

BERNARD F. PETTINGILL, JR., PH.D.
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RETAINER AND FEE AGREEMENT

This agreement is entered into on (date): _____, by and between _____ (firm): as represented by _____ (hereinafter, "Client"), and the firm of Bernard F. Pettingill, Jr., Ph.D. (hereinafter, "Expert Witness"), who will serve as the consulting testifying expert. It is our policy that we are retained solely by the attorney and their firm.

A. Purpose of Engagement

The Client has hired the Expert Witness to provide advice, reports, and possibly testimony in the matter of (Case Name): _____, (hereinafter, "Matter"). Client has disclosed and received the permission of the party Client represents and warrants the acceptance and appropriateness of using an Expert Witness in the legal matters handled by Client.

- I. The Expert Witness will provide review, advice, conferences, reports, and testimony (as needed) up to and including the trial in this matter.
- II. The Client agrees to pay the Expert Witness for his services and the services of all associates under his direction, and to pay for all authorized expenses incurred. As noted below, fees due to the Expert Witness shall be paid by the Client before a signed copy of the Expert Report is provided and provided, and prior to any scheduled testimony. The Client agrees to cooperate fully with the Expert Witness and to provide all information which may aid the Expert Witness in advising and/or testifying in this matter.
- III. The Client or the Expert Witness may terminate this retainer agreement at any time via written notice to the other party. Any unpaid monies owed to Expert Witness will be due immediately. The Client agrees to waive any claims for damages against Expert Witness if we disengage from the Matter for any reason including, but not limited to, any request to compromise our ethical standards, any misrepresentation or failure to disclose material facts, or any failure on the Client's part to pay the invoices in a timely manner.

B. Expert Witness Fees and Travel Fees & Expenses

- I. The Client and Expert Witness agree that the following method is to be used for determining the proper amount of Expert Witness Fees. The fees quoted below on this matter will be good for one year from the date that this agreement is signed by the Client.
- II. It is our firm policy that the Expert Witness is not retained and will not begin work on this Matter until a copy of this Agreement signed by the Client, along with a non-refundable retainer fee of payment to Bernard F. Pettingill, Jr., Ph.D., in the amount of Eighteen Hundred Dollars (\$1,800.00 USD) (the retainer) are both received. The Client agrees that time expended by the Expert Witness and the professional services of associates under his direction and control in the Matter is the primary basis for determining the total fees to be paid to the Expert Witness. Expert Witness fees are charged at the rate of Four Hundred and Fifty Dollars (\$450.00) per hour for preparation, consulting, drafting expert reports, preparation for testimony, and testimonial work. For trial testimony, depositions, or mediation/arbitration hearings, the Expert Witness fees are charged at a minimum of Thirteen Hundred and Fifty Dollars (\$1,350.00) for three hours. Travel is billed hourly, portal to portal. Payment for testimony, deposition, or mediation/arbitration hearing is requested at the time of scheduling **and must be received no later than three (3) days before the scheduled testimony, deposition, or mediation/arbitration hearing.** Additional travel expenses will be charged as incurred. If travel is necessary, please contact our office directly to make travel arrangements. **There is a two-hour minimum cancellation fee if the testimony, deposition or mediation/arbitration hearing is cancelled 48 hours or less before the scheduled testimony date.**

C. Out of Pocket Expenses

- I. The Client acknowledges that the Expert Witness may incur various expenses in the course and scope of providing services to the Client and agrees to reimburse the Expert Witness for all reasonable out-of-pocket expenses. Out-of-pocket expenses include, but are not limited to, travel and lodging expenses, photocopying, postage, books, journals, computer research, or additional research data.

