

SAMPLE FIXED FEE AGREEMENT

Privileged Attorney-Client Communication

Via Hand Delivery

Mr. John Doe
123 Park Place
Houston, TX 77002

January 1, 2012

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 the trial of the cause entitled *Doe v. ABC Corporation* (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. FL has 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.

In particular, FL strongly prefers to be involved in the handling of a client's case from the beginning. Here, FL is representing you only in connection with the trial of your case, and because it has not participated in any aspect of the preparation of your case for trial, it takes no responsibility for the activities which have occurred prior to its engagement. You agree specifically that certain errors may have occurred either in

strategy or execution during the pretrial phase and that while we will attempt to ameliorate those errors, we can offer no assurances that any part of them can or will be corrected. Because this is a “flat fee” engagement, our work ends at the delivery of a verdict by a jury, or decision by a court, in your trial, and we are specifically not retained to handle post-verdict or post-evidence briefing, such as motions for entry of judgment upon the verdict, for judgment notwithstanding the verdict or other such motions. Should you wish to retain us after the verdict or close of evidence in trial to the court, we shall endeavor to negotiate a new agreement with you.

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 Billing

I will be handling the trial and any significant hearings in the Matter personally, but substantial amounts of work are likely to be done by other lawyers in the firm. You agree to pay a one-time flat fee of \$_____ in connection with the handling of the Matter upon execution hereof. Such fee is to be paid by certified funds. Our representation will commence if and only if this agreement is executed and payment is made with good funds of the sum set out in this paragraph.

The sum referenced in this paragraph is not necessarily intended to accurately estimate the billings that would be incurred had this matter been handled as an hourly matter. Rather, it is intended to take into account a variety of factors, including the immediacy of the services required, the degree of commitment required to learn the case and the displacement of other cases and clients occurring by virtue of the engagement. As a result, the fixed fee may be substantially lower or higher than would have been the case had the matter been handled on an “hours and rate” manner.

3. Costs and Expenses

FL's ordinary costs associated with the handling of a trial, such as ordinary document reproduction, messengers, parking fees, and similar nominal charges, are included in the flat fee being paid up to a maximum of \$10,000. Any other costs shall be paid by the Client as provided below.

Any expert fees, including travel and others, graphic reproduction, or other in-trial costs exceeding the sum referenced above shall be paid by the Client. All invoices from such service providers will be forwarded to you. Given the proximity of trial and necessity of expedited services in many cases, the Client shall either retain parties to provide such services in advance of trial or pay such invoices within five days of their invoicing to the Client.

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.

5. Nonpayment

By your execution of this engagement letter, you agree that we are relieved from the responsibility of performing any further work in the event that you fail to pay any monthly statement for fees and expenses (including bills for expenses received from third parties) within thirty (30) days of receipt of such statements. In the event of such default, you agree that we may move to withdraw as your counsel in any matter in which we have made an appearance on your behalf and that you will promptly execute or consent to any motion required to accomplish the withdrawal.

6. 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.

7. 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. 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>.

8. 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 through binding arbitration in Harris County, Texas. First, sixty (60) days before filing any arbitration proceeding, 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 tests for 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. The decision by the arbitration panel will be final and binding.

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.

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