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**OF COUNSEL & CONFIDENTIALITY AGREEMENT**

**Exclusive Relationship**

This Of Counsel & Confidentiality Agreement (the “Of Counsel Agreement”) is entered effective as of the \_\_\_ day of \_\_\_\_\_\_\_\_, 201\_\_, by and between LAW FIRM (the “Firm”), and ATTORNEY (the “Attorney”). The term “Parties” shall refer to both the Firm and Attorney.

**SECTION ONE—PURPOSE**

1. The Firm and Attorney agree to form a regular, on-going association whereby Attorney will associate with the firm and provide legal services to clients of the Firm and shall receive compensation through the Firm for providing these services.

2. In addition, Attorney is expected and agrees to assist the Firm with firm marketing and client development-related activities upon request by the Firm.

**SECTION TWO—EXCLUSIVITY AND CONCURRENT PRACTICE**

3. Attorney agrees that, during the duration of this Of Counsel Agreement, Attorney will only provide legal services through the Firm and in accordance with the terms of this Of Counsel Agreement. Unless the Firm expressly agrees in writing, Attorney will not provide legal services separate from the Firm during the duration of this Of Counsel Agreement.

4. Attorney shall not maintain a separate law firm or provide legal services concurrent with the duration of this Of Counsel Agreement, unless Attorney obtains approval from the Firm as set forth above.

**SECTION THREE—ATTORNEY’S TITLE**

5. The Firm is permitted to list Attorney’s name and to indicate that Attorney is an “attorney” at or “Of Counsel” with the Firm, as it deems fit, on letterheads, brochures, electronic and hard-copy professional listings (such as Martindale-Hubbell), and other promotional materials. The Firm may also use titles such as “associate” when communicating with clients regarding billing rates and the like, although the firm does not expect to ordinarily use that terminology. Attorney is permitted to indicate that Attorney is an “attorney” at or “Of Counsel” with the Firm. Attorney shall avoid communications that may misstate or mislead a potential client as to Attorney’s relationship with the Firm or to suggest the Firm is involved or should be responsible for legal services that the Firm is providing not in association with the Firm.

**SECTION FOUR—NATURE OF RELATIONSHIP**

6. Attorney will be an employee of the Firm.

**SECTION FIVE—COORDINATION ON CASES**

7. At the request of the Firm, unless Attorney objects, the Firm and Attorney shall cooperate on the representation of clients of the Firm (“Firm clients”). Attorney shall do so as an attorney with the Firm and shall be entitled to and receive compensation for work on Firm clients’ matters only as expressly provided in this Of Counsel Agreement.

8. When working on cases where Attorney is serving Firm clients, the Firm will provide Attorney with access to the Firm’s office services in a manner consistent with a part-time lawyer otherwise associated with the Firm. This includes use of the Firm’s computer system (at least as to matters on which Attorney is working), printing facilities, conference space, telephone, Internet, facsimile and photocopying. The Firm will also provide basic secretarial and paralegal assistance consistent with what other firm attorneys receive for cases where the Firm and Attorney are working together, including forwarding relevant case documents, email and mail; answering phone calls and communicating with Attorney regarding the same; discovery support; service of process support; court filing support; and general litigation and trial support.

**SECTION SIX—COMPENSATION**

9. The Firm shall pay Attorney a minimum of $\_\_\_\_ gross pay per hour (less appropriate payroll deductions withheld as determined by the Firm) for all work that Attorney provides at the request of the Firm, including on Firm clients’ matters and Firm business. Payments of these wages are ordinarily made twice per month, normally near the beginning and middle of the month. Attorney may also receive bonus payments at the sole discretion of the Firm. The payment of such bonuses shall not alter the minimum compensation Attorney is entitled to receive. In addition, Attorney may also receive payments as stated in sections 10 through 13 of this Of Counsel Agreement. Attorney shall have no right to compensation beyond what is provided in sections 9 through 13 of this Of Counsel Agreement, unless the Firm and Attorney agree in writing to such additional compensation.

