

**VESTA COVER LIMITED  
(TRADING AS DECLINE)  
237 KILKENNY DRIVE  
EAST TAMAKI HEIGHTS  
AUCKLAND 2016**

**(DATE)**

## **CONTINGENCY FEE AGREEMENT**

**DECLINE** (“Adviser”), and **CLIENT NAME** (“Client”) hereby agree that Adviser will provide services to Client on the terms set forth below.

**1. CONDITIONS.** This Agreement will not take effect, and Adviser will have no obligation to provide services, until Client returns a signed copy of this Agreement.

**2. SCOPE OF SERVICES.** Client is hiring Adviser to assist Client in the matter of Client’s claims against **INSURER NAME**, and possibly others as future investigation may indicate, arising out of the decline by **INSURER NAME** of a **COVER TYPE** insurance claim made to **INSURED NAME** which occurred on or about **DATE OF CLAIM**.

Adviser will assist Client until a settlement or judgment, by way of arbitration or trial, is reached. After settlement or judgment, Adviser will not assist Client on any appeal, or in any proceeding to execute on the settlement or judgment, unless Client and Adviser agree that Adviser will provide such services and also agree upon additional fees, if any, to be paid to Adviser for such services. Services in any matter not described above will require a separate written agreement.

**3. RESPONSIBILITIES OF THE PARTIES.** Adviser will provide those services reasonably required to assist Client in successful resolution of the claim described in Paragraph 2 and will take reasonable steps to keep Client informed of progress and developments, and to respond promptly to inquiries and communications. Client agrees to be truthful with Adviser, to cooperate, to keep Adviser informed of any information and developments which may come to Client’s attention, to abide by this Agreement, to pay Adviser’s bills for costs on time, and to keep Adviser advised of Client’s address, cell phone number and whereabouts. Client agrees to appear at all proceedings when Adviser deems it necessary, and generally to cooperate fully with Adviser in all matters related to the preparation and presentation of Client’s claims.

**4. FEES.** Adviser will only be compensated for services rendered if a recovery is obtained for Client. If no recovery is obtained, Client will be obligated to pay only for costs, disbursements and expenses, as described in Paragraph 6.

The fee to be paid to Adviser will be a percentage of the “net recovery,” depending on the stage at which the settlement or judgment is reached. The term “net recovery”

means: (1) the total of all amounts received by settlement, arbitration award or judgment, excluding any award of Adviser's fees, (2) minus all costs and disbursements set forth in Paragraph 6. [Net recovery will not include the reasonable value of any non-monetary proceeds.]

Adviser's fee shall be calculated as follows:

- (i) If the matter is resolved before TWO WEEKS FROM DATE OF SIGNING, then Adviser's fee will be five percent (5%) of the net recovery;
- (ii) If the matter is resolved before TWO MONTHS FROM DATE OF SIGNING, then Adviser's fee will be seven percent (7%) of the net recovery;
- (iii) If the matter is resolved before THREE MONTHS FROM DATE OF SIGNING, then Adviser's fee will be ten percent (10%) of the net recovery; and
- (iv) If the matter is resolved before FOUR MONTHS FROM DATE OF SIGNING, then Adviser's fee will be fifteen percent (15%) of the net recovery; and
- (v) If the matter is resolved after the date set forth in (iv), above, then Adviser's fee will be twenty percent (20%) of the net recovery.

In the event of Adviser's discharge or withdrawal as provided in Paragraph 9, Client agrees that, upon payment of the settlement, arbitration award or judgment in Client's favour in this matter, Adviser shall be entitled to be paid by Client a reasonable fee for the services provided. Such fee shall be determined by considering the following factors:

- (1) The actual number of hours expended by Adviser in performing services for Client;
- (2) Adviser's hourly rates;
- (3) The extent to which Adviser's services have contributed to the result obtained;
- (4) The amount of the fee in proportion to the value of the services performed;
- (5) The amount of recovery obtained;
- (6) Time limitations imposed on Adviser by Client or by the circumstances; and
- (7) The experience, reputation and ability of personnel performing the services.

**5. NEGOTIABILITY OF FEES.** The rates set forth above are not set by law, but are negotiable between an Adviser and client.

**6. COSTS AND LITIGATION EXPENSES.** Adviser may incur various costs and expenses in performing services under this Agreement. Client agrees to pay for all costs, disbursements and expenses paid or owed by Client in connection with this matter, or which have been advanced by Adviser on Client's behalf and which have not been previously paid or reimbursed to Adviser. Costs, disbursements, and litigation expenses commonly include court fees, service of process charges, notary fees, expert witness, professional mediator and/or arbitrator fees. All costs and expenses will be charged at Adviser's cost.

Client authorises Adviser to incur all reasonable costs.

Adviser shall obtain Client's consent before incurring any costs in excess of \$50.

Adviser shall obtain Client's consent before retaining outside investigators, consultants, or expert witnesses.

