



## **Terms for Engagement of Services**

Thank you for choosing Foster Pepper PLLC. Our Engagement Letter and these “Terms” constitute our agreement with you for performing the engagement described in that letter. We pride ourselves on responsive and vigorous representation and strive to develop excellent working relationships with our clients. Therefore, we wish to share with you the terms of our engagement as your lawyers and tell you about our firm. Our web page ([www.foster.com](http://www.foster.com)) contains additional information about the firm and its capabilities. If you have questions or concerns, please contact us immediately.

### **Scope of Work**

Our policy—and the foundation of a sound client-attorney relationship—is to ensure that we understand your legal needs and that you understand the nature of the services we will provide. Communication between us is critical. We regularly will keep you informed of our activities on your behalf and will act in your interest at all times to the best of our abilities, subject to our knowledge of the facts and the state of the law during the representation.

Generally, one lawyer will be responsible for and will oversee your representation. Other lawyers and legal assistants may work on your behalf—especially when special skill or expertise is required or when delegation is more expeditious and cost-effective, or for other appropriate reasons. Your responsible lawyer will be your point of contact for all aspects of your representation. If at any time you are unhappy with any person working on your behalf, please tell your responsible lawyer or the Chair of the firm’s Executive Committee. The situation will be addressed immediately.

We need your help to represent you to the best of our abilities. We rely on you to be candid with and responsive to us, as we will be with you. Please inform us immediately of any change of circumstance affecting the representation or our ability to contact you. We both must respond promptly and completely to inquiries and requests to enable us to represent you effectively. While we cannot assure a successful result in any engagement, we pledge to use our best efforts on your behalf.

You may terminate our representation of you at any time and for any reason. In addition, we may choose to withdraw from the representation, but only in accordance with the applicable Rules of Professional Conduct in effect in the jurisdiction where our relationship exists. If we choose to withdraw as your lawyers, we will notify you in writing. At termination or withdrawal, you will remain obligated to pay us promptly for all charges for legal services rendered as well as charges resulting from the termination or withdrawal, including working with any successor counsel. We will cooperate with successor counsel to assure a smooth transfer of the representation.

### **Conflicts of Interest**

Because our representation of you is limited in scope and because we have a large number of clients, we wish to clarify the extent to which our representation of you may affect our ability to represent other clients in other matters, including matters in which you may be involved. We employ internal procedures to ensure that our representation of other clients will not cause a conflict of interest with you. Your identity as our client is the person or entity named as the client in our Engagement Letter and does not include any of your affiliates, officers, directors, principals or other related parties unless so specified. Accordingly, we may represent another client with interests adverse to any such affiliate without obtaining your consent, and we respectfully decline to be bound by any contrary policy. If we discover any actual or potential conflict of interest affecting our representation of you, we will notify you promptly.

Depending upon our relationship, at the conclusion of the engagement described in the Engagement Letter, you will no longer be considered a current client of the firm. As a former client, you may expect that we will not represent another person in the same or a substantially related matter if that client’s interests are adverse to your interests unless you have consented in writing to the representation after consultation and full disclosure of material facts. You may also expect that we will preserve appropriately the confidentiality of your information and secrets. Without your prior written consent, we will not represent a client adverse to you in a different matter if we have obtained confidences or secrets from you that are material to that matter.

## **Records Retention**

We maintain policies regarding retention and destruction of records. Records include our files and related electronic documentation, including e-mails. Records (including materials provided by you to us and all electronic documentation) relating to this engagement will be destroyed according to our policies unless you request that they be returned to you. Our own files pertaining to the matter will be retained in accordance with the policies. Our own files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, credit and accounting records, internal lawyers' work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers. We retain client files for ten years after a matter is closed. We will endeavor to remind you of this policy on completion of the engagement, but we reserve the right to destroy records in accordance with our policy without further notice to you.

## **Fees for Services**

We generally charge on an hourly basis for time expended on your behalf. This includes, for example, telephone conversations, face-to-face conferences, strategy development and planning, document preparation and review, research, drafting, negotiating, court appearances and travel. Through hourly billing, you pay only for work performed on your behalf. We maintain daily time records that include a brief description of the work done so that you will understand why you are being billed. We record our time in units of tenths of an hour.

Upon request, we will work with you to produce an estimate of the anticipated legal fees and costs for a particular engagement. Any such estimate will be based on our prior experience with similar engagements as well as information you provide us about your particular needs. Unless we reach a clear, written understanding that the fee will be a fixed amount, any estimate we make may be revised based upon the facts and circumstances we encounter during your representation.

