

**MASTER LITIGATION LOE – COMPANY (includes employee modifications)**

**REMINDER TO ATTORNEY: MUST SEND STANDARD LITIGATION HOLD LETTER TO CLIENT  
DOC ID NO. 387321**

May 17, 2019

**LETTER OF ENGAGEMENT**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: \_\_\_\_\_

Dear \_\_\_\_\_:

Thank you for retaining Berman Fink Van Horn P.C. (“BFV”) to represent \_\_\_\_\_ (the “Company”) with respect to \_\_\_\_\_. We are pleased that the Company has placed its confidence in our law firm and look forward to working together to bring this matter to a satisfactory conclusion.

BFV strives to provide full transparency with respect to our services and this letter outlines the basic information we believe you need to know regarding the engagement of our firm. This is both to acquaint you with our normal practices and to ensure that there are no misunderstandings over the handling of the matter or the billing for our services. This letter is a contract between the Company and the firm. And, more importantly, it is our commitment to you to provide excellent legal service. Please review the balance of this letter carefully and if you have any questions, please let us know.

Additionally, your matter either is in litigation, or likely could lead to litigation. For that reason, we are providing you a separate letter spelling out your legal obligation to preserve information, how to fulfill that obligation, and the consequences of not preserving required information.

**Commented [LCD1]:** Include if matter is litigation, pre-litigation, or if there is any argument the duty to preserve has arisen.

**Hourly Rates and Retainer**

I will be the primary attorney working on this matter and my hourly rate is \$ \_\_\_\_\_. Other attorneys’ hourly rates range from \$250.00 to \$550.00. Our paralegals’ hourly rates are \$225.00, and our law clerk is also billed at \$225.00 per hour.

These hourly rates are subject to periodic review and change. We typically evaluate our hourly rates annually. BFV makes every effort to have legal services performed at the lowest possible billing level commensurate with the level of skill and experience which we feel is required for efficient and effective completion of the services.

In consideration of the legal services to be rendered on the Company's behalf, we require an initial retainer in the amount of \$\_\_\_\_\_.00. BFV has no obligation to take any action on behalf of the Company until this retainer is paid.

**Commented [KK2]:** Use if requiring an evergreen or standard retainer.

Ordinarily, it is our firm's policy to obtain retainers from all new clients. Given that the scope of our engagement is limited at this juncture, we have not requested a retainer. In the event the scope of our engagement expands, or in the unfortunate event of any litigation, we reserve the right to request a retainer.

**Commented [BF3]:** Include when litigation is possible.

**Commented [BF4]:** Use if NOT requiring any form of retainer to keep possibility open in the future.

If this matter proceeds to a trial, ninety (90) days before the trial setting, we will require the Company to pay all amounts then owing and we reserve the right to request an additional retainer equal to the fees we estimate will be incurred in preparing for and completing the trial, as well as any out-of-pocket expenses estimated to be incurred. If the Company is behind in paying invoices or fails to timely pay the additional pre-trial retainer requested, we will have the right to withdraw from the representation and to cease from performing further work. If permission of the Court is required, you agree not to oppose any motion to withdraw.

### **Billing and Payment**

The Company will be billed for attorney time, paralegal time and certain expenses. We will maintain complete and accurate records of the time spent during our representation and we will send regular periodic statements (approximately every thirty days) for services rendered and expenses incurred. The Company will be responsible for all such costs and expenses. These expenses will be included on our invoices to the Company.

The Company agrees that our invoices will be deemed accepted if no dispute over any item is brought to our attention within thirty (30) days after receipt of the invoice.

Beginning with the first periodic billing, the retainer will be credited against the fees and costs incurred. After the retainer is exhausted, payment is due upon receipt of our statements. The retainer must then be replenished within ten (10) days of your receipt of our statements. All receivables not paid within thirty (30) days will accrue interest at the rate of one and one-half percent (1½%) per month. If the Company fails to remain current on firm invoices, BFV reserves the right to suspend or terminate its services.

**Commented [BF5]:** Only include if retainer required.

**Commented [KK6]:**  
NO Evergreen

**Commented [KK7]:**  
Evergreen

BFV does not bill for general office expenses, in-office copies, domestic phone call expenses, conference call expenses, or general office supplies such as pen, paper, notebooks, or other similar items. BFV also does not bill for meals for in-office meetings relating to client matters.

In our experience, regular billing enables our clients to monitor the status and cost effectiveness of our legal services. If you would like to review the scope or nature of our representation, desire an explanation of any particular matter or billing entry, or wish to discuss any other aspect of our services or our billing practices, please feel free to call us.

### **Fees**

As we have discussed, the fees and expenses relating to this litigation are not predictable. Accordingly, we have made no commitment to you concerning the maximum fees and expenses that will be necessary to resolve or complete the matter. Any estimate of fees and expenses that we may have discussed represents only an estimate of such fees and expenses, as those figures will wholly depend on the time and efforts required to be devoted to this matter. This in turn dependent on numerous factors including the complexity of the issues as they develop further and the approach that the opposition takes in negotiations and any litigation. It is also expressly understood that your obligation to pay our fees and expenses is in no way contingent on the ultimate outcome of the matter.

