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XXX, 2015

## ENGAGEMENT/RETAINER AGREEMENT

**SAMPLE DRAFT © 2015**

Mr./Ms. John Doe  
100 Anywhere St.  
Atlanta, Georgia 12345

**Re: Engagement/Retainer Agreement**  
**Matter: XXX v. Doe**  
**Our File No.: ALGXXX-15.001**

Dear Mr. Doe:

I am pleased you have asked me [in my professional capacity, as counsel with *The Law Office of Auden L. Grumet, LLC*] to assist you with the matter identified below. This letter ("Agreement") is meant to serve as a follow-up to our **emails/telephone discussion/meeting** and your decision to retain my services, as well as to outline our mutual understanding and agreement concerning several aspects of our relationship.<sup>1</sup> While such formalities may seem like an unnecessary distraction at the beginning of our engagement, I have found that it aids in the development of good client relationships and helps minimize misunderstandings.

### **(I) SERVICES TO BE PROVIDED**

We have agreed that the current scope and focus of my representation may consist of, and shall be limited to [at least initially, unless and until I agree in writing to expand or change said scope], **XXX [specifics of matter]**. In the event we later mutually agree in writing, these tasks may be expanded - e.g. in the unlikely event we are unable to resolve the matter prior to litigation you may wish to retain me to help defend any such claims.

Depending upon the scope of my representation, my services may include, but are not necessarily limited to, activities such as factual investigation, telephone calls, public records/legal research, preparation, review/receipt and or filing of correspondence, letters, memoranda, email, fee bills, facsimiles, pleadings, notices, mailings, postal documents, exhibits, electronic scanning/preservation of documents, attending meetings with you and or others, consulting with experts, insurance adjusters, medical providers, traveling to/from and attending/conducting depositions, hearings, arbitrations, mediations or other proceedings and appearances before or contact with various agencies and or courts, etc.

**As you are aware and as discussed, my knowledge of this matter is very limited at present and I have not been provided or reviewed all of the information and evidence that exists germane to same and thus I have not offered and cannot offer any opinion as to the likelihood of success, etc. Regardless, you understand that I have not - nor could I - guarantee or promise a specific or favorable result or outcome in this matter.**

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Please keep in mind that this document is intended to be and should be treated as a legally-binding contract despite its letter-like format.

## (II) IDENTITY OF CLIENT

You, \_\_\_\_\_, are specifically retaining me for legal representation and as counsel to act on your behalf personally and individually, and no other individual(s) or entity(s) that is now or may become affiliated with you shall be considered my client for any purpose unless this *Agreement* is expressly amended in writing to that effect. As such, I will have the right to represent other current and future clients so long as I adhere to my professional obligation not to disclose any confidential information for the benefit of another party. Provided I act in this manner, you agree not to assert or claim that my possession of such information, even though it may relate to a matter for which I am representing another client, is a basis for disqualifying me from representing another client(s) in any matter.

## (III) FEES

As compensation for my services, I will be paid an hourly fee of **\$280.00** for all time/tasks (including travel time, if necessary), exclusive of time spent in, or traveling to/from, court, depositions or other formal out-of-office proceedings [e.g., hearings, trial, calendar calls, ADR, etc.], which shall be billed at a rate of **\$295.00** per hour. On occasion I may also utilize the services of a paralegal/legal assistant and or associate attorney and may bill his or her time at hourly rates of **\$75.00/\$125.00** respectively. In this instance I will require an initial Retainer Fee of **\$3,500.00**, which will be debited as fees are earned and disbursements are incurred. As discussed, **the initial Retainer Fee is not intended to reflect an estimate of the total scope/cost of my work, but is merely a preliminary payment.** This and any future retainer fees shall be considered earned upon receipt; however, **any unearned portion in excess of \$1,000 remaining at the conclusion of my engagement will be refunded** (in other words, my minimum fee, regardless of time billed, is \$1,000). Depending upon a variety of factors, ***I may require an additional/increased Retainer Fee(s)*** as the scope, extent and or nature of our engagement changes.

All time is to be billed in minimum increments of 1/10<sup>th</sup> (.10) of an hour. This might mean, for example, that a 'quick' exchange of emails, voicemails, telephone calls, etc. could result in a billing entry of 1/10<sup>th</sup> of an hour (i.e., 6 minutes), even if I do not actually spend an entire 6 minutes on such a task(s). My general practice, however, if I undertake such brief, multiple and successive tasks throughout a given day, is to bill them cumulatively; so that, for example, two short phone calls might be billed a total of .10 hours. Also, please keep in mind that some limited time may be billed for tasks related to certain preliminary matters leading up to the establishment and formalization of our attorney-client relationship [a rough estimate of such time is **1-2 hours**].

