

EXPERT WITNESS RETENTION CONTRACT

Surety *Lexpert* Witness Services
a dba of Tex Lex, Inc.



Expert Witness Retention Contract

- 1. Parties.** This contract is made between Surety *Lexpert Witness Services*¹ (“Expert”) and the Law Firm of [REDACTED] (“Client”) regarding the underlying legal matter of [REDACTED].
- 2. Retention.** The parties agree that Client will only retain Expert once this contract has been mutually executed and Client has paid the initial non-refundable retention retainer specified in paragraph 4.b. Expert has no duties to Client until such time.
- 3. Expert’s Fees and Expenses.** The parties agree that the fee for all time Expert spends on the case will be compensated at the following rates:

Experts	Review and Report Rate	Testimony Rate
(1) Gregory Stephen Arnold Surety <i>Lexpert Witness Services</i> , dba of Tex Lex, Inc.	\$450.00/hour	\$500.00/hour Four-hour minimum paid in advance

Support Staff

- (2) Sherry L. LaVallee, Administrative Support \$75.00/hour

CVs of the Experts are attached to this Expert Witness Retention Contract

It is agreed that this specifically includes (but is not limited to) factual and other research; legal research of cases and statutes confirming the standard of care and industry standards in the jurisdiction; conferences; consultations with Client; reviewing documents; organizing documents; analysis; testing; responding to discovery requests; report writing; responding to other experts’ reports; testifying; investigating; reading and signing deposition transcripts and errata sheets; local portal-to-portal travel; long distance portal to portal travel; waiting time; preparing exhibits; preparing demonstrative aids; and preparation time for testifying at deposition, trial, hearing, arbitration or other venues. Expert’s time will be tracked and invoiced to the nearest 0.25 of an hour. In lieu of the above hourly rate, duties that reasonably require overnight travel will be billed at the flat rate of \$5,000.00/day on site. In any and all events, and in addition, Client will be responsible for all reasonable out-of-pocket expenses including, but not limited to travel, testing, research, copying, storage of evidence or documents, *etc.*

¹ A dba of Tex Lex, Inc. (www.TexasLexas.com).

4. Payment Terms.

a. All payments are to be made to: Surety *Expert Witness Services*. Wire instructions are attached if you prefer not to pay by check.

Expert's Taxpayer ID# is: 84-1770082.

b. The retainer amount is \$7,500.00.

c. The *non-refundable* retention retainer amount is \$3,000.00. Expert will invoice against this retainer. This non-refundable retainer amount is the minimum fee due Expert and is earned upon receipt.

d. Expert agrees to invoice client no less frequently than monthly.

e. All invoices will be paid within 30 days - or sooner if so specified in this Contract.

f. Overdue invoices will accrue interest at a rate of 1.5% per month.

g. Fees for any time Expert is asked to reserve for testifying (at trial, hearing, deposition, arbitration or other venue) and preparation for said testimony must be paid in advance and in full 5 (five) business days prior to the time reserved for the scheduled testimony. Expert is under no contractual obligation to reserve the time or appear to testify and provide opinions unless Expert has received this payment in full at least 5 (five) business days prior to the time reserved for the scheduled testimony.

h. Client is responsible for collecting any and all deposition fees owed by other lawyers or parties. In the event Expert's deposition fees are reduced by court order, Client shall still pay Expert's full fee specified in paragraph 3.

i. Expert will invoice Client monthly for services, including the writing of Expert's report(s). All fees must be paid in full before a report is released to Client, other parties or anyone else. Expert is under no duty to release a report until Expert has been paid in full for all work performed to date.

j. Expert will invoice Client before scheduled testimony for any outstanding fees and expenses for work performed to date. All such fees must be paid in full before Expert testifies. Expert is under no contractual duty to appear to testify and provide opinions until Expert has been paid in full for all outstanding services performed and expenses incurred on behalf of Client.

k. All invoices must be current prior to depositions or trial/arbitration testimony.

l. Expert may defer services without liability for consequences if not paid.

m. In the event client disputes, disagrees with or questions any amount due under an invoice, client shall communicate such disagreement or question to Expert, in writing, within 30 days of invoice date.