If an award of fees and/or costs is sought on Client's behalf in this action, Client understands that the amount which the court may order as fees and/or costs is the amount the court believes the party is entitled to recover, and does not determine what fees and/or costs Adviser is entitled to charge Client or that only the fees and/or costs which were allowed were reasonable. Client agrees that, whether or not Advisers' fees or costs are awarded by the court in Client's case, Client will remain responsible for the payment, in full, of all Advisers' fees and costs in accordance with this Agreement.

Additionally, Client understands that if Client's case proceeds to court action or arbitration, Client may be required to pay fees and/or costs to other parties in the action. Any such award will be entirely the responsibility of Client.

**7. APPROVAL NECESSARY FOR SETTLEMENT.** Adviser will not make any settlement or compromise of any nature of any of Client's claims without Client's prior approval. Client retains the absolute right to accept or reject any settlement. Client agrees to consider seriously any settlement offer Adviser recommends before making a decision to accept or reject such offer. Client agrees not to make any settlement or compromise of any nature of any of Client's claims without prior notice to Adviser.

**8. LIMITATION OF ASSISTANCE.** Adviser is assisting Client only on the matter described in Paragraph 2. Adviser's assistance does not include independent or related matters that may arise, including, among other things, claims for property damage, workers' compensation, or claims for reimbursement (subrogation) by any insurance company for benefits paid under an insurance policy.

This Agreement also does not include assisting Client against or representing Client in any claims that may be asserted against Client as a cross-claim or counter-claim in Client's case. This Agreement does not apply to any other matters. If any such matters arise later, Adviser and Client will either negotiate a separate agreement if Client and Adviser agree that Adviser will perform such additional work or Client will engage counsel with respect to the cross-claim or counter-claim or additional legal work.

**9. DISCHARGE AND WITHDRAWAL.** Client may discharge Adviser at any time, upon written notice to Adviser. Adviser may withdraw from assisting Client upon reasonable notice to Client. Adviser's withdrawal could occur because of Client's breach of this contract, Client's refusal to cooperate with Adviser or to follow Adviser's advice on a material matter, or any other fact or circumstance that would render Adviser's continuing assistance unlawful, unethical or unlikely to succeed.

Notwithstanding Adviser's withdrawal or Client's notice of discharge, and without regard to the reasons for the withdrawal or discharge, Client will remain obligated to pay Adviser for all costs incurred prior to the termination and, in the event that there is any net recovery obtained by Client after conclusion of Adviser's services, Client

remains obligated to pay Adviser for the reasonable value of all services rendered from the effective date of this Agreement to the date of discharge.

**10. CONCLUSION OF SERVICES.** When Adviser's services conclude, all unpaid charges will immediately become due and payable. After Adviser's services conclude, upon request, Client's file and property will be delivered to Client, or Client's other Adviser, whether or not Client has paid any fees and/or costs owed to Adviser.

**11. LIEN.** Client hereby grants Adviser a lien on any and all claims or causes of action that are the subject of Adviser's assistance under this Agreement. Adviser's lien will be for any sums owing to Adviser for any unpaid costs, or Advisers' fees, at the conclusion of Adviser's services. The lien will attach to any recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise. The effect of such a lien is that Adviser may be able to compel payment of fees and costs from any such funds recovered on behalf of Client even if Adviser has been discharged before the end of the case. Because a lien may affect Client's property rights, Client may seek the advice of an independent lawyer of Client's own choice before agreeing to such a lien. By initialling this paragraph, Client represents and agrees that Client has had a reasonable opportunity to consult such an independent lawyer and—whether or not Client has chosen to consult such an independent lawyer—Client agrees that Adviser will have a lien as specified above.

\_\_\_\_\_ (Client initials here) \_\_\_\_\_ (Adviser initials here)

**12. RECEIPT OF PROCEEDS.** All proceeds of Client's case shall be deposited into Adviser's trust account for disbursement in accordance with the provisions of this Agreement.

**13. DISCLAIMER OF GUARANTEE.** Nothing in this Agreement and nothing in Adviser's statements to Client will be construed as a promise or guarantee about the outcome of this matter. Adviser makes no such promises or guarantees. There can be no assurance that Client will recover any sum or sums in this matter. Adviser's comments about the outcome of this matter are expressions of opinion only. Client acknowledges that Adviser has made no promise or guarantees about the outcome.

**14. ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties. No other agreement, statement or promise made on or before the effective date of this Agreement will be binding on the parties.

**15. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY.** If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

**16. MODIFICATION BY SUBSEQUENT AGREEMENT.** This Agreement may be

modified by subsequent agreement of the parties only by an instrument in writing signed by both of them or an oral agreement only to the extent that the parties carry it out.

**17. EFFECTIVE DATE.** This Agreement will govern all services performed by Adviser on behalf of Client commencing with the date Adviser first performed services. The date at the beginning of the Agreement is for reference only.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM, AS OF THE DATE ADVISER FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE JOINTLY AND SEVERALLY FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. THE CLIENT SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.

DATED: \_\_\_\_\_

CLIENT NAME

Address:

DATED: \_\_\_\_\_

DECLINE & VESTA COVER LIMITED

By: \_\_\_\_\_

BRYAN TUCKER  
DIRECTOR  
FINANCIAL ADVISER