

**CONTINGENCY FEES AGREEMENT IN TERMS OF THE  
CONTINGENCY FEES ACT, 1997 (ACT NO. 66 OF 1997)**

Done and entered into between

**WENDY TETANI** – ID No. 670 511 0306 089

(hereinafter called "the Client") with duly nominated *domicilium citandi et executandi* at

4C NOMPONDO STREET, JOZA, GRAHAMSTOWN, EASTERN CAPE

and


**JOHN B. SCOTT ATTORNEYS**

of PO BOX 70592, THE BRIDGE, PORT ELIZABETH, EASTERN CAPE, 6032

(hereinafter called "the Attorney")

In terms of which the Client shall pay the fees agreed to herein to the Attorney for services rendered, if the Client is successful in such proceedings to the extent set out in this agreement, subject to the terms hereof:

1. It is recorded that in the opinion of the Attorney there are reasonable prospects that the Client may be successful in the proceedings mentioned hereunder and the Attorney therefore undertakes to recover no fees from the Client unless –
  - 1.1 the Client is successful in such proceedings; or
  - 1.2 the Attorney, as set out hereunder, becomes entitled to a fee in the event of partial success in such proceedings or in the event of the premature termination of this agreement;
  
2. It is further recorded that, before the signing of this agreement and in terms of section 3(3) of the Contingency fees Act, 1997 (Act No. 66 of 1997), the Client was:
  - 2.1 advised of any other ways of financing the litigation and of their respective implications, namely accessing financial institutions to take loans against either assets the client owns

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or against the security of their claim, alternatively, of contacting Legal Aid in the event they finance such matters;

2.2 informed of the normal rule that in the event of the Client being unsuccessful in the proceedings, he may be liable to pay the taxed party and party costs of his/her/its opponent in the proceedings; and

2.3 informed that he will be liable to pay the attorney's normal fees and the success fee in the event of success or partial success by the Attorney.

3. The Client acknowledges that he/she/it gave a power of attorney to the Attorney to conduct proceedings in/before any court or tribunal having the power of a court of law to determine the client's claim on his/her/its behalf; and/or render the professional services in respect thereof.

4. The parties agree that the Client –

4.1 shall be deemed to be successful in the aforementioned proceedings and/or due to the rendering of professional services to the client, if the client's claim results in a full enforceable value exceeding R100 000.00 (One Hundred Thousand Rand); and

4.2 shall be deemed to be partially successful in the aforementioned proceedings and/or due to the rendering of professional services to the client, if the client's claim results in a full enforceable value below R100 000.00 (One Hundred Thousand Rand).

5. The attorney hereby warrants that the normal fees of the attorney on an attorney and own client basis to perform work in terms of the aforementioned proceedings are calculated on the following basis:

5.1 A rate, irrespective of whether the attendances are taxable on a party and party basis or not and subject to 5.3 below:

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or against the security of their claim, alternatively, of contacting Legal Aid in the event they finance such matters;

2.2 informed of the normal rule that in the event of the Client being unsuccessful in the proceedings, he may be liable to pay the taxed party and party costs of his/her/its opponent in the proceedings; and

2.3 informed that he will be liable to pay the attorney's normal fees and the success fee in the event of success or partial success by the Attorney.

3. The Client acknowledges that he/she/it gave a power of attorney to the Attorney to conduct proceedings in/before any court or tribunal having the power of a court of law to determine the client's claim on his/her/its behalf; and/or render the professional services in respect thereof.

4. The parties agree that the Client –

4.1 shall be deemed to be successful in the aforementioned proceedings and/or due to the rendering of professional services to the client, if the client's claim results in a full enforceable value exceeding R100 000.00 (One Hundred Thousand Rand); and

4.2 shall be deemed to be partially successful in the aforementioned proceedings and/or due to the rendering of professional services to the client, if the client's claim results in a full enforceable value below R100 000.00 (One Hundred Thousand Rand).

5. The attorney hereby warrants that the normal fees of the attorney on an attorney and own client basis to perform work in terms of the aforementioned proceedings are calculated on the following basis:

5.1 A rate, irrespective of whether the attendances are taxable on a party and party basis or not and subject to 5.3 below:

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- 5.1.1 equal to 1.5 times the party and party tariff, as amended from time to time, prescribed by the Uniform Rules of Court, plus Value Added Tax thereon, in the event that the full enforceable value does not exceed R150 000-00;
- 5.1.2 equal to 2.75 times the party and party tariff, as amended from time to time, prescribed by the Uniform Rules of Court, plus Value Added Tax thereon, in the event that the full enforceable value exceeds R150 000-00, but does not exceed R400 000-00;
- 5.1.3 equal to 3.5 times the party and party tariff, as amended from time to time, prescribed by the Uniform Rules of Court, plus Value Added Tax thereon, in the event that the full enforceable value exceeds R400 000-00, but does not exceed R600 000-00;
- 5.1.4 of R3 200-00 per hour, or part thereof, excluding VAT, in the event that the full enforceable value exceeds R1 000 000-00, whilst fees for attendances that cannot reasonably be calculated on a time basis, shall be calculated at 4.0 times the party and party tariff, as amended from time to time, prescribed by the Uniform Rules of Court, plus Value Added Tax thereon;