5. Fees for Late Notice Cancellation or Rescheduling of Testimony.

- a. Client understands that Expert will suffer damages from late notice cancellation or rescheduling of Expert's testimony and that since the precise amount of these damages would be difficult to determine, Expert shall instead be entitled to the cancellation and rescheduling fees specified in paragraphs 5.c and 5.d.
- b. The fees specified in paragraph 4.g. are 100% refundable to Client in the event Expert's scheduled testimony is cancelled or rescheduled with notice to Expert of 3 (three) or more business days.
- c. In the event Expert's scheduled testimony is cancelled or rescheduled with 1 (one) or 2 (two) business days' notice, Expert may retain a cancellation fee of 100 % the amount from paragraph 4. g.
- d. In the event of same day cancellation or rescheduling of Expert's Testimony or if Expert's testimony is completed in less time than was reserved pursuant to paragraph 4. f., Expert may retain 100% of the amount specified in paragraph 4.g.
- e. In the event of any cancellation or rescheduling of testimony, Client shall be responsible for all non-refundable out of pocket travel expenses incurred by Expert such as airline tickets and hotel rooms.

6. Duties of Client. The Client's duties specifically include, but are not limited to:

- a. Abiding by the applicable rules of professional conduct for attorneys.
- b. Making all payments as specified in Paragraphs 4 and 5 under the terms as specified in Paragraphs 4 and 5.
- c. Providing Expert with copies of or access to all non-privileged, arguably relevant documents, evidence and other materials in the underlying legal matter.
- d. Notifying Expert of all parties and attorneys in the case so that Expert can check for conflicts of interest.
- e. Where circumstances reasonably allow, providing Expert with prompt notice of any *Daubert* motions, *Frye* motions, motions in limine, or other pre-trial motions made by other parties or persons to restrict, exclude or in any way limit Expert's testimony, Expert's written report(s), Expert's opinion(s) or Expert's participation in the underlying legal matter. Client agrees to allow Expert to assist in preparation of any response to motion, and, where appropriate and reasonable, Expert may retain his own counsel to assist in the preparation of any response.

- f. Obtaining Expert's advance approval (for accuracy) of the relevant portions of any and all answers to interrogatories, motions, Expert designations or other documents which summarize Expert's qualifications, methodology, opinion(s) and/or anticipated testimony.
 - i. A \$250.00 Expert Designation fee applies at time of designation or disclosure of the name of your Expert. This is credited against, or waived, in the event the Expert is actually hired and the Retainer Fee is paid.
- g. Being available as reasonably requested to meet with Expert prior to anticipated testimony.
- h. Promptly notifying Expert of when and where Expert may be requested to appear to testify.
- i. Promptly notifying Expert of any issues related to paragraph 8.b. to which Client is or becomes aware of.
- j. Promptly notifying Expert of the settlement or final adjudication of the underlying legal matter.

7. Duties of Expert. The Expert's duties are:

- a. To truthfully represent Expert's credentials.
- b. To formulate with honesty and due care and truthfully express Expert's opinion(s) in those areas (and only those areas) where Expert feels qualified to render an opinion and where Client has requested an opinion. Client agrees that Expert's opinion(s) are not preordained, might be contrary to Client's position, and are subject to modification as a result of new or additional information.
- c. To cease work on the underlying legal matter and promptly inform Client whenever Expert has accrued unpaid fees and expenses totaling more than \$1,600. In this event, Expert shall not perform further work on the underlying legal matter until approval is given by Client.
- d. Expert is under no duty to provide and express opinions if Expert is given time deadlines or cost-based or other restrictions by Client that would not reasonably allow Expert to in good faith formulate and express his opinions with reasonable care.
- e. Subject to paragraph 7.d., to prepare a written report if Client requests one.
- f. Subject to paragraph 7.d. and to circumstances beyond the Expert's control, to meet all reasonable deadlines requested by Client.
- g. To retain and preserve (during this engagement) all evidence provided to Expert from the underlying legal matter unless Client gives written permission for destructive testing or the like.
- h. To be available on reasonable notice to testify.
- i. To be available on reasonable notice to consult with Client. Experts' cellular numbers are:
Gregory Stephen Arnold, Tex Lex, Inc. (509) 212-5311

- j. To work exclusively with Client in the underlying legal matter unless the parties mutually agree in writing otherwise.
- k. Upon receipt from Client of the list of attorneys and parties specified in paragraph 6.d., to within 30 days check for conflicts of interest with due care and within the same 30-day period to notify Client of any conflicts of interest discovered that preclude Expert's further involvement in the underlying legal matter.

8. Expert's Right to Withdrawal from Case. Expert shall have the absolute right to withdraw, without any liability, from the case if Client violates any of the duties specified in paragraph 6 above or if:

- a. Expert discovers a conflict of interest which precludes Expert's further involvement in the underlying legal matter.
- b. Expert discovers that because of legal restrictions Expert's involvement or testimony in the case could reasonably be deemed to be practicing Expert's profession without a license.