Our rates (which are subject to change prospectively with notice) should always be discussed in advance with your responsible attorney. Generally, rates are revised annually and adjustments will be reflected in our invoices in the month following any adjustment. On occasion, and after discussion with you, we may perform services on a non-hourly basis. Our agreement with you to do so will be in writing. We strive to keep fees and charges at a level appropriate to the task.

## **Expenses**

In addition to fees for legal services, you will be charged for expenses advanced on your behalf and ancillary costs incurred by us during the course of your representation. Such charges may be revised from time to time without notice and will be reflected in our invoice in the month following any revision. These charges include such things as photocopying, document binding, external messenger service, electronic records searches, special mailing or courier services, and costs associated with managing electronically stored information [e.g., scanning, image processing, data collection, database services, web hosting, document summaries, etc.]. We may add an administrative charge to some or all of these costs. The firm's Automated Legal Support Services team may perform some of the services associated with managing electronically stored information. Charges for these services are part of the costs you agree to pay in connection with our representation of you. You will not be billed for long distance telephone charges, facsimile transmissions or standard postage charges. Please note that should your work require secretarial overtime (not caused by a secretary working for another client during the regular work day), you will be charged for such service.

You may be asked to pay certain non-routine expenses directly to the service provider. These may include travel expenses, filing fees, and fees and expenses of independent professionals such as appraisers, accountants, investigators, court reporters, and other consultants and experts. Often, these expenses must be paid in advance. Normally, we will send the charge directly to you for payment or obtain in advance funds from you to pay such costs. While we are under no obligation to do so, we may advance payment of such expenses and subsequently bill you for the charges.

## **Billing Policy**

Usually, you will be billed monthly. For your convenience, the billing statement will describe briefly the matter and legal services performed and will set forth the fees and expenses relating to the legal services provided. The bill typically will contain charges incurred during the prior month. Charges for some expense items such as copy and delivery charges may not be processed and billed until some time after the expense has been incurred. Bills are due upon receipt, and may be paid by check, wire transfer, Visa, MasterCard or American Express. Any past due amounts will bear interest at twelve

percent per year. We strive to provide clear and prompt billing statements. If you have any questions regarding your invoice, please promptly call your responsible attorney or our accounting department.

### **Advance Fee and Trust Deposits**

If required by your Engagement Letter, you must pay in advance an amount equal to our estimate of the fees and costs for some or all of the work contemplated by the scope of the engagement. Any amount remaining at the conclusion of the engagement will be returned to you. If, after commencing work, it appears the advance payment will be insufficient to cover legal fees and costs, you may be asked to advance additional amounts.

If required by your Engagement Letter, you must pay a retainer to secure our availability for a given period of time, which is considered earned by us when paid.

Amounts you pay to us in trust, including advance payments for fees and costs, will be deposited in a trust account that we maintain for the benefit of our clients as required by the Rules of Professional Conduct. Under these rules, if your deposit is not expected to earn a "positive net return" given its size, the expected duration of the deposit and prevailing interest rates (less reasonable bank and administrative charges), we will place the deposit into a pooled account. The interest earned on this account must be paid to a charitable foundation established by court rule. If your deposit likely will earn a "positive net return", you may request that it be placed into a segregated account and interest earned on that account will be added to your deposit and will be reported by our bank to the Internal Revenue Service as taxable income to you. If you wish us to place such funds into a segregated account for your benefit, you must provide us with your Federal Tax Identification Number.

### **Attorney-Client Privilege**

Our attorneys and staff recognize our duty to maintain confidentiality. The attorney-client privilege protects communications between us, whether oral or written, as long as neither of us discloses those communications to anyone else. Privileged communications cannot be used in court without your consent. Therefore, to preserve the privilege and confidentiality of our communications, you should not show our written communications or discuss any oral communications between us with anyone. Furthermore, certain communications and documents prepared in anticipation of litigation are also privileged even if no attorney is involved. Because disputes can arise as to whether certain communications are privileged, if you have any questions regarding what you can do, be sure to seek advice from the lawyer with whom you are working.

*We are not acting as your counsel with respect to the provisions of this statement of Terms for Engagement of Services and to do so would be a conflict of interest. If you wish to seek advice from independent counsel of your choice about whether you should agree to these terms, please do so. In addition, if you have any questions or would like additional information, we are happy to discuss this statement with you further. These terms of engagement will govern our relationship, however, unless we reach a different agreement in writing.*

We understand that you have selected us not only for our expertise, but also for our reputation as responsive and creative counsel. Be assured that we will strive to live up to your expectations. If you have any questions, please do not hesitate to call.

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