regardless of whether the time is spent on consultations with any person (including but not limited to Counsel, witnesses and Court officials), attendances at Court or elsewhere (including, but not limited to time spent waiting at Court and attendances on officials), phone calls made or received, perusal and re-perusal of documents, drafting of any nature and preparation for trial (including, but not limited to indexing and paginating of papers) and regardless of whom does the work within the attorney's offices, be it a secretary, para-legal, candidate attorney or professional assistant. Photocopying will be charged at R4.00 a page and travelling at R9.00 a kilometre, in both instances excluding VAT.

- 5.2 A copy of party and party tariffs, as was prescribed by the Uniform Rules of Court at the time that this document was drafted, are annexed hereto for information purposes only.

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and, subject to 5.4 below, the applicable rates that will apply will be those officially in force at any given time.

5.3 All fees will increase by 10% from 1 January in the year succeeding the year in which this agreement was concluded, or in which the mandate was given, whichever is the earlier, and in each and every succeeding year thereafter, save that in the event that the Consumer Price Inflation Index for the previous year was greater than 10% then the fees for the following year, shall increase by a percentage equal to such Consumer Price Inflation Index.

6. The parties agree that if the Client is successful in the aforementioned proceedings an amount shall be payable to the Attorney, calculated according to the following method:


6.1. the Attorney shall be entitled to an amount equal to the normal fees of the attorney on an attorney and own client scale prevailing from time to time plus all disbursements **plus** an additional success fee equal to the normal fees of the attorney prevailing from time to time, conditional to the success fee portion not exceeding 25% of the full enforceable value, excluding the client's entitlement to recover costs from any counterparty;

6.2. It is agreed, in anticipation of the final accounting of the attorney to the client, which shall only occur once the party and party fees have been recovered, that the attorney may in the interim debit an estimated fee and recover actual disbursements, upon recovery of the capital of the client's claim, account on an interim basis, and pay the balance, less any third party obligations to the client.

7. The parties agree that:

7.1 If the Client is partially successful in the aforementioned proceedings:

a. The Attorney shall be entitled to an amount equal to the normal fees of the attorney on an attorney and own client scale prevailing from time to time plus all disbursements **plus** an additional success fee equal to 50% of the normal fees of the attorney

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prevailing from time to time, conditional to the success fee portion not exceeding 25% of the full enforceable value, excluding the client's entitlement to recover costs from any counterparty.

- b. It is agreed, in anticipation of the final accounting of the attorney to the client, which shall only occur once the party and party fees have been recovered, that the attorney may in the interim debit an estimated fee and recover actual disbursements, upon recovery of the capital of the client's claim, account on an interim basis, and pay the balance, less any third party obligations to the client.

and

7.2. in the event premature termination of this agreement for any reason:

7.1.1 the client, shall owe to the Attorney the normal fees of the attorney on an attorney and own client scale prevailing plus all disbursements; and

7.1.2 insofar as the full enforceable value has not yet been determined, the applicable rate shall be that agreed in 5.1.4 above as adjusted in terms of 5.3 above; and


7.1.3 the following consequences will follow in terms of this agreement:

- a. the attorney shall be entitled to retain the client's entire file content and no other party may represent the client in respect of the client's claim, proceed with litigation or settlement, or have access to any papers relating to the matter until the attorney's fees and disbursements are paid in full to the Attorney.

8. Disbursements by the attorney relating to the matter, made or incurred on behalf of the client shall be dealt with in the following manner:

8.1. disbursements are not subject to contingency; and

8.2. it is recorded that advocates and experts will not necessarily agree to render their services on contingency; and

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- 8.3. the attorney is entitled, any time, to demand advance trust deposits from the client at any time to finance disbursements. Failure by the client to make payment of such trust deposit, will entitle the attorney to terminate this agreement and any mandate which he holds on behalf of the client. The attorney shall have no duties or obligations towards the client of any nature during any period in which a trust deposit so demanded remains unpaid and the client indemnifies, absolves and holds the attorney harmless in respect of any damages suffered by the client or any other parties from any cause whatsoever, in respect of any action or inaction in respect of the client's claim, while such trust deposit remains unpaid.
9. 9.1. The Client has a period of 14 days, calculated from the date of signing this agreement during which he/she/it will have the right to withdraw from the agreement by giving notice to the Attorney in writing.
- 9.2. The Attorneys shall, in the event of withdrawal by the Client, be entitled to fees and disbursements in respect of any necessary or essential work done to protect the interest of the Client during such period, calculated on an attorney and client basis.
10. If the Client feels aggrieved by any provision of this agreement or any fees chargeable in terms of this agreement, the agreement or the fees may be referred for review to the Law Society of which the Attorney is a member and, if an advocate has been appointed, also to the Bar council in the area in which the advocate practices. The professional controlling body concerned may set aside any provision of this agreement or any fees claimable in terms of this agreement, if in its opinion such provision or fees are unreasonable or unjust.
11. 11.1. Any amendment or other agreements ancillary to this agreement (including any amendments to such agreements) shall be in writing and comply with the requirements laid down in the Contingency Fees Act, 1997 (Act No. 66 of 1997).

