

SUCCESS FEE CHARGING AGREEMENT

(Applicable to Claims for Damages arising from Personal Injury or Death from Personal Injury)

between

X Solicitors (the "Provider")

and

Y Client (the "Recipient")

In this Agreement the term the "Provider" shall mean the solicitor or firm of solicitors advising the Recipient and the "Recipient" shall mean the client or, where appropriate, the client's attorney, executor or other formally appointed party representing the client's interests.

1) WHAT IS COVERED BY THE AGREEMENT:

All work carried out by the Provider on behalf of the Recipient relating to the Recipient's personal injury claim for compensation arising from an accident/clinical negligence on [insert date if applicable] / *insert details of disease/condition/insert details of fatality leading to claim by family members*

2) THE RECIPIENT'S OBLIGATIONS:

You should:

- (a) Give instructions that allow the Provider to do their work properly.
- (b) Not ask the Provider to work in an improper or unreasonable way.
- (c) Not deliberately mislead the Provider.
- (d) Co-operate with the Provider when asked.
- (e) Go to any medical or expert examination when asked to do so by the Provider or the opponents.
- (f) Subject to clause 3(a), accept the Provider's professional opinion given in good faith if they believe objectively that you are unlikely to win.
- (g) Subject to clause 3(a), accept the Provider's professional opinion given in good faith about making a settlement with the opponents.

3) THE PROVIDER'S OBLIGATIONS

(a) The Provider undertakes to perform all necessary legal work on behalf of the Recipient in pursuing the compensation claim arising out of the accident/clinical negligence/condition/disease mentioned above. At all times the Provider will take all reasonable steps to carry out the necessary legal work in accordance with current professional standards applicable to the legal profession in Scotland and shall use their best endeavours to achieve the best outcome for the Recipient.

(b) The Provider undertakes to consult with the Recipient on any significant developments, including, but not limited to the receipt of an offer of settlement.

(c) Assuming the Recipient complies with their obligations under Clause 2) the Provider will not charge the Recipient any amount, whether relating to fees, VAT, outlays or otherwise (except any insurance premium for "After the Event Legal Expenses Insurance") which the Provider incurs in performing the work which is undertaken for the Recipient should the Recipient lose.

(d) If the Recipient wins, the Provider will be entitled to, and in the normal course of events will, retain expenses which are awarded to the Recipient in the proceedings or which it is agreed with another person that the Recipient is entitled to recover. The only charges which the Recipient shall be liable for are a) any insurance premium payable in respect of "After the Event Legal Expenses Insurance" and b) a success fee calculated as a percentage of the financial benefit which the Recipient obtains, directly or indirectly, as a result of the Provider's services as follows:

Financial Benefit up to £100000	<input checked="" type="checkbox"/> %(maximum 20%)
On the excess over £100000 up to £500000	<input checked="" type="checkbox"/> % (maximum 10%)
On the excess over £500000	<input checked="" type="checkbox"/> % (maximum 2 ½%)

These success fees are inclusive of VAT and unrecovered outlays.

4) [DRAFTING NOTE – this clause only applies in situations where there is a possibility that future loss for the Recipient will be in excess of £1m]

In calculating the success fee under paragraph 3 above, any damages for future loss which form part of the Recipient's financial benefit will be included in the calculation but only if the future element is:

(a) to be paid as a lump sum and does not exceed £1,000,000 or

(b) to be paid as a lump sum and exceeds £1,000,000 and the Provider has not advised the Recipient to accept that the future element be paid in periodical instalments and the conditions in the following paragraph are met.

(c) the conditions referred to in para 4 b) above are:

(i) in a case where the damages are awarded by a court or tribunal, that the court or tribunal in awarding the future element has stated that it is satisfied that it is in the Recipient's best interests that the future element be paid partly or wholly as a lump sum rather than wholly in periodical instalments;

(ii) in a case where the damages are obtained by agreement, that an independent actuary has, after having consulted the Recipient personally in the absence of the Provider, certified that in the actuary's view it is in the Recipient's best interests that the future element be paid either wholly or partly as a lump sum rather than wholly as periodical instalments.

(iii) in either case, if the damages are paid partly as a lump sum and partly as periodical instalments only that part of the damages paid as a lump sum shall be included in the amount of damages used to calculate the success fee.

5) (1) The Recipient can end the Agreement at any time. If the Recipient ends the Agreement prior to the final resolution of the claim, whether litigated or not or prior to the Provider receiving payment of judicial or extra judicial fees, vat and outlays from the opponent or their insurers on settlement of the Recipient's claim, the Provider has the right to charge for all work done on the Recipient's behalf up to that date. The charge out rates as at [insert date] are:

Partner	£A per hour
Associate Solicitor	£B per hour
Assistant Solicitor	£C per hour
Administrative Assistant	£D per hour

The Provider is entitled to add VAT to the foregoing rates at the prevailing rates from time to time in force and be paid for any outlays incurred or which the Provider has committed to incur on the Recipient's behalf.