I generally bill on a monthly or semi-monthly basis [approximately, although this can vary and any variation shall not relieve you from any payment obligations] for services performed during the prior billing period. My Statements/Invoices ["Fee Bills"] will reflect tasks performed on a daily basis, in 1/10<sup>th</sup> of an hour increments, the fees and disbursements incurred and the Retainer balance [remaining or due], if any. With the exceptions noted herein, **I expect payment within ten (10) days**; amounts outstanding more than 30 days will accrue interest at the rate of 1.5% per month, compounded monthly, not to exceed the maximum rate permitted by law. If you fail to dispute any particular bill or billing entry within 30 days of receipt, you shall waive the right to do so.

Payment by standard check is fine, unless I encounter any payment problem, in which case I reserve the right to insist upon certified check or cash (you also agree that I may send any applicable "bounced" check notices - e.g. O.C.G.A. § 16-9-20 and the like - via email, which shall be the equivalent of issuance by Certified Mail). Acceptance of partial payment(s) - even with restrictive endorsements such as "payment in full" - shall not work as an accord and satisfaction unless expressly agreed by me in writing and shall not be construed as a waiver of any kind. If this is a matter that is or may later be in litigation, and if you have any desire or expectation to recover your attorney's fees from another party, you understand and agree that I may bill some limited time for preparation of fee bills; without detailed billing entries, a party is usually precluded from recovering attorney's fees. To offset the transaction fees that I incur, I will also add a surcharge of 2.0% for any payments made by credit card [3% for AMEX].

You understand that time may be of the essence in certain situations (i.e. response deadlines, etc.), and **in the event the Retainer Balance is depleted I may, at my sole option, require that it be restored before continuing representation and prior to undertaking additional/expanded tasks** [subject to any Court-Order(s) or Professional Rules of Conduct, if applicable]. Accordingly, if and when I notify you that the Retainer Balance has fallen below the original amount [assuming it has been billed], you agree to tender such Fees within **five (5) days** [or sooner if circumstances involving court or other deadlines or urgencies warrant]. To the extent allowable by law you also agree and consent to my withdrawal from representation in any litigation if such withdrawal is due in part or whole to non-payment or untimely payment of my fees and to receive any notice(s) of withdrawal via electronic mail.

#### **(IV) INCIDENTAL EXPENSES**

On occasion it may be necessary for me to incur various expenses for items such as travel, parking, mileage, lodging, meals, transcripts, etc. Similarly, some matters require substantial costs for ancillary services such as couriers, postage, long-distance telephone calls, photocopying, word processing/transcription, computerized legal research, cloud computing, telecopying, internet docket/public information access/retrieval and or other reasonable items. In order to allocate these expenses fairly and keep billing rates as low as possible for those matters which do not involve such expenditures, these items are usually itemized separately on Fee Bills as expenses. Such expenses represent either actual out-of-pocket costs, allocated overhead costs or a combination of both. Mileage will be billed at 55¢/mi., copies at 15¢ per page and faxes at 15¢ per page.

#### **(V) PRIVACY AND CONFIDENTIALITY**

In the course of my representation I may come into possession of, and work with, certain personal and or confidential information, including financial, credit, medical, health, family, legal, employment and other similar types of data and or documents. As such, you hereby agree and acknowledge that I may do so and you authorize me to obtain, hold, review, and disseminate and or release such information/data as is necessary to pursue or protect you and or your agent(s) and your legal or other interests and rights.

This includes your authorization and consent for me to use electronic means of communication, such as electronic mail ("email"), the internet, telephone, facsimile, internal and external computer drives, "clouds" and software to transmit and or store such information and data. In doing so, I will use my best efforts to protect such information, but I cannot guarantee its absolute security. You also understand that your employer may monitor [whether lawfully or not] your personal communications and that by utilizing company email, telephone and other forms of communication with me, it is possible that they may gain access to privileged/confidential information, and that I cannot control nor am I responsible for any such disclosure.

#### **(VI) COOPERATION**

It will be our mutual responsibility to cooperate fully with one another so that the scope of work to be performed can be carried out and you agree to be available at all (reasonable) times to ensure I am able to timely act on your behalf and or in your best interests. You agree to be completely honest and forthcoming with me, to keep me updated with all current contact or other information requested and to regularly check and promptly respond to emails, text messages, telephone calls, etc. (this is of particular importance and is a material aspect of our agreement).