### **Withdrawal/Termination**

BFV may withdraw from our representation and/or terminate this agreement at any time if the Company (a) insists upon presenting a claim or defense which is not warranted under existing law and cannot be supported by a good-faith argument for modification or reversal of existing law; (b) seeks to pursue an illegal course of conduct; (c) insists that our law firm pursue an illegal or unethical course of conduct; (d) fails to pay any fees or costs when due; or (e) fails to cooperate with us on any matter when requested to do so.

The Company may discharge us and terminate this contract at any time. In the event of withdrawal or discharge of BFV, you expressly agree that BFV shall be entitled to all legal fees and expenses already incurred in representing the Company, all of which will be due and payable at the time of such termination, unless we agree otherwise. You also agree to pay all fees and expenses incurred in transferring Company files after the engagement.

### **Communications**

Communications between attorneys and clients are privileged. This means that our communications are protected from review by third parties, including adversaries. The attorney/client privilege and its protections may be lost, however, if you disclose the contents of our communications to anyone else, or if you do not take reasonable steps to protect the confidentiality of our communications. Please refrain from disclosing the contents of any of the communications you have with us. This includes refraining from oral disclosures as well as not permitting others to view copies of our written correspondence. Never forward our email correspondence to any other person.

To protect the privilege and confidentiality of our communications, you should never communicate with us from your present employer's telephones or computers or from any public

computer such as a library or hotel business center computer. These systems are not likely to be secure or confidential. Even accessing your personal, web-based email account (such as your Gmail, Yahoo or other personal internet service provider) from a company-owned computer may result in inadvertently leaving the substance of those communications on the computer in a manner that is recoverable by your present employer. This could negatively impact the matter by exposing information related to your case and may lead to a court finding that you have waived the confidentiality of our communications. As a result, you should only communicate with us using your personal phones or computers. For the same reasons, you should not access any documents that you receive from our firm (such as Word documents, Excel spreadsheets, or PDFs) on anything other than a personal device. Taking these steps will be invaluable in protecting your right to claim the full protections of confidentiality under the attorney/client privilege.

Commented [KK8]: Include for Employee Representation

### **Electronic Data Transmission and Storage**

BFV may send Company data over the Internet or store electronic data via computer software applications hosted either on our servers, public and/or private cloud-based servers. Data may be stored or transmitted on portable storage devices, including USBs and external hard drives. We may also use third-party service providers to store, copy, or transmit data. In using these data communication and storage methods, our firm employs appropriate measures designed to maintain data security based on several factors, including the type and volume of data being stored or transmitted. We use reasonable efforts to keep such communications and data access secure in accordance with professional standards. By signing this letter, you are consenting to our use of these data communication and storage methods and well as the engagement of third-party vendors in the course of the representation. If you believe this matter requires BFV to handle data that merits extra security precautions in storage or transmission or the use of vendors, please notify us in writing and identify the specific data that requires extra precaution and what precautions you believe are necessary.

### **Property and File Retention**

Any materials or documents generated during this engagement are, and shall remain, the property of BFV. Upon the conclusion of the representation, should you desire a copy of those portions of the file that are considered the client's, please let us know. Otherwise, BFV will retain electronic copies of the files for a period of seven years running from the conclusion of the representation, at which time the files will be destroyed unless you notify us to the contrary in writing. Catastrophic events or physical deterioration may result in damage to or destruction of our firm's records, causing the records to be unavailable before the expiration of the retention period as stated in our record retention policy.

### **Additional Terms**

We have agreed that our engagement is limited to performance of services related to the matter described above. Our acceptance of this engagement does not involve an undertaking to represent you or your interest in any other matter. We may agree with you to limit or expand the scope of our representation from time to time, provided that any such change is confirmed by us

in writing. The terms of this letter of engagement will govern all subsequent matters that you ask us to handle and we agree to handle, unless we agree to different terms in writing.

As a condition of BFV agreeing to represent the Company and further agreeing to extend credit to the Company, the undersigned being a shareholder of the Company (if more than one, jointly and severally) hereby absolutely and unconditionally guarantees to BFV full and prompt payment of any and all indebtedness, obligations and liabilities owed to BFV by the Company. The undersigned shall also pay all costs and expenses, including, without limitation, reasonable attorneys' fees of fifteen percent (15%), with respect to collection under this guarantee. The undersigned agrees that this guarantee shall constitute a guarantee of payment and not of collection and that the undertakings of undersigned are independent of the obligations of the Client.

**Commented [KK9]:**  
Optional Guarantee paragraph.

Please sign below acknowledging agreement and acceptance of the terms and conditions recited in this letter, authorizing BFV to act on behalf of the Company, and return this letter to us by mail or email. For purposes of this letter, electronic signatures will be deemed originals.

We look forward to working with you and the Company on this matter and affirm our commitment to provide you with the most effective and efficient representation and responsive service possible.

Thank you again for selecting us to represent you.

Sincerely,

BERMAN FINK VAN HORN P.C.

\_\_\_\_\_

\_\_\_\_:\_\_\_\_\_

ACCEPTED AND AGREED:

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_