



KEYS TO CUSTOMER FEE ARRANGEMENTS

- *Upfront assessment (within 60 days)*
- *Understand customer's business goals*
- *Align Summit and customer's interests*
- *Clear, written fee arrangement, including assumptions*

Following are some fee arrangements used by Summit and its customers:

1. Detailed Excel-Based Budgeting Tool

Summit generates a budget via spreadsheet (using ABA Task Codes) to estimate the cost of litigation; once budget is reviewed and adjusted with our customer, **Summit commits not to bill any exceeded budgeted costs without prior consent from customer.**

2. Detailed Excel-Based Budgeting Tool and Decision Tree

Summit generates a detailed decision tree that sets forth what decisions will be made by the judge/arbitrator and jury, and how those decisions relate. Used in conjunction with a budget, the business decision-maker can decide whether it makes sense for the company to invest the budget amount given the probabilities and likely outcomes in the case.

3. Fixed Fee

Summit provides services based on an agreed-upon fixed fee. This works best for repetitive matters where the firm and the customer have sufficient experience to price accurately. The risk that Summit or customer will end up on the short end is reduced because this risk should balance out over multiple matters.

4. Fixed Fee with Bonus for Success

Same as fixed fee with a success bonus. The bonus should be tied to customer's interest, such as a bonus fee for resolving a matter before a certain date. The bonus can also be used to ensure that the customer and Summit share in any "windfall" though a 50/50 bonus (*i.e.*, the fixed fee for the matter is \$150,000 and the law firm successfully completes the matter for \$100,000 in time value at normal hourly rates; the law firm receives \$125,000 and the customer saves \$25,000).

5. Commission-Based Fee

Summit provides services in which it is only compensated if the customer successfully secures a contract. Summit is then compensated similar to a commission or contingency fee, that is a percentage of the value of the contract(s) for which it provided services to the customer.

6. Fee Paid in Stock

Summit has accepted stock as part of its fee arrangement with a customer. Most of the time payment in the form of stock is combined with some other form of payment, such as an incentive bonus or reduced hourly rate.

7. Monthly or Annual Fixed Fee Retainer

This works best for customers that require "preventative" legal advice on a consistent basis. The retainer amount is established by determining the amount of advice a customer is likely to need on an annual basis, and by pricing Summit's time at a discount. The customer can consult Summit as frequently as needed to obtain advice on how to handle employee (or other) issues to help manage risk. There are also customers who use annual fixed fee retainers for large blocks of outside legal work, such that the retainer amount might cover all of the customer's litigation for the year and be in the millions of dollars for a large corporation. These arrangements are most likely to work best for the customer and Summit when both have a basis in experience to fairly price the retainer.

8. FMC ACES Product

Under this approach, Summit and the customer develop a budget for each phase of a matter. Summit bills the customer at its normal hourly rates, but until the budget target for a phase is reached, the customer pays a percentage (normally 75% to 80%) of the billed fees. The unpaid fees are placed in a success "bucket." If Summit exceeds the

approved budget for a phase, the percentage paid Summit reverses. For example, if Summit is paid 80% of fees up to the approved budget amount, after the target budget is exceeded, Summit is paid 20% and the balance of the fees for that phase (80% of the billed fees) are placed in the success bucket. If success is achieved in the matter (which the firm and customer have previously defined), a bonus is paid. The bonus consists of the amount in the success bucket plus a multiplier. The amount of the multiplier depends upon the point in time when success is achieved and normally is: 100% (if success is achieved at an early stage before substantial expenses are incurred); or 50% (at dispositive motions phase or settlement by mediation); or 25% (at trial or on appeal). A second level bonus is paid by adding one percent (1%) to the bucket multiplier for each 1% that the total fees billed in the matter are less than the total case target budget. In other words, if the law firm has expended only 40% of the total matter target, there would be an additional 60 percentage points added to the applicable bonus multiplier.

9. Straight Contingent Fee

Summit receives a percentage of the settlement or judgment amount, typically 25% to 40%. The percentage is agreed upon by the law firm and customer depending on risk, whether the customer will pay out-of-pocket costs, and other factors. Typically, straight contingent fees have been used in personal injury cases. More recently, corporate law departments and law firms have begun to embrace contingent fee arrangements in business/commercial cases. For example, Summit has used straight contingent fee arrangements in antitrust cases brought by corporate plaintiffs, and has received multi-million dollar contingent fees in exchange for the risks taken.

