

# SAMPLE CONTINGENCY FEE AGREEMENT

## **Privileged Attorney-Client Communication**

Via Hand Delivery

Mr. John Doe  
123 Park Place  
Houston, TX 77002

[date]

Re: Proposed Engagement of Fulkerson Lotz LLP

Dear John:

This agreement sets forth the terms and conditions under which Fulkerson Lotz LLP (“FL,” “we,” or “us”) will undertake representation of John Doe (the “Client” or “you”) in connection with your claims against ABC Corp. (the “Matter”). Services rendered after our engagement but before the signing of this agreement will be covered by these terms and conditions. You agree to the terms and conditions of this letter either by signing it in the space provided below, or by paying the first invoice sent to you by the firm.

### **1. Professional Undertaking – Limited Scope of Engagement**

FL has undertaken to represent you only in connection with the Matter and not undertaken to represent you in connection with any other dispute or issue.

Although we endeavor to represent your interests vigorously and efficiently, we cannot guarantee success in any given case. You acknowledge that FL has made no promises or guarantees concerning the outcome of the Matter, and nothing in this agreement, or in any prior discussions we may have had, can be construed as such a promise or guarantee.

You acknowledge that FL's performance depends, in part, upon:

- a. Our prompt receipt of documentation, information, authorization, and instructions from you;
- b. Your prompt review and execution of documents; and
- c. Your cooperation in general.

You therefore agree to cooperate with FL:

- a. In the investigation, preparation, and prosecution of the Matter;
- b. By providing us with all requested documents and information;
- c. In disclosing truthfully and fully all facts and information;
- d. In keeping us advised of all developments relating to the Matter; and
- e. By attending meetings, hearings, and other proceedings upon request.

## **2. Fees and their Payment**

I will be handling the trial and any significant hearings in the Matter personally, but others associated with our firm are likely to do substantial amounts of work on your case.

FL will be compensated by a forty-percent (40%) contingency fee interest. When you sign this agreement, you are conveying to us an irrevocable 40% interest in the net proceeds arising from prosecution of the Matter, whether obtained by settlement or by judgment or otherwise and whether denominated actual damages, costs, attorneys' fees, punitive damages or other recovery, and in whatever form they may take. In the event that settlement is obtained or judgment rendered in such a manner that you obtain non-monetary relief or consideration, we will propose a valuation of the proceeds of your case. If you disagree with that value, then within five days of receiving ours, you will state your own value. If we cannot reach an agreement, we will engage in a one-day "baseball" style arbitration by submitting the two competing valuations to a mutually acceptable arbitrator, who shall choose one of the two valuations at the end of the arbitration session. Each of us will provide to the other all data reasonably necessary to evaluate any in-kind interest or non-monetary consideration that is created by virtue of this representation. FL may memorialize its interest by making appropriate filings where appropriate. When and if funds are received that are subject to the contingency interest set forth here, you consent in advance to have them negotiated into the FL trust account. Prior to any distribution of such funds, however, you will be provided a complete accounting of proposed distributions and must consent to those distributions.

## **3. Costs and Expenses**

It is often necessary for us to incur expenses for items such as travel, lodging, meals, telephone calls, transcription, and the like. Similarly, some matters require substantial amounts of costly ancillary services such as photocopying, messenger and delivery services, and computerized legal research. FL agrees to advance all such costs and expenses incurred in connection with the Matter, including, but not limited to, photocopying, messenger and delivery services, expert witnesses, court reporter fees, computerized research, travel (including mileage, parking, air fare, lodging, meals, and ground transportation), long-distance telephone calls, telecopying, court costs, filing fees, and other similar expenses. Certain of the preceding items may be charged at

more than FL's direct costs in order to cover overhead.

Such costs are to be repaid out of the proceeds, if any, from the Matter, and costs shall be repaid to FL prior to the division of funds on the 60/40 basis set forth in paragraph 2 above.

#### **4. Termination**

You have the right to terminate our representation at any time. You agree that FL will have the same right to withdraw from the representation under the following circumstances:

- a. If you breach this agreement;
- b. If you fail to cooperate with FL in this representation;
- c. If, for professional or ethical reasons (such as a presently unknown conflict of interest), FL cannot proceed with the representation.