10. In addition to the hourly compensation provided in section 9, where Attorney helps originate a (non-contingency-fee) client or client matter of the type handled by the Firm, the Firm shall pay Attorney an amount equal to one-third of any hourly or fixed (*i.e.,* non-contingent) fees actually paid by (and not refunded to) that client pays on that client matter during the term of this Of Counsel Agreement and while Attorney is employed by the Firm. Payments to Attorney based upon time billed (as stated in section 9) and for origination of business (as provided in this section) on that matter shall be capped at two-thirds of the amounts actually paid to the Firm by that client on that client matter, so that the Firm shall receive at least one-third of the amounts paid to the Firm by that client on that client matter. If Attorney receives partial credit for originating a matter, the portion of paid fees that Attorney receives shall be reduced *pro rata.* Thus, if Attorney receives one-half credit for origination of a non-contingent matter, Attorney would be entitled to receive one half of the amount otherwise due Attorney under this section 10 of this Of Counsel Agreement. Attorney and the Firm shall also make reasonable efforts to reach agreement regarding the resolution of any dispute where a (non-contingency-fee) client originated by Attorney contests the amount owed or seeks to pay a reduced amount and how such reductions may affect payments to Attorney and the Firm.

11. In addition to the hourly compensation provided in section 9, where Attorney helps originate a contingency-fee client or client matter of the type handled by the Firm, the Firm shall also pay Attorney one-third of any amount in excess of payments Attorney received for working on the matter (as provided under section 9) that the Firm receives during the term of this Of Counsel Agreement as attorney fees on that contingency-fee matter. Such payments shall be made to Attorney within ten business days of the Firm receiving its portion of the attorney fees on that matter and disbursing those funds to the Firm’s operating account. Attorney understands that these payments shall be made only from amounts received by the Firm as attorney fees: amounts held in trust pending final resolution of a matter, or paid to the Firm as reimbursement for costs and expenses, or amounts owed to non-Firm third-parties (for example to co-counsel or referring counsel) shall not be included as fees paid to the Firm in determining payments to Attorney under this section. As an example and to illustrate this section, suppose Attorney originates a contingency fee matter for the Firm. Attorney works on the matter for four hours and receives $\_\_\_ as payment for those hours. The Firm then receives $\_\_\_\_\_ in attorney fees on the matter. Attorney shall be entitled to an additional $\_\_\_\_ payment, or one-third of the amount the attorney fees received exceed the amount already paid to Attorney on that matter, as long as Attorney is still Of Counsel to the Firm when the fee payment is received. If Attorney receives partial credit for originating a matter, the portion of paid fees that Attorney receives shall be reduced *pro rata.* Thus, if Attorney receives one-half credit for origination of a contingent matter, Attorney would be entitled to receive one half of the amount otherwise due Attorney under this section 11 of this Of Counsel Agreement.

12. All rights to receive origination payments under sections 10 and 11 terminate upon termination of this Of Counsel Agreement. Attorney shall only be entitled to receive payments under sections 10 and 11 for moneys actually received by the Firm during the period when both (a) Attorney is employed by the Firm and (b) this Of Counsel Agreement is in effect.

13. In addition to payments the Attorney may receive under sections 9 through 12 of this Of Counsel Agreement, the Firm will pay Attorney $\_\_\_\_ per hour for time spent on Firm-related activities that the Firm requests or approves Attorney to perform. Activities covered by this section are expected to include training, professional development, administrative, marketing, and business-development activities.

**SECTION SEVEN—REIMBURSEMENT FOR EXPENSES**

14. The Firm will pay for or reimburse Attorney for expenses incurred on behalf of Firm or Firm clients. Where the expense is expected to exceed $200.00, Attorney should try to provide advance notice and receive approval from the Firm for those expenses.

15. Should Attorney incur any out-of-pocket expenses for other Firm activities such as expenses for client entertainment or meals, the Firm will reimburse Attorney for those expenditures.

16. Should the Firm incur expenses because of legal services that Attorney provides for clients through the practice of law outside of the Firm (whether or not done so consistent with sections 3 and 4), Attorney shall compensate the Firm for those expenses.

