

**Other Clauses of Interest in  
Fee Agreements**

**1. ARBITRATION**

**A. ARBITRATION OF ALL DISPUTES INCLUDING CLAIMS OF MALPRACTICE**

Any dispute between the parties [Attorney and Client] regarding the construction, application or performance of any services under this Agreement, and any claim arising out of or relating to this Agreement or its breach, including, without limitation, claims for breach of contract, professional negligence, breach of fiduciary duty, misrepresentation, fraud and disputes regarding attorney fees and/or costs charged under this Agreement (except as provided in paragraph B below) shall be submitted to binding arbitration upon the written request of one party after the service of that request on the other party. The parties shall appoint one person [Option: or agree upon a 3-person panel] to hear and determine the dispute. [Option: name the arbitration provider such as AAA, JAMS, ADR, etc., and provide that the arbitration shall be conducted pursuant to the provider's rules]. If the parties cannot agree, then the Superior Court of [fill in the name of county] County shall choose an impartial arbitrator whose decision shall be final and conclusive on all parties. Attorney and Client shall each have the right of discovery in connection with any arbitration proceeding in accordance with Code of Civil Procedure Section 1283.05. [Optional provision: The cost of the arbitration, excluding legal fees and costs, shall be borne by the losing party or in such proportion as the arbitrator shall decide.] The parties shall bear their own legal fees and costs for [all claims, or contract claims, or tort claims]. The sole and exclusive venue for the arbitration and or any legal dispute shall be [fill in name of county] County, California.

By initialing below, Client and Attorney confirm that they have read and understand subparagraphs A above, and voluntarily agree to binding arbitration. In doing so, Client and Attorney voluntarily give up important constitutional rights to trial by judge or jury, as well as rights to appeal. Client has the right to have an independent lawyer of Client's choice review these arbitration provisions, and this entire agreement, prior to initialing this provision or signing this Agreement.

\_\_\_\_\_ (Client Initial Here)      \_\_\_\_\_ (Attorney Initial Here)

**B. MANDATORY FEE ARBITRATION**

Notwithstanding subparagraph A above, in any dispute over attorney's fees, costs or both subject to the jurisdiction of the State of California over attorney's fees, charges, costs or expenses, Client has the right to elect arbitration pursuant to the fee arbitration procedures as set forth in California Business and Professions Code Sections 6200 -6206. Arbitration pursuant to the Mandatory Fee Arbitration Act is non-binding unless the parties agree in writing, after the dispute has arisen, to be bound by the arbitration award. The Mandatory Fee Arbitration procedures permit a court trial after arbitration, or a subsequent binding contractual arbitration if

the parties have agreed to binding arbitration and either party rejects the award and requests a trial de novo within 30 days after the award is mailed to the parties. If, after receiving a notice of client's right to arbitrate, Client does not elect to proceed under the State Bar fee arbitration procedures, and file a request for fee arbitration within 30 days, any dispute over fees, charges, costs or expenses, will be resolved by binding arbitration as provided in the previous paragraph A.

[Optional provision: If either party rejects a non-binding fee arbitration award by timely submission of a request for trial de novo, Attorney and Client agree that in lieu of a trial de novo in court, the trial after arbitration shall be binding arbitration pursuant to the provisions of paragraph 1, above.]

## **2. MEDIATION CLAUSE**

If a dispute arises out of or relating to any aspect of this Agreement between Attorney and Client, or the breach thereof, and if the dispute cannot be settled through negotiation, Attorney and Client agree to first try in good faith to settle the dispute by private mediation or fee mediation provided by local bar association programs before resorting to arbitration, litigation, or any other dispute resolution procedure. The cost of such mediation shall be borne equally by the parties, unless otherwise stipulated in a settlement agreement between the parties.

## **3. INTEREST CHARGES**

If a billing statement is not paid when due, interest will be charged on the principal balance (fees, costs, and disbursements) shown on the statement. Interest will be calculated by multiplying the unpaid balance by the periodic rate of .833% per month (TEN PERCENT [10%] ANNUAL PERCENTAGE RATE). The unpaid balance will bear interest until paid.

[Interest may not be compounded without compliance with the California Civil Code, Appendix I, dealing with usury.]

