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# TOM KIRKENDALL, LAWYER

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January 1, 2016

*Privileged attorney-client communication  
and confidential attorney work product*

*Via electronic transmission*

Ms. Perry Bright  
Chief Executive Officer  
Bright Technology, Inc.  
One Main Street  
Houston, TX 77002

Re: Engagement letter in regard to professional services to be provided to Bright Technology, Inc. In regard to Dark Technology, Inc. v. Bright Technology, Inc., civil action 16-17181 in the United States District Court for the Southern District of Texas, Houston Division

Dear Ms. Bright:

Thank you for retaining me on behalf of Bright Technology, Inc. (“Bright”) in connection with the above-captioned matter.

This letter sets forth our agreement regarding my engagement. After you have reviewed the letter, if the proposed terms are acceptable to Bright, then please sign the agreement in the space provided at the end of the letter and return a copy of the signed letter to me. Signing and delivering a copy of the signed agreement to me will confirm our agreement.

You have requested that I advise and represent Bright in connection with the above-captioned lawsuit. My primary goal is to assist Bright in effectively defending the above-captioned case in the most efficient manner under the circumstances of the case.

Although I will try hard to achieve a satisfactory resolution of this matter, this confirms that Bright understands that uncertainty of outcome is one of the inherent risks of this type of

matter. I will attempt to help reduce that risk through my professional services, but I cannot predict at this time whether my efforts will be successful in completely hedging that risk.

In view of the inherent uncertainty of this type of matter, I recommend that you and I reevaluate the status of this matter on a regular and frequent basis. I am candid and realistic with my clients regarding their goals and I understand the high cost of my professional services. I want to help Bright defend against these claims in the most efficient manner possible under the circumstances.

My professional fees are based on the actual time that I spend in working on the case. I am a sole practitioner and I combine extensive experience in business law with technology to provide high-quality and personalized legal services for my clients.

Based on over 35 years of experience – including 20 years in which I managed a downtown Houston business litigation firm earlier in my career – my legal and technical expertise allows me to compete effectively and efficiently against large law firms in matters such as these.

My hourly billing rate is \$400 and I will perform all of the professional services in this matter. My policy is not to raise my hourly billing rate during the course of representing a client in a particular matter.

In the event that it becomes necessary to incur material third party fees and expenses (*e.g.*, experts, investigators, consultants, etc.), I will incur such fees and expenses on Bright's behalf only after you have authorized any such expense. If my representation requires me to travel by air, then this confirms that I will travel by business class so as to facilitate my work on these matters during flight.

I will deliver to you a monthly statement on or near the first day of each month that sets forth the professional services rendered and expenses incurred (if any) on Bright's behalf during the previous month. The monthly statements will contain a daily recitation of my services, the amount of time necessary to provide those services, and a listing of any expenses incurred. If you have any questions about anything related to any of my statements, then please call or email me immediately.

As a condition to your retention of my professional services, I require a \$15,000.00 retainer deposit. I will apply the proceeds of the retainer deposit on a monthly basis to satisfy the charges for my professional services provided and any third party expenses incurred on Bright's behalf. If I believe that developments in these matters will increase the level of my services necessary to represent you effectively, then this confirms that you and I will discuss whether a replenishment of the retainer for my services is appropriate under the circumstances.

Based on my experience in defending matters of this type, I presently estimate that the cost of my services in these matters will be greater than the \$15,000.00 retainer deposit. If that estimate turns out to be accurate, then Bright agrees to pay the charges for my professional services after the retainer deposit is exhausted within 25 days following your receipt of my monthly statement. Prompt payment of my statements is important because my law practice is not structured in a way that allows me to finance my clients' legal fees and related expenses.

Although I recognize that my professional services are expensive, my billing rate is considerably less than those charged by many law firms in Houston for the services of attorneys with comparable or less experience and expertise than I provide. One of the main reasons that I am able to charge my clients less for my professional services relative to the market for such legal services is that my clients promptly pay their statements for my professional services.