#### **(VII) MISCELLANEOUS**

You understand and agree, unless provided otherwise in writing, that I have not been retained - and am not qualified - to provide expert, legal or other advice concerning bankruptcy, taxes, securities,

trusts/wills/estates, monopolies/antitrust, property transfers/recordings/titles/deeds, intellectual property, criminal or family/custody laws, or related matters, including as such relates to the consequences or application of receipt of any settlement proceeds and the like, or any law or matter not pertaining to Georgia state law or applicable [11<sup>th</sup> Circuit] federal law.<sup>2</sup>

You also acknowledge and understand that there are certain risks, both financial and otherwise, associated with the proceedings and tasks described herein, including, but not limited to, sanctions, penalties, contempt, exposure to liability, claims/counterclaims fees/expenses against you, me or us - e.g. for attorneys' fees [e.g. O.C.G.A. § 9-11-68], abusive litigation [e.g. §§ 9-15-14 and 51-70-80 *et seq.* and or Fed. Civ. Rules 11 and 68], libel, slander, etc. Accordingly, assuming my representation is equal to or exceeds the applicable standard of care in the community, in the event a sanction, award, claim, demand, judgment/ruling or the like of such nature is made, issued or assessed against or adverse to me/my firm or my/its representatives/agents [and or you] in conjunction with any demands, claims, defenses, my representation or your case/matter, you agree to fully indemnify me and hold me/my practice/agents harmless from any such sanction/award/fees/liability, including but not limited to defense costs and attorney's fees [whether I am proceeding *pro se* or not] arising therefrom.

You agree not to contact or communicate with an opposing party, opposing counsel, prior counsel or the court without first consulting with and notifying me in advance. If we disagree about whether or not such communication should be made, or any other material aspects of litigation or of handling a dispute, you agree to give notice to any third party with whom you communicate of the fact that you are doing so against the advice of counsel, and I shall be relieved from any adverse consequences that may arise or result therefrom. You agree that I retain the right to make final substantive decisions about legal and procedural matters and those that do not directly involve the outcome of the litigation.

In the unlikely event you decide to terminate our engagement, you agree to provide to me, in writing, a truthful and accurate basis/explanation for said decision, and that I may retain a lien on your file/papers and or will not be required to disburse any funds to you until you do so. You also promise that in the unlikely event you wish to "post", transmit or otherwise publish a negative or non-favorable review or information [on the internet or elsewhere] about me or my firm, whether expressly or implicitly, you will notify me in writing before doing so, communicate with me about same in good faith and provide me with a reasonable opportunity [e.g. 30+ days] to resolve any dissatisfaction or dispute - and this applies whether the *Agreement* has been terminated or not.

Regardless of the outcome of any such dispute, if you are nevertheless compelled to post such a review, you agree to be entirely truthful about all facts and circumstances germane to same, and you understand and agree that I may share any documents, communications and or information in my defense/in conjunction therewith, some of which may contain confidential information, pursuant to Rule 1.6 [in particular, subsections (a) and (b)(i)(iii)] of the Georgia Rules of Professional Conduct. You understand that the failure to adhere to the provisions of this paragraph would result in a material and substantial breach of this *Agreement* and that significant financial and other harm is likely to result [and could have been avoided had you complied].

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<sup>2</sup> You understand that while certain state and federal laws [e.g. O.C.G.A. § 15-6-21 and F.R.C.P. 77] may require the court/clerk to notify a party/counsel of an adverse/appealable decision/order, on occasion such notice is not given or not timely given, which can cause various problems, such as the loss of the right to appeal. However, the only way to be certain [or as certain as reasonably possible, for there is still a risk that misinformation may be conveyed] about such a notice is to constantly monitor the docket and or inquire with the court/clerk, which is obviously not only impractical, it is cost prohibitive. As such, you agree that unless you are willing to pay for either a costly docket monitoring service or for the billable time required for me to monitor/inquire with the court/clerk, there is a chance that notice may not be received, which may result in the expiration of deadlines and or other adverse consequences. As such, unless we come to a separate written agreement about purchasing a docket monitoring service (or paying me for the time required to constantly monitor the docket), you agree that I shall not be responsible for any failure to receive notice and any related adverse consequences and to hold me harmless from same.

You promise and agree, as a material condition of our engagement and as consideration upon which I am relying, that you are not now contemplating the filing of bankruptcy, that you have not filed for bankruptcy within the last ninety (90) days and that you do not currently have any present intent to seek bankruptcy protection in the next ninety (90) days - and that you will give me written notice, at least sixty (60) days in advance, in the event you begin to consider filing or intend/decide to file for bankruptcy. This document, along with any emails we may have exchanged - which, to the extent they are not inconsistent with the terms herein - are expressly reincorporated herein insofar as defining the scope of my engagement - represents our entire agreement, and any changes to it must be mutually agreed upon and in writing (exchange of electronic/email shall suffice). If any portion or aspect of this *Agreement* is deemed unenforceable, the others/remainder shall be unaffected and enforceable.

