

# Of Counsel Agreement [Independent Contractor and Partnership]

This Contract made on \_\_\_\_\_, 19\_\_\_\_, between JOHN Q. LAWYER (“Lawyer”), an individual, and XYZ (the “Firm”), establishes the parties’ agreement that Lawyer will become associated with the Firm on an “Of Counsel” basis in the practice of law.<sup>1</sup>

1. This relationship will commence as of \_\_\_\_\_, 19\_\_\_\_, and will continue indefinitely thereafter, with either party having the right for any reason, on thirty (30) days’ written notice, to terminate the relationship.<sup>2</sup>

2. As of the commencement date, all legal services performed by Lawyer will be on behalf of the Firm. This arrangement includes Lawyer’s full-time efforts and precludes legal services (including teaching and serving on a board of directors) being rendered for a fee to any party outside of this arrangement. All fees will be billed through the Firm and collected by the Firm, with the exception of one pre-existing relationship that Lawyer has with ABC Company. Lawyer agrees to use the Firm’s basic accounting systems and billing systems to permit effective coordination with the Firm’s office procedures. Lawyer shall have full judgment as to billing of matters for clients that Lawyer brings to the Firm, including arbitrarily discounting or writing off fees, and the manner in which bills are sent to clients. All funds collected will be deposited in the general account of the Firm. All fees billed by Lawyer shall be accounted for separately, and accrued to the mutual benefit of both parties pursuant to the terms of this Agreement. To the extent of funds held for the benefit of Lawyer in excess of allocated expenses, the same shall be distributed to Lawyer at such time and in such amounts as the Firm directs.

3. The Firm will include Lawyer at its expense in the Firm’s E&O coverage effective with the commencement date of this relationship.<sup>3</sup> All costs required for Lawyer’s clients will be advanced by the Firm, and all recovery of costs will accrue to the Firm. If any costs are not billed to and paid by Lawyer’s clients, Lawyer will reimburse the firm for them.<sup>4</sup>

4. Lawyer has indicated that he anticipates over a period of time the need for partners, associates, clerks, or paralegals of the Firm to assist with the performance of legal services to his clients from time to time.<sup>5</sup> Any

associates, secretaries, and support personnel will be hired by the Firm, with input from Lawyer. With respect to work performed by the Firm or the Firm’s associates, clerks, or paralegals for the clients of Lawyer, or new matters referred to the Firm from the existing clients of Lawyer or from new business generated by Lawyer, the Firm shall be allocated from gross receipts of fees (but not costs because of the agreement as set forth above), as collected eighty-two and one-half percent (82½%), and Layer shall retain seventeen and one-half percent (17½%). With respect to matters generated by Lawyer, one hundred percent (100%) of the sums collected shall be held for the benefit of Lawyer’s account. From time to time, there may be matters where the Firm will want Lawyer to assist the Firm because of Lawyer’s particular background and expertise. With respect to existing clients or new clients or new business generated by the Firm in an area where Lawyer can provide special expertise or assistance, Lawyer shall retain eighty-two and one-half percent (82-1/2%) for his time expended, and the Firm shall retain seventeen and one-half percent (17-1/2%) of fees as collected. The parties appreciate that there may be times when it is difficult to determine the origination of the client or client matter and the Firm will work with Lawyer to make those allocations fairly.

5. The Firm will charge Lawyer the amount of \$\_\_\_\_\_ at the beginning of each month as his share of expenses for that month. This will be a charge against fees received by Lawyer. This charge will include Lawyer’s share of all office costs, including rent, secretarial, telephone, equipment use, library, reception, accounting, word processing, office supplies, messenger services, postage, Bar dues, parking, health, life, disability, and E&O insurance in accordance with the Firm’s current office practice. It also includes the amount of \$\_\_\_\_\_ per month (\$\_\_\_\_\_ per year) reserve for promotional activities to be undertaken by Lawyer. This contemplates secretarial needs on the basis of up to one-half a full-time secretary with word processing and office overflow as backup.

6. Notwithstanding anything to the contrary above, expenses shall be as follows:

a. For the period from \_\_\_\_\_ through \_\_\_\_\_,

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\$ \_\_\_\_\_ each month plus \_\_\_\_\_ percent (\_\_\_\_\_% ) for legal services performed after \_\_\_\_\_.

b. For the period from \_\_\_\_\_ through \_\_\_\_\_, \$ \_\_\_\_\_ each month plus \_\_\_\_\_ percent (\_\_\_\_\_% ) for legal services performed after \_\_\_\_\_, but not to exceed \$ \_\_\_\_\_ per month, and with no accrual of the difference between \$ \_\_\_\_\_ and \$ \_\_\_\_\_ per month.

c. After \_\_\_\_\_, \$ \_\_\_\_\_ per month plus \_\_\_\_\_ percent (\_\_\_\_\_% ) of actual fees collected (in excess of \$ \_\_\_\_\_) but not to exceed \$ \_\_\_\_\_ per month, with the difference between \$ \_\_\_\_\_ and \$ \_\_\_\_\_

accruing and being carried forward on a month-to-month basis.

If this Agreement is terminated by either party, Lawyer shall have no personal obligation for any accumulated expenses, except with respect to \_\_\_\_\_ percent (\_\_\_\_\_% ) of any uncollected receivables for legal services performed by Lawyer after date of termination.

By \_\_\_\_\_

By \_\_\_\_\_

DATED: \_\_\_\_\_

### Appendix C Notes

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<sup>1</sup> While this provision indicates the parties' intention to create an Of Counsel relationship, it does not establish whether Of Counsel's status will be analogous to that of an independent contractor or that of an employee. See Chapter 5.

<sup>2</sup> See Chapters 4 and 5 for a discussion of the parties' right to terminate and common termination clauses.

<sup>3</sup> See Chapter 5 for a discussion of malpractice liability coverage for Of Counsel and its effect on his status.

<sup>4</sup> See Chapters 4 and 5.

<sup>55</sup> For a discussion of overhead expenses, see Chapter 4. See also Chapter 5 for a comparison of overhead expense provisions in the Of Counsel contract.