These rates are reviewed on [] each year and are available from the Provider on request. These charges will be notified by the Provider to the Recipient in writing as soon as reasonably practicable after they take effect.

(2) The Provider can end the Agreement at any time:-

(a) if the Recipient does not fulfil their responsibilities as outlined in Clauses 2(a), (b), (c), (d) or (e) above. The Provider then has the right to decide whether the Recipient must pay fees, VAT and any outlays incurred for the work done on their behalf up to that date. If the Provider decides to charge said fees vat and outlays, the Provider will charge for the work using the rates mentioned in 5(1) above. The Provider shall be entitled to exercise a lien over all documents / files relating to the Recipient's claim pending payment of said fees, vat and outlays.

(b) if they form the opinion acting objectively and in good faith that the Recipient is unlikely to win and the Recipient rejects that advice. Provided the Recipient has complied with all of their other obligations under Clause 2, the Recipient will only be responsible to the Provider for payment of expenses recovered, relative to the period up to the date this agreement is terminated. Further, the Provider may only claim a share of expenses, if the Recipient goes on to derive a financial benefit from the claim. The Provider will be entitled to a share of expenses (including VAT and outlays) recovered on behalf of the Recipient, to be determined on an equitable basis having regard to the relevant services provided by the Provider and any new Provider who is subsequently instructed. In the event of disagreement with any new Provider or other person as to relative share or shares , the matter will be referred at the expense of the Providers to the Auditor at Edinburgh Sheriff Court, who will determine an equitable apportionment of expenses on the basis of the relevant services provided by each Provider in relation to the whole expenses recovered. In these circumstances no success fee shall be chargeable by the Provider first instructed.

(c) if the Recipient rejects the Provider's opinion, arrived at objectively and in good faith about making a settlement with their opponent.

- I. In the event the recipient goes on to derive a financial benefit, the Provider is entitled to charge for the expenses (consisting of the fees, VAT and outlays) which have been incurred on the Recipient's behalf up to the date this agreement is terminated. The expenses payable by the Recipient to the Provider under this subclause are confined to those recoverable judicially from the opponent(s), and are recoverable by the Provider in addition to the success fee mentioned above. The amount of the success fee payable shall be calculated by reference to the financial benefit actually obtained but shall not exceed the level of the success fee which would have been chargeable if the Provider's advice had been accepted by the Recipient. The success fee under this agreement becomes payable as soon as the financial benefit is obtained, whether as a result of extra judicial agreement or judicial determination. Where expenses have been recovered in the claim, a share of the recovered expenses is payable to the Provider on the receipt of those expenses from the opponent. The Provider's share of expenses shall be determined on the same basis and in the same manner as set out in clause 5(2)(b).

The Recipient hereby undertakes to:

- a. Notify the Provider of the identity of any new Provider who is instructed to provide relevant services in connection with the claim and
- b. Instruct the new Provider to account to the Provider under this agreement for all sums due under this clause.

If the Recipient does not instruct a new provider but represents him or herself and derives a financial benefit, the Recipient shall make payment to the Provider under this agreement in accordance with the same timescales as if a new Provider had been instructed.

2. In the event that the Recipient does not go on to derive a financial benefit, having rejected the Provider's advice to settle, the Recipient shall be liable to pay to the Provider all outlays which the Provider incurred or is liable to incur on the Recipient's behalf.

(3) In any scenario in clause 5 where the Recipient pays the Provider a fee charged at the hourly rates referred to clause 5(1) above, the total paid by the Recipient to the Provider shall be fair and reasonable in the circumstances.

(4) In the event that the Recipient dies or becomes incapax prior to the final resolution of the claim, whether litigated or not, or prior to the Provider receiving payment of judicial or extra judicial fees, vat and outlays from the opponent or their insurers on settlement of the Recipient's claim, and the Recipient's executor, guardian or other representative, as the case may be, do not choose to continue instructing the Provider to provide ongoing advice with the claim, the Provider has the right to charge for all work done on the Recipient's behalf up to the date when the Provider becomes aware of the death or incapacity. The applicable charge out rates are those set out in clause 5(1) above, as amended by any annual increases.

- 6) In the event of a conflict with the Provider's standard terms of engagement, the terms of this Success Fee Agreement take precedence.
- 7) For the avoidance of doubt this Agreement is effective from [], being the date that the Recipient first instructs the Provider in the case, not the date of signing the Agreement. Where this Agreement