If FL elects to withdraw, we shall give you reasonable notice to enable you to secure other counsel, and you agree to execute any documents necessary to complete the withdrawal.

If you elect to terminate this agreement, it will not terminate our contingency interest in the outcome of the Matter. Should you breach this agreement in such a manner that we are reasonably required to withdraw or to terminate the agreement, we will attempt to accommodate new counsel should you choose to hire new counsel, but while we may choose to do so, under no circumstances are we required to relinquish any part of the contingency fee provided herein in order to make that accommodation.

#### **5. Record Retention Policy**

FL maintains case files electronically using Net Documents and other software programs. During the normal course of litigation, both paper and electronic files are collected. Upon the conclusion of litigation, FL may retain portions of the case file pursuant to our firm's record retention policy and any applicable confidentiality agreement or protective order. To reduce costs, FL recycles paper products and may discard old case files. If you want FL to return original client documents or send you any portion of the file, you agree to let us know in writing within 30 days of the conclusion of the matter. FL will not be responsible for file materials that you do not request in writing within 30 days and which are eventually destroyed under our record retention policy.

## **6. Integration, Choice of Law, Disciplinary Rules, Lawyer's Creed**

This agreement represents the entire agreement between us. In entering this agreement, FL has not made, and you are not relying upon, any representations or promises other than those contained in writing in this letter. To avoid any misunderstanding over the terms of this representation, this agreement shall not be modified or waived in any respect except in writing signed by both parties.

This agreement shall be construed under and in accordance with the laws of the state of Texas, excluding any conflicts of law, rule or principle that might otherwise refer to the substantive law of another jurisdiction.

It is our intention to follow the Texas Disciplinary Rules of Professional Conduct, which is published and updated on the Internet by the State Bar of Texas at <http://www.texasbar.com/ContentManagement/ContentDisplay.cfm?ContentID=13756>. If, despite that intent and endeavor, any part of this agreement shall for any reason be found unenforceable, the parties agree that (1) all other portions shall nevertheless remain valid and enforceable, and (2) a provision most similar to the stricken provision but otherwise complying with applicable law shall be substituted therefor. Since we represent our own interests in crafting this retention agreement, we encourage you to consult other counsel of your own choosing regarding the terms of this agreement. You should also understand that, to the best of our ability, we intend to follow the Texas Lawyer's Creed, in which we commit, among other things, not to engage in abusive litigation or tactics. A copy of the Texas Lawyer's Creed may be obtained at <http://www.txethics.org/uploaded/Resources/846921306641139.pdf>.

## **7. Binding Arbitration**

**Any dispute arising out of or relating to this agreement, our interactions leading to it or our performance of the agreement or of the representation of you shall be resolved as follows. First, the parties agree that sixty (60) days before filing any arbitration proceeding hereunder, the party requesting relief must demand and attend mandatory mediation before a mutually acceptable mediator to attempt to resolve any dispute. In the event the parties are unable to resolve such dispute, the affected party shall initiate an arbitration proceeding utilizing the rules of (but not employing) the American Arbitration Association ("AAA") for the arbitration of complex commercial cases. In any dispute of less than \$250,000, the parties shall jointly appoint a single arbitrator. In any dispute of a greater amount, each party shall appoint his/her or its own party arbitrator, and these two-party arbitrators shall in turn appoint a third, neutral arbitrator. All party arbitrators' conduct and the tests for their eligibility shall be governed by AAA rules of disinterest. The time limits hereunder shall not apply in the event emergency injunctive relief is required, but only to the extent of such emergency injunctive relief itself.**

If the foregoing correctly reflects your understanding of the terms and conditions of our representation, please indicate your acceptance by executing this letter in the space provided below and returning it to me.

Very truly yours,

Fulkerson Lotz LLP

By: \_\_\_\_\_  
Thomas M. Fulkerson, Partner

**AGREED TO AND ACCEPTED**

this \_\_ day of \_\_\_\_\_, \_\_\_\_\_:

By: \_\_\_\_\_  
John Doe

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Unless otherwise noted in website – not certified by Texas Board of Legal Specialization.