## **4. REPLENISHING DEPOSIT**

To commence the representation, Client has provided [must provide] Attorney with a \$\_\_\_\_\_ deposit. Attorney will hold the deposit in Attorney's trust account and apply it to each statement when rendered by Attorney. Client will pay any additional balance due upon receipt of Attorney's statements each month and also will replenish the deposit each month in the amount of all payments made to Attorney from the deposit. At the conclusion of the matter, the deposit will be applied to the final statement, in which event Client will be responsible for any amount due over and above the deposit or be entitled to a refund of any amount remaining after the final statement is satisfied in full.

## **5. SECURITY DEPOSIT**

Attorney's obligation to render services to Client will be subject to Attorney's receipt of a refundable security deposit of \$\_\_\_\_\_.

Attorney will apply \$ \_\_\_\_\_ of that deposit to the first fees and costs billed to Client pursuant to this Agreement, and will retain the remainder of the deposit in Attorney's trust account as security for Client's obligations to make timely payment of fees and costs pursuant to this Agreement. Attorney will thereafter apply the remaining deposit against what appears to be the last billing for the services rendered to Client pursuant to this Agreement. Client agrees to provide an additional security deposit of \$ \_\_\_\_\_ at least 120 days prior to the first scheduled trial date of the matter.

**6. ATTORNEYS' FEES CLAUSE**

The prevailing party in any action or proceeding arising out of or to enforce any provision of this Agreement, with the exception of a fee arbitration or mediation under Business and Professions Code Sections 6200-6206, will be awarded reasonable attorneys' fees and costs incurred in that action or proceeding, or in the enforcement of any judgment or award rendered.

**7. OTHER PAYOR CLAUSE – INSURANCE**

Client has informed Attorney that Client may have insurance coverage which may pay for some or all of Attorney's fees which may become due under this Agreement. Attorney will make a claim with the insurer for compensation. It is understood, however, that if the insurance provider refuses or fails to pay Attorney for any reason, Client shall remain responsible for paying all Attorney's statements as they are rendered upon the billing and payment terms set forth in this Agreement. Should the insurance provider pay only a portion of the fees and costs, Client shall be responsible for the balance.

**8. OTHER PAYOR CLAUSE – PERSONAL**

Client has informed Attorney that Client has arranged for [employer/relative-name and relationship] to be responsible for some or all of Attorney's fees which may become due under this Agreement. It is understood that should [name] fail for any reason to pay Attorney's statements as they become due, Client shall remain responsible for paying all Attorney's statements as they are rendered upon the billing and payment terms set forth in this Agreement.

It is understood that the attorney/client relationship will only exist between Attorney and Client, and that [employer/relative name] will have no right to information regarding the representation of Client by Attorney, and have no right to control or direct the Attorney in providing the services under this Agreement, unless specifically approved by Client.

[Note: Provide signature line for employer/relative in Agreement.]

**9. FIXED FEE CLAUSE**

Client agrees to pay a fixed fee of \$ \_\_\_\_\_ for Attorney's services under this Agreement. The fixed fee is due by \_\_\_\_\_. Attorney shall have no obligation to provide services to Client until the fixed fee is paid in full. Unless Attorney withdraws before the completion of the services or otherwise fails to perform services contemplated under this

Agreement, the fixed fee will be earned in full and no portion of it will be refunded once any material services have been performed.

**10. “OTHER ATTORNEY” CLAUSE – CONTINGENCY**

It is agreed that Attorney will associate with another attorney, [name], who will assist Attorney regarding the representation. [Name] will be compensated out of the fees which Attorney otherwise will earn under this Agreement based upon the effort and time he/she puts into the case. Attorney will divide the total fees received from the representation with [name], and the terms of the division will be [specify the terms of fee division]. This division of fees will not increase the fee due from Client should Attorney obtain a recovery on behalf of Client.

**11. “OTHER ATTORNEY” CLAUSE – HOURLY**

It is agreed that Attorney will associate with another attorney, [name], who will assist Attorney regarding the representation. [Name] will be compensated by Attorney on an hourly basis at a rate of \$\_\_\_\_\_ per hour. These charges will be billed by Attorney to Client as a cost as defined in this Agreement. [Option: or “billed directly to Client by the other attorney.”].

[Note: not suitable for use in contingency fee cases.]

**12. PROFESSIONAL LIABILITY INSURANCE DISCLOSURE**

Pursuant to California Rule of Professional Conduct 3-410, I am informing you in writing that I do not have professional liability insurance.