Inasmuch as it is not fair to my clients who pay their statements promptly if I render services for a client who does not, I reserve the right to terminate this engagement if any of my statements for my professional services are not paid in a timely manner. Likewise, I reserve the right to withdraw from this engagement if a fact or circumstance would, in my view, render my continuing involvement in this matter unlawful, unethical or ineffective. This confirms that any such termination does not affect Bright's obligation to pay for any services rendered and expenses incurred as of the time of termination.

Similarly, Bright may terminate my involvement in this matter at any time, subject only to any court approval that may be necessary if I have appeared on Bright's behalf in such court. You acknowledge that any such termination of my engagement does not affect Bright's obligation to pay for any services rendered and expenses incurred as of the date of termination or, if court approval is required, the date upon which the court approval is obtained.

I will maintain all relevant documents relating to this matter in my computerized client files. At the conclusion of this matter (or earlier if appropriate), I will ask Bright to advise me as to which digital documents, if any, should be delivered to Bright. I retain digital documents in my files only to the extent that I deem it advisable for my purposes, but then I ultimately destroy the remainder. However, I will not destroy any documents or files for a reasonable period of time after conclusion of these matters, and I will not destroy them until I have notified Bright of my intent to do so and given Bright a reasonable opportunity to retrieve any such documents or files.

For the convenience of my clients, I provide the option of using internet email to communicate with me during the course of my representation. This confirms that you understand that ordinary internet email is insecure. Stated simply, that means that information communicated through normal internet email can be viewed by third parties subject to any privilege or right of confidentiality that may apply.

This confirms that you authorize me to use normal internet email to communicate confidential and privileged matters with you and other members of Bright legal team during my representation. If at any time you prefer that we engage in a more secure form of electronic communication than ordinary internet email, then please advise me and I will immediately make arrangements to provide a platform for doing so.

This confirms that you understand that I maintain a weblog entitled [Houston's Clear Thinkers](#) in which I have written extensively for over 13 years about business, legal matters and other matters of interest to Houston's business and legal community.

This confirms that my policy is not to write on my weblog about matters in which I am involved professionally and I never do so unless authorized to do so by my client. This also confirms that, without your prior written approval, I will not write about anything on my weblog having to do with either Bright or any of the other persons or entities involved in these matters during the course of this engagement.

The following is a notice that I support that the State Bar of Texas requires attorneys to advise all clients:

**NOTICE TO CLIENTS: THE STATE BAR OF TEXAS INVESTIGATES AND PROSECUTES PROFESSIONAL MISCONDUCT COMMITTED BY TEXAS ATTORNEYS. ALTHOUGH NOT EVERY COMPLAINT AGAINST OR DISPUTE WITH A LAWYER INVOLVES PROFESSIONAL MISCONDUCT, THE STATE BAR'S OFFICE OF GENERAL COUNSEL WILL PROVIDE YOU WITH INFORMATION ABOUT HOW TO FILE A COMPLAINT. PLEASE CALL 1-800-932-1900 TOLL-FREE FOR MORE INFORMATION.**

If a dispute arises under this agreement or in connection with any professional services or expenses incurred in connection with this agreement, then this confirms the following:

- We will first attempt to resolve that dispute through good faith negotiation; and
- If that fails, then the dispute will be referred to mediation before a mediator who is mutually acceptable to Bright and me.

If the agreement set forth in this letter is satisfactory to Bright, then please sign in the space below and return a copy of the signed letter to me via email or fax. If any part of the foregoing is unclear or unacceptable to you, then please call me immediately so that we can resolve the issue in a prompt manner.

**Letter to Ms. Bright**  
**January 1, 2016**

*Privileged Client Communication and Attorney Work Product*

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I appreciate the opportunity to advise and represent Bright in this matter and look forward to working with you to resolve these matters in as satisfactory a manner as possible under the circumstances.

Very truly yours,

Tom Kirkendall

**APPROVED:**

**BRIGHT TECHNOLOGY, INC.**

By: \_\_\_\_\_  
Perry Bright, Chief Executive Officer