#### **(VIII) DISPUTE RESOLUTION**

In the unlikely event a dispute arises in connection with this *Agreement*, it is my desire to resolve it through amicable discussion. But if such efforts do not resolve the problem, and if the issue is one related to fees/payment, I believe it would be in each of our best interests to engage in ***non-binding*** mediation. Accordingly, you agree that any such fee dispute related to this *Agreement* that cannot be informally resolved within forty-five (45) days shall thereafter be submitted to a neutral mediator within a reasonable time (i.e. 90 days), with each party sharing any associated fees equally but bearing his own expenses and attorney's fees. If you do not respond in writing to my request to submit to same within ten (10) days, you waive any right to compel same and agree that I may proceed as otherwise allowed by law [notwithstanding the foregoing, nothing herein shall preclude initiating earlier legal action to avoid any putative Statute of Limitations defenses]. Further, due to the complexity of the process and the time and cost burdens associated therewith, unless we otherwise mutually agree to *not* participate in the Georgia State Bar's "Fee Arbitration Program".

The prevailing party in any formal *binding* legal action or proceeding shall be entitled to and awarded any actual and reasonable costs/expenses and attorney's fees incurred [including *pro se*, if licensed to practice law in GA] in connection therewith. Furthermore, with the exception of standard and routine inquiries, any dispute or disagreement about the accuracy or validity of my/my firm's fees or bills that requires or leads to my review of, or expenditure of time analyzing, data or documents relating thereto may be billed to you at my sole discretion. Of course, this shall not apply to time incurred that is mutually determined to be solely a result of my error.

In addition to any other applicable forum, you also agree that jurisdiction and venue shall be proper [at my discretion] in Dekalb County in the unlikely event litigation is pursued against you in connection with this *Agreement*, and you hereby waive any defenses to the propriety of same to the extent allowable by law. If requested, you also agree to accept and acknowledge service of process [e.g. of any Complaint] by Certified U.S. Mail (or equivalent statutory delivery) and waive any service defenses to the extent allowed by O.C.G.A. § 9-11-4, Federal Rule of Civil Procedure 4 or other applicable statute or rule. Finally, you agree and consent to electronic service of pleadings and other documents pursuant to O.C.G.A. § 9-11-5 (f) or other applicable law in the event of litigation, and to service by email/PDF attachment of any notices that may be required by law to otherwise be sent via Certified Mail or Overnight/Statutory Delivery.

#### **(IX) TERMINATION OF SERVICES**

Either you or I may terminate our engagement for any reason upon advance written notice to the other person. As soon as is practicable after receiving/giving such notice I will cease to render additional services - except to the extent such may be ordered by the Court or are, in my sole discretion, necessary to protect either your or my interests or for an effective closure of the file - and will cooperate with you in facilitating the orderly transfer of your file to you or to your new attorney(s). You also understand and agree that I may be entitled to a lien on all or a portion of your file and the

contents thereof [including digital] and I may therefore retain same in the event monies are due/outstanding to me. Furthermore and notwithstanding, you agree to be responsible for any and all copying, mailing or other costs associated with reproducing, transmitting or retrieving of the contents of your file.

I may also view my engagement as terminated if a period of sixty (60) consecutive days elapses during which I do not have an open project or matter from you, although my engagement may be renewed under this *Agreement* by my accepting new assignments from you. Once our engagement terminates for any reason, I am permitted to accept work from other clients who may have interests that are or could be adverse to yours, provided I do not disclose confidential information acquired during my representation that is material to the new engagement.

Finally, please keep in mind - regardless of fact, fault or circumstance - **termination of my engagement [by either you or me] does not relieve you of the obligation to pay for any fees, costs and expenses generated, incurred and or due for services rendered and or expenses incurred prior to termination and or during/related to an orderly wind down of my services.** In litigation matters or in cases where I am counsel of record, my termination is subject to any applicable rules of [and or permission from] the court, and you are responsible for any fees that may be incurred for tasks related to any efforts to withdrawal and for any time that may be incurred prior to my formal withdrawal per court order, even if such time is incurred or tasks are undertake after you request that I cease further work but before the court or other authority has formally granted, approved or ordered my withdrawal.

If you have any questions about any aspect of this *Agreement* please do not hesitate to ask me. Otherwise, please sign, **date and initial each page on the bottom right corner and return it to me along with the initial retainer fee payment** (if you have not already submitted payment). Thank you very much and I look forward to working with you.

Sincerely,

Auden L. Grumet, Esq.  
*The Law Office of Auden L. Grumet, LLC*

Agreed to and accepted:

\_\_\_\_\_  
**JOHN/JANE DOE**

This \_\_\_\_\_ day of \_\_\_\_\_ 2015.