9. Withdrawal.

- a. Notice of withdrawal under Paragraph 8 shall be in writing from Expert to Client. In the event of withdrawal, the parties agree that Client remains fully liable for all accrued but unpaid fees, expenses, and interest.
- b. If Expert defers services as described in 4.1. above, Expert has right to terminate agreement upon three (3) days notice, issuance of a final invoice, and return of any confidential files. All outstanding invoices shall remain due and payable.

10. Termination. This contract shall be terminated upon written notice to Expert from Client at any time, by Expert's withdrawal pursuant to paragraph 8, at such time as Client is no longer involved in the underlying legal matter, or upon the settlement or final adjudication of the underlying legal matter. In the event of termination Client is still responsible for all sums owed Expert.

11. Document/Evidence Retention. Expert shall have no duty to retain any documents, reports, evidence, transcripts, exhibits, e-mails, electronic files or other materials from the underlying legal matter for more than 30 (thirty) days following the termination of this agreement. Expert shall return (at Client's expense) all records and evidence in the underlying legal matter to Client if a written request to do so is received by Expert within the 30 (thirty) days following the termination of this agreement.

12. Airline Flights. All airline flights taken by Expert shall be direct, non-stop, coach class or better where possible (never economy or basic economy class).

13. Disputes. Any controversy, claim or dispute arising out of or relating to this Contract, shall be resolved first through nonbinding mediation and if unsuccessful, second through binding arbitration conducted in accordance with the rules of the American Arbitration Association in the State in which the Expert is domiciled. The law of the State in which the Expert is domiciled will be the governing law. The arbitration award will be enforceable in any state or federal court. Mediations will be conducted virtually using JAMS Seattle Resolution Center. Each party pays a pro-rata share of the mediation fee. In any arbitration or court proceeding, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and expenses. In addition, Client shall be responsible for payment of attorneys' fees, costs and expenses associated with the Expert's efforts to collect monies owed under the terms of this Contract.

14. Miscellaneous. Each party agrees that it may not assign its interest, rights or duties under this Contract to any other person or entity without the other party's prior approval. (Expert is under no duty to work for successor law firms on the underlying legal matter.) The performance of this contract by either party is subject to acts of God, death, disability, government authority, disaster or other emergencies, any of which make it illegal or impossible to carry out the agreement. It is provided that this contract may be terminated for any one or more of such reasons by written notice from one party to the other without liability. If either party agrees to waive its right to enforce any term of this contract, it does not waive its right to enforce any other terms of this contract. This written contract represents the entire understanding between the Expert and Client. The individual signing this contract on behalf of Client represents and warrants that he/she is duly authorized to bind Client.

15. Additional Provisions (check all those that apply).

- a. **Expert Unavailable Notwithstanding Paragraph 7** Expert is unavailable to perform obligations under this contract during the following time frame(s):
See Appendix A.
- b. **Business Class Flights.** Notwithstanding paragraph 12, all flights taken by Expert longer than ____ hours shall be by business class, or first class if business class is unavailable.
- c. **Scope of Work.** Client is requesting an opinion in the following area(s):

d **Additional terms are attached to this contract as Appendix B. Wire Instructions.**

e **The following additional terms apply:**

- i.** All documents to be reviewed must come directly from retaining law firm and not law firm's client.
- ii.** Expert has no obligation to interview law firm's client, and expert will not do so.
- iii.** Retaining law firm is responsible for filing all legal notices and notices to the state's DOI, including any specially-required notice(s), if any.

Surety *L*expert Witness Services

Law Offices of

Signature

Signature

Gregory Stephen Arnold

Print Name

Print Name

Print Name

Date: _____, 2023

Date: _____, 2023

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Surety ~~L~~expert Witness Services

Appendix A

Times and Dates Not Available

October 23, 2023	Zoom call from 1:00 pm to 2:00 pm CST
October 25, 2023	AZ Bar Meeting – Lunchtime - PST
November 18, 2023	All day – family commitment
December 11, 2023	Expert deposition, time TBD
January 23-28, 2024	ABA Midwinter Meeting

Appendix A

PAYMENT INSTRUCTIONS

Surety *L*expert Witness Services

910 Quest Parkway, Office Suite 9
Cedar Park, TX 78613

(509) 212-5311

Pay by check only.

The payee is **Surety Lexpert Witness Services**, at the address above.

Use **United States Postal Service** ONLY.

Do not use Fed Ex or UPS, as this actually slows receipt and may result in mis delivery.

EIN: 76-0594999