**SECTION EIGHT—HEALTH INSURANCE**

17. Currently the Firm does not offer health insurance. If the Firm does offer health insurance during Attorney’s employment, the Firm shall take such steps as may be necessary so that Attorney may participate in the Firm’s health insurance coverage on a basis equal to other Firm employees, if any. Attorney will thus have the opportunity to purchase from the Firm’s health insurance provider such coverage as the carrier offers at group rates, at Attorney’s own expense. If the Firm rather than Attorney is billed by the insurance provider, then the Firm will bill Attorney for the amount that is reimbursable to the Firm. Attorney shall not be entitled to any compensation should Attorney elect not to obtain health insurance coverage. Attorney will not be required to participate in the Firm’s health insurance and may obtain health insurance coverage outside the Firm.

**SECTION NINE—OTHER BENEFITS**

18. Attorney shall not be entitled to any other benefits for Attorney’s association with the Firm, except benefits that Firm may be required to provide by law. The Firm may in its sole discretion provide other benefits to Attorney, but the Firm’s giving of such benefits and the Attorney’s receipt of such benefits do not create any right or entitlement to such benefits, absent a writing bestowing to the Associate a right to such benefits.

19. Unless the Firm’s management otherwise agrees in writing, Attorney shall be responsible for maintaining and shall maintain a law license in good standing in all jurisdictions in which Attorney is licensed to practice at the time this Of Counsel Agreement is entered.

**SECTION TEN—FIDUCIARY DUTIES**

20. The Firm and Attorney agree that they owe fiduciary duties of care and loyalty to one another with respect to (a) cases where the Attorney is working on matters relating to the representation of Firm clients; (b) the development of clients to receive legal services; and (c) operation of the Firm as a business.

21. The Firm and Attorney shall not owe fiduciary duties to each other with regard to matters outside the scope of this Of Counsel Agreement.

**SECTION ELEVEN—INTELLECTUAL PROPERTY**

22. Attorney has prepared and in the future may prepare “Intellectual Property” including but not limited to computer programs, articles for electronic or other publication and materials (including Power Point files) for presentations, as part of Attorney’s work at the Firm. Attorney agrees that, if the Firm has paid or does pay Attorney for work on any Intellectual Property, the Intellectual Property shall be deemed the work of the Firm or the Firm’s principal, such that (a) the Firm and/or the Firm’s principal – as the Firm decides – shall be deemed the inventor, legal author, or creator of that Intellectual Property, or (b) Attorney shall be deemed to have transferred and assigned all rights, powers, and interests in that Intellectual Property to the Firm (or the Firms’ principal, if the Firm directs), whichever confers greater rights and powers upon the Firm. Attorney shall be required to request permission to use, publish, or otherwise disclose Intellectual Property or any portion thereof, including after the Termination of this Of Counsel Agreement. Attorney agrees to execute any assignment or other documents appropriate to make any transfers and assignments of rights, powers, and interests in this section effective.

23. Unless otherwise agreed in writing, Attorney shall have no right to receive any publication rights, royalties or any other rights, revenues or interests arising from or generated by any Intellectual Property where the Firm has paid or does pay Attorney for developing that Intellectual Property.

**SECTION TWELVE—CONFIDENTIALITY**

24. Attorney agrees to maintain in confidence all Confidential Information of the Firm or its clients and shall not use or disclose any Confidential Information to any third party except: (a) Attorney may disclose Confidential Information of the Firm to Attorney’s own lawyers, accountants, and other advisors to the extent reasonably necessary to receive services or guidance from such professionals, provided that such persons agree to maintain the confidentiality of any information shared; (b) Attorney may use or disclose Confidential Information to the extent reasonably necessary to engage in the business of the Firm; (c) Attorney may use or disclose Confidential Information as authorized by the Firm’s management; (d) Attorney may use Confidential Information relating to the representation of a client when authorized by the client or otherwise under applicable law; and (e) Attorney may use or disclose Confidential Information when compelled to do so by law or court order. Attorney shall provide the Firm with prompt notice if that Attorney receives a demand that would compel the disclosure of Confidential Information, so that the Firm or its representative may challenge the need to comply with such a request or demand.