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- 8.3. the attorney is entitled, any time, to demand advance trust deposits from the client at any time to finance disbursements. Failure by the client to make payment of such trust deposit, will entitle the attorney to terminate this agreement and any mandate which he holds on behalf of the client. The attorney shall have no duties or obligations towards the client of any nature during any period in which a trust deposit so demanded remains unpaid and the client indemnifies, absolves and holds the attorney harmless in respect of any damages suffered by the client or any other parties from any cause whatsoever, in respect of any action or inaction in respect of the client's claim, while such trust deposit remains unpaid.
9. 9.1. The Client has a period of 14 days, calculated from the date of signing this agreement during which he/she/it will have the right to withdraw from the agreement by giving notice to the Attorney in writing.
- 9.2. The Attorneys shall, in the event of withdrawal by the Client, be entitled to fees and disbursements in respect of any necessary or essential work done to protect the interest of the Client during such period, calculated on an attorney and client basis.
10. If the Client feels aggrieved by any provision of this agreement or any fees chargeable in terms of this agreement, the agreement or the fees may be referred for review to the Law Society of which the Attorney is a member and, if an advocate has been appointed, also to the Bar Council in the area in which the advocate practices. The professional controlling body concerned may set aside any provision of this agreement or any fees claimable in terms of this agreement, if in its opinion such provision or fees are unreasonable or unjust.
11. 11.1. Any amendment or other agreements ancillary to this agreement (including any amendments to such agreements) shall be in writing and comply with the requirements laid down in the Contingency Fees Act, 1997 (Act No. 66 of 1997).

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11.2 A copy of any such amendment or other agreements ancillary to this agreement shall be delivered to the Client upon the date on which such amendment or ancillary agreement is signed.

12. In the event of an advocate being appointed on contingency, the following shall be completed:

12.1 On this ..... day of ..... 20..., the Attorney briefed

.....  
.....

(full names and address of advocate)(hereinafter called 'the Advocate') to act as advocate in the proceedings mentioned in paragraph 3 above.


12.2 By his/her signature hereto ( \_\_\_\_\_ ) the Advocate warrants that in his/her opinion there are reasonable prospects that the Client may be successful in such proceedings and that he/she accepts the brief on the understanding that he/she will be entitled to the payment of fees only if the Client is successful or partially successful in the proceedings as agreed upon in paragraph 4 above and in the event of the premature termination for any reason of this agreement.

12.3 The parties agree that-

a. If the Client is successful in the aforementioned proceedings, an amount shall be payable to the Attorney as advocates' fees, to be calculated according to the following method :

.....; or

b. if the Client is partially successful in the aforementioned proceedings-

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11.2 A copy of any such amendment or other agreements ancillary to this agreement shall be delivered to the Client upon the date on which such amendment or ancillary agreement is signed.

12. In the event of an advocate being appointed on contingency, the following shall be completed:

12.1 On this ..... day of ..... 20..., the Attorney briefed

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(full names and address of advocate)(hereinafter called 'the Advocate') to act as advocate in the proceedings mentioned in paragraph 3 above.


12.2 By his/her signature hereto ( \_\_\_\_\_ ) the Advocate warrants that in his/her opinion there are reasonable prospects that the Client may be successful in such proceedings and that he/she accepts the brief on the understanding that he/she will be entitled to the payment of fees only if the Client is successful or partially successful in the proceedings as agreed upon in paragraph 4 above and in the event of the premature termination for any reason of this agreement.

12.3 The parties agree that-

a. If the Client is successful in the aforementioned proceedings, an amount shall be payable to the Attorney as advocates' fees, to be calculated according to the following method :

.....; or

b. If the Client is partially successful in the aforementioned proceedings-

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an amount of R..... shall be payable to the Attorney as advocates' fees;  
or an amount shall be payable to the Attorney as advocates' fees, to be  
calculated according to the following method:

.....; or

c. In the event of the premature termination of this agreement for any reason-

an amount of R..... shall be payable to the Attorney as advocates' fees;  
or an amount shall be payable to the Attorney as advocates' fees, to be  
calculated according to the following method:

.....

**THE CLIENT HEREBY WARRANTS THAT HE/SHE/IT UNDERSTANDS THE MEANING AND  
PURPOSE OF THIS AGREEMENT.**

Signed at PORT ELIZABETH, EASTERN CAPE on this the 13<sup>th</sup> day of AUGUST 2012



\_\_\_\_\_  
**WENDY TETANI**



\_\_\_\_\_  
For **JOHN B. SCOTT ATTORNEYS**

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*W. Tetani*

\_\_\_\_\_  
**WENDY TETANI**

*[Signature]*  
\_\_\_\_\_  
For **JOHN B. SCOTT ATTORNEYS**