D. Billing, Payment of Fees, and Report Updates

- I. The Client agrees that all invoices are immediately due and payable upon submission by Expert Witness. The Client and Expert Witness agree that the billing and payment of Fees, Charges, and Expenses to the Client in this Matter shall be as follows: All fees, charges and expenses shall be due within thirty (30) days of billing. The final amount of fees, charges and expenses will first be billed against the retainer. Any outstanding fees, charges and expenses are to be paid prior to any testimony. The Expert Witness reserves the right to stop all work on the case if the account is not kept current. Furthermore, all attorney's fees and costs incurred by Expert Witness, necessitated by Client's failure to timely pay fees and costs, will be the responsibility of the Client. Any late invoice amount unpaid by the Client shall act as a

lien against the Client's property and any court or arbitration award of the cause, lawsuit, or action for which Expert Witness has provided services. Past due balances are subject to a Two Percent (2%) monthly interest charge and a Twenty-Five Dollar (\$25.00) monthly service charge.

- II. Under no circumstances is our firm name or the name of any of our testifying expert associates to be used or listed for any litigation purposes without prior notification and written approval by Bernard F. Pettingill, Jr., Ph.D.
- III. We base our analyses on available data, research and professional expertise, experience and judgment. Since economic, market and business cycle conditions change, data can prove incomplete or outdated. The Client agrees that we reserve the right to update our reports when needed as appropriate to the variables. The updates to our report will be billed at our hourly rate of Four Hundred and Fifty Dollars (\$450.00) per hour.
- IV. This contract limits our liability under all circumstances to the total amount of professional fees in any engagement.
- V. The attorney agrees to notify the Expert Witness in advance of a Frye/Daubert Hearing to exclude expert report or testimony, to discuss the issues with Bernard F. Pettingill, Jr., Ph.D., and to have the Expert Witness appear at the hearing if possible. The Expert Witness retains the right to defend all work in any Frye/Daubert Hearing or similar motions to exclude the economic report and/or testimony relating to this matter, and to bill the Client for the Expert Witness' time at Four Hundred and Fifty Dollars (\$450.00) per hour.
- VI. Bernard F. Pettingill, Jr., Ph.D. is under no obligation to store or retain documents related to this case once their involvement is concluded. Please notify us when the case is closed or otherwise settled, and we will end a copy of our case file to you for a fee of Seventy-Five Dollars (\$75.00) if requested or, alternatively, destroy the file. There will be a minimal storage fee of Seventy-Five Dollars (\$75.00) per year for documents, beginning one (1) year after the date of settlement. Otherwise, all documents will be shredded.
- VII. This is the entire Agreement between the Client and the Expert Witness regarding this matter and the fees, charges and expenses to be paid. This Agreement shall not be modified except by written consent signed by both the Client and the Expert Witness. This Agreement shall be binding upon the Client and the Expert Witness and their respective heirs, executors, legal representatives, and successors.
- VIII. Should Client become insolvent, disbarred, fail to timely pay invoices, or otherwise removed from the legal matter associated with this Agreement, Client herein authorizes Bernard F. Pettingill, Jr., Ph.D. to assert a claim against recovery damages or any insurance carried by Client.

E. General Terms

- I. Force Majeure. The performance of this Agreement is subject to any circumstance making it illegal or impossible to provide the requested services, to include Acts of God, war, government regulation, disasters, strikes, civil disorder or curtailment of transportation.
- II. No Assignment. This Agreement may not be assigned or transferred without the written consent of the Expert Witness.
- III. Governing Law. This Agreement shall be governed by the laws of Florida, with the forum mutually agreed upon as Palm Beach County, Florida.
- IV. In the event of any litigation arising from breach of this Agreement, or the services provided under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred, including staff time, court costs, attorneys' fees, and all other related expenses incurred in such litigation.
- V. Should the Client be replaced by a successor attorney or law firm, Expert Witness is under no obligation to continue working on the case.
- VI. Expert Witness may terminate this Agreement and withdraw from the case should Client breach any ethical rules or law that regulate the conduct of attorneys, or if the Client is unable to properly prepare the Expert Witness.
- VII. The undersigned, on behalf of the Client, represents and warrants that it has the authority to bind the firm, and the firm's client, for all matters addressed herein.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year written above.


Bernard F. Pettingill, Jr., Ph.D.

Client

- Please return the signed retainer agreement via email to biffpett@gmail.com or by mail.
- Please pay the retainer fee via our website www.bpettingill.com by check or PayPal.