25. For purposes of this Operating Agreement, Confidential Information shall mean (a) the terms of this Of Counsel Agreement; (b) all information relating to client matters that is confidential under Missouri Rule of Professional Conduct 1.6 or other applicable ethical rules, or that is otherwise protected by the attorney-client privilege or work-product protection; (c) nonpublic information designated by the Firm as confidential; (d) intellectual property of the Firm, including Intellectual Property as defined in Section Eleven of this Of Counsel Agreement; and/or (e) any non-public information relating to the business or affairs of the Firm, or its attorneys or employees, for which disclosure to or use by third parties would be detrimental to the Firm (and/or its attorneys or employees) as determined by the Firm in its sole discretion. Confidential Information shall not include information that is generally known to or available to the public. Confidential Information is presumed, however, to include identities of Firm clients, the work the Firm provides to Firm clients, the rates Firm clients pay, and the compensation that the Firm pays to its attorneys and staff. Nothing in this section shall limit or reduce any protection the Firm has to intellectual property, including that publication or public display of any Intellectual Property (as defined in Section Eleven) shall not limit or reduce the Firm’s rights, powers, and interests in that Intellectual Property.

**SECTION THIRTEEN—MALPRACTICE COVERAGE**

26. The Firm shall name Attorney as an additional insured on its lawyers professional liability insurance.

27. Should Attorney elect to provide legal services not in association with the Firm, Attorney shall – in addition to receiving permission from the Firm’s management as set forth in section 3 – maintain lawyers professional liability insurance, at Attorney’s own expense, at a level sufficient for such matters. At minimum, the insurance will provide minimum coverage of $100,000.00 per claim.

**SECTION FOURTEEN—TERMINATION OF AGREEMENT**

28. This Of Counsel Agreement may be terminated by either Party at any time for any reason upon ten business days’ written notice to the other Party. If the Firm terminates this Of Counsel Agreement, Attorney shall be entitled to receive compensation pursuant to the terms of this Of Counsel Agreement during the notice period unless Attorney was terminated for cause, which shall include material violation of this Of Counsel Agreement as well as other instances defined as cause under Missouri law.

29. This Of Counsel Agreement shall terminate immediately, unless the Parties otherwise agree at that time, upon a finding by any court or adjudicative body that Attorney has breached a provision of the Rules of Professional Conduct of an applicable jurisdiction, or upon Attorney being charged with any crime.

**SECTION FIFTEEN—DISPUTE RESOLUTION AND ARBITRATION**

30. Should either Party believe that the other Party has breached this Of Counsel Agreement or that the Party has a claim related to or arising from this Of Counsel Agreement or the association between the Parties, that Party shall provide the other Party with written notice of the alleged breach. The Party receiving such notice shall have ten business days to remedy or respond to the notice. If the Parties believe the dispute has not been resolved, except as provided in section 31 below, the Parties shall engage in arbitration – commonly referred to as “baseball” or “pendulum” arbitration – as follows, unless both parties agree to the contrary:

(a) One of the Parties shall send notice of intent to arbitrate to the other Party to initiate the arbitration. Then, unless the Parties agree upon an arbitrator, within five business days of receipt of the notice of intent to arbitrate three arbitrators shall be selected at random from among the certified arbitrators listed on the list of mediators for the U.S. District Court for the Eastern District of Missouri;

(b) Each Party shall have five business days to strike one of the randomly selected arbitrators, if the Party chooses to do so;

(c) After each Party exercises its strike or indicates it does not intend to strike a possible arbitrator, the single arbitrator who shall resolve the dispute shall be selected at random from arbitrators remaining eligible to handle this matter after the process described in section 30(a) and (b);

(d) The Party providing notice of the alleged breach shall within five business days confirm the arbitrator selected under section 30(a) through (c) of this section is available, retain the arbitrator, and provide the arbitrator with a copy of this Of Counsel Agreement, so the arbitrator will know the process for arbitration. If the arbitrator requires a deposit or advance, the Parties shall each pay one-half the required payment. If the arbitrator selected to handle the matter is unable or declines to handle the arbitration for any reason, the process set forth in section 30(c) shall be repeated or, if no potential arbitrators remain available under that provision, the process set forth in section 30(a) through (c) shall be repeated, until an arbitrator is retained as provided in this section 30(d).