10. Reduced Hourly Rate + Contingent Fee

Summit bills monthly on a reduced hourly rate basis (typically 66% to 80% of normal hourly rates). If the law firm is successful, as defined by agreement of the law firm and the customer, the law firm receives a low percentage bonus (typically 1% to 5%) fee based on the amount of the settlement or judgment. For example, Summit has handled cases for both corporate plaintiffs and defendants priced at a percentage (66% to 80%) of normal hourly rates with or without a monthly cap on fees. The unpaid percentage of fees incurred at normal hourly rates and any fees over the monthly cap amount (if a cap is established) are placed in a “bonus bucket.” If the settlement or judgment amount exceeds an agreed upon amount, the law firm receives all the fees in the bonus bucket, plus 1% to 5% of the settlement or judgment amount on a sliding scale, e.g., 5% of the first X million dollars, 3% of the next XX million dollars, and 1% of any amount over XXX million dollars.

11. Reduced Hourly Rate with Bonus

Summit bills monthly on a reduced hourly rate basis (typically 66% to 80% of normal hourly rates). If the law firm is successful, as defined by agreement of the law firm and customer, the law firm receives a bonus based on the amount of fees incurred at normal hourly rates. For example, the customer might pay 80% of normal hourly rates. The

20% of fees that are not paid monthly are placed in the “bonus bucket.” If the law firm is successful, the law department would pay the full amount in the bonus bucket, plus an additional percentage of the amount in the bonus bucket (typically 25% to 100% depending on the risk in the case, the bonus budget amount and other factors agreed in advance by the law firm and the customer).

12. Reduced Hourly Rate with Discretionary Bonus

Summit bills monthly on a reduced hourly rate basis up to a monthly fee cap set in advance by agreement of the law firm and its customer. If the law firm is successful, as defined by agreement of the law firm and the customer, the law firm receives a bonus fee that is discretionary with the customer. This type of pricing arrangement requires a very high degree of trust between the law firm and the customer – usually built by years of working together. However, Summit has used this arrangement to earn bonuses in the tens and hundreds of thousands of dollars.

13. Reduced Hourly Rate + Cap on Hourly Fees + Plus Percentage of Recovery

A hybrid of some of the other fee arrangements described above.

14. Hourly Rate Fee Plus Value Adjustment Line

It is not possible in every matter for the customer and Summit to create an alternative pricing arrangement that both have a high degree of confidence will serve their respective business goals. In those situations, it is necessary and appropriate to use traditional hourly rate pricing. That does not mean, however, that a value-based component cannot be part of the pricing arrangement. For all matters billed on an hourly rate basis, Summit proposes a fee each month based on the time incurred. The customer is asked to pay the proposed monthly fee or adjust that fee – up or down – for the value as perceived by the law department.

Summit’s billing statement:

Proposed Fee:	\$10,000
Value Adjustment	\$_____
Amount Due	\$_____

Summit’s customers are excellent judges of the value of legal services since they buy legal services from multiple law firms throughout the United States. Summit encourages its customers to adjust its proposed fee – up or down – to match the value the law department believes it has received. Whatever amount the customer places in the “Amount Due” blank is the amount the owed. No questions asked. Summit is willing to be judged and compensated on the basis of results, not time expended. A corollary benefit of Summit’s value adjustment line is that it actually improves the value of legal services provided to the firm’s customers. Summit’s

lawyers and staff know that customers can pay whatever they believe Summit's services are worth. No lawyer or staff member wants to be embarrassed by having a customer significantly reduce the proposed fee. The result is that Summit's lawyers and staff take more care to work with customers at the beginning of the engagement to define the scope and cost of the legal product to be provided. And they take more care to ensure that the cost of Summit's legal services match the customer's expectations and business objectives. Summit's experience with value-adjusted fees has been terrific. Our customers have adjusted our fees downward, thereby giving us "early warning" that we have not achieved the customer satisfaction that is essential to our success. We have notice and time to fix the problem, and save the customer relationship. On the other side, Summit's customers have voluntarily paid tens and even hundreds of thousands of dollars more than the proposed fee in matters where the value of Summit's legal services substantially exceeded the fee proposed. Other customers have asked Summit to raise its hourly rates in order to better reflect value.