indemnity, establish an amount that fairly reflects the approach above.]

**Example based on a partial award for costs**

William slipped in the lobby of his luxury hotel and sustained an injury. He wanted compensation from the hotel, but they wanted to fight him in court.

At the hearing, William received an award of $100,000, plus $20,000 for partial costs. The other side was also ordered to pay $15,000 for disbursements that William owed to his lawyer.

William and his lawyer had agreed on a contingency fee of 25% of the combined award and costs. That meant she could receive $30,000 + HST.

However, their contingency fee agreement said that if his case went to a hearing, his lawyer could opt to charge him the $20,000 awarded for partial costs, plus an additional amount of up to 2/3 of the awarded costs ($13,200) to help make up for all her work on the case.

The agreement said this additional amount must not exceed half of the contingency fee that would have otherwise applied. In this case, the additional amount would not be permitted to exceed 50% of $30,000, or $15,000.

The extra $13,200 was under the $15,000 limit. So the additional amount was allowed.

William’s lawyer prepared a final account statement:

|  |  |
| --- | --- |
| Award and partial costs ($100,000 + $20,000) | $120,000 |
| Less: Partial costs awarded | -20,000 |
| Less: Additional fee at 2/3 of partial costs (66% of $20,000) | -13,200 |
| HST on total fees ($20,000 + $13,200 x 13%) | -4,316 |
| Plus: Disbursements paid by the other side (including HST) | 15,000 |
| Less: Disbursements owing to William’s lawyer | -15,000 |
| William will receive: | $ 82,484 |

**Your Agreement Summary**

**[Firm Name, Address, Telephone Number, Email, Fax]**

**Client:**[Insert names of all clients covered by the agreement.]

|  |  |
| --- | --- |
| Client a party under disability – Court to approve agreement | [Select if client is a party under disability as defined in the Rules of Civil Procedure, represented by a litigation guardian. Delete this row if N/A.]  A judge must approve this agreement. We are required to ensure that this approval happens either before the agreement is finalized or as part of the court’s approval of a settlement agreement or a consent judgment. |
| Legal services covered | You retain us on a contingency fee basis to [Briefly describe the nature of the matter and the scope of the retainer.]  Youretain us to represent you: [Select each bullet point that applies. Erase what does not apply:]   * + through to settlement   + through to the end of your hearing   + through an appeal if you lose your case and decide to appeal.   You have the right to make all critical decisions about how your case is conducted. |
| Related legal issues **not** covered | [List excluded services in bullet points, if applicable. Delete this row if N/A.] |
| Disbursements | We may have to pay for items and services from third parties, including taxes. These payments are considered disbursements because we paid for them on your behalf (for example, court filing fees and fees for expert witnesses).  Internal firm costs are not generally chargeable as disbursements. For example, disbursements do not include the cost of other lawyers, paralegals, law clerks and administrative assistants, or any overtime.  However, expenses approved by a court or tribunal or authorized by a regulation known as “Tariff A” are also considered disbursements, even if they are internal firm costs (Tariff A is part of the Rules of Civil Procedure).  [Select what applies and delete all others:]  You pay for disbursements, whether you win or lose, at the end of the case.  You pay directly for disbursements as they are incurred.  We will bill you for disbursements over the course of your case.  You will only have to pay for disbursements if you win your case or receive a settlement. |
| Contingency fee | [Insert a short summary of the fee, including the percentage and any other special conditions.] |
| If interim costs are awarded | [Select if client receives some of the interim costs:]  If we settle or win your case, we will reduce our fees in the final account statement by the amount we have already received.  If we do not settle or win your case, or the award or settlement is very low, the amount received in interim costs may turn out to be more than we are entitled to. We will pay the extra money to you.  [Select if the firm keeps the interim costs if case lost or award is low:]  If we settle or win your case, we will reduce our fees in the final account statement by the amount we have already received.  If we do not settle or win your case, or the award or settlement is very low, we will keep the interim costs to cover some of the fees for our work on your case.  [Select if firm is paying for disbursements up front:]  If money is awarded for disbursements, we will use it to pay for disbursed expenses incurred in your case.  [Select if client is paying for disbursements up front:]  If money is awarded for disbursements, we will give this money to you to reimburse you for some of the disbursements you have paid. |
| Your right to a review of the final account | If you feel that the final account statement is unreasonable, contact the Superior Court to ask for a review. You should do this within 30 days of receiving the final account statement. |