(e) The Parties shall each submit a brief of no more than 5,000 words to the arbitrator within 30 days of the selection of that arbitrator. The brief shall clearly state on its first page the relief of result that the Party requests from the arbitrator. The Parties shall also serve concurrently serve their brief upon the other Party or that Party’s counsel by email or similar instantaneous means of electronic delivery;

(f) Each Party shall have 10 business days from the date the other Party’s brief is received to submit a brief of no more than 2,000 words to the arbitrator responding to issues raised by the other Party’s brief. This response brief may offer an alteration or amendment of the remedy sought if the Party so chooses. Again, the Parties shall concurrently serve their brief as set forth in section 30(e);

(g) The arbitrator may, at the arbitrator’s sole discretion, hold an in-person, telephonic or similar meting to allow the Parties to advocate their position on the dispute. Any such proceeding, however, must occur in St. Louis County, Missouri (if physical presence is required) and each Party shall receive no more than 60 minutes to argue their position. The Party that gave notice of the purported breach shall argue first and may retain no more than one-quarter of the total time allowed to the Parties to provide a reply to the other Party’s argument. If there is an argument as provided in this subsection, the Arbitrator may – at the Arbitrator’s sole discretion – also request post-argument briefs from each Party, which shall not exceed 1,000 words and shall be served as the arbitrator directs. A Party may amend its requested relief either during argument or a post-argument brief, if they occur; and

(h) Within 60 days of the selection of the arbitrator, the arbitrator shall resolve the dispute solely and only by selecting the relief sought by a Party. The arbitrator shall have no authority or discretion to select a resolution other than as has been provided by a party.

(i) The Party whose proposed relief is not selected shall reimburse the other Party for all fees and costs incurred during this arbitration process, and shall also pay or reimburse the other Party for all fees and costs that may be incurred by the arbitrator for the arbitration.

31. Section 30 shall not apply to any dispute where a Party has engaged in any conduct that (a) must be, in the reasonable belief of the other Party, reported to disciplinary counsel as required by the applicable Rules of Professional Conduct or (b) that may pose a risk of imminent harm to any client of Attorney or the Firm. Disputes that are within this section 31 may be brought in a Court whose geographic jurisdiction encompasses St. Louis County, Missouri, and the party prevailing in such dispute or litigation shall be entitled to recover all fees incurred due to that dispute or litigation, including any fees or costs incurred enforcing the rights provided in this section (including recovery of fees and costs).

32. Except as provided in section 31, any disputes relating to or arising from this Of Counsel Agreement or the association between the Parties shall be resolved solely as provided in section 30. Should any other dispute or litigation result relating to this Of Counsel Agreement, or should litigation result to enforce a decision of the arbitrator made pursuant to section 30, that dispute or litigation shall be brought only in a court whose geographic jurisdiction encompasses St. Louis County, Missouri, and the party prevailing in such dispute or litigation shall be entitled to recover all fees and costs incurred due to that dispute or litigation, including any fees or costs incurred enforcing the rights provided in this section (including recovery of fees and costs).

**SECTION SIXTEEN—ENTIRE AGREEMENT**

33. This Of Counsel Agreement constitutes the entire agreement between the Parties. Any prior understanding or representation of any kind preceding the date of this Of Counsel Agreement shall not be binding on either Party except to the extent incorporated in this Of Counsel Agreement. That said, all rights and obligations imposed in any prior “Of Counsel Agreement” are incorporated herein and shall remain in full force and effect, except to the extent those rights and obligations are modified going forward by the express language of this Of Counsel Agreement.

**SECTION SEVENTEEN—MODIFICATION OF AGREEMENT**

34. Any modification of this Of Counsel Agreement or additional obligation assumed by either Party in connection with this Of Counsel Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each Party.

**SECTION EIGHTEEN—GOVERNING LAW**

35. This Of Counsel Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Missouri.

**SECTION NINETEEN—ASSIGNMENT OF RIGHTS**

36. The rights of Attorney under this Of Counsel Agreement are personal to Attorney and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the Firm. The Firm may assign its rights under this Of Counsel Agreement to its principal and/or to a successor law firm at its sole discretion. The Firm may assign or transfer its rights to any other person, firm, corporation, or other entity – other than principal or a successor law firm – only with the prior, express, and written consent of Attorney.

**SECTION TWENTY—SECTION HEADINGS**

37. The titles to the sections of this Of Counsel Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Of Counsel Agreement.

[Remainder of Page Deliberately Left Blank]

Each Party to this Of Counsel Agreement has caused it to be executed on the date indicated below.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

Attorney Firm

Signature Signature

Printed Name Printed Name

Date Position

Date