

## **RETENTION AGREEMENT**

This Retention Agreement (hereinafter this “Retention Agreement”) is entered into by and between the Ohio Attorney General (the “Attorney General”) and the undersigned (“Special Counsel”).

### **RECITALS**

WHEREAS, the Attorney General is the chief law officer for the State of Ohio and, as such, is the legal representative of the State, including its various agencies, boards, commissions, departments, colleges, universities, and retirement systems; and

WHEREAS, the Attorney General, pursuant to Ohio Revised Code Section 109.07, is empowered to appoint Special Counsel to represent the State of Ohio in civil actions, criminal prosecutions or other proceedings in which the State is a party or directly interested; and

WHEREAS, the purpose of this Retention Agreement is to set forth the terms for the appointment and retention of Special Counsel; and

WHEREAS, the Attorney General desires to engage Special Counsel to provide specific legal services to the State of Ohio and its agencies, boards, commissions, departments, colleges, universities, and retirement systems (each, a “Client”); and

WHEREAS, the specific legal services that Special Counsel is requested to provide will be set forth in one or more Special Counsel Assignment Letters (each an “Assignment Letter”) and such services shall be rendered in accordance with the terms and conditions of this Retention Agreement.

NOW THEREFORE, in consideration for the mutual promises and covenants set forth herein and for other valuable consideration, the Attorney General and Special Counsel (each individually a “Party” and collectively the “Parties”) hereby agree as follows:

### **Article I TERM**

The appointment of Special Counsel and this Retention Agreement shall terminate on June 30, 2021, unless earlier terminated as provided herein (the “Termination Date”). No services rendered by Special Counsel after the Termination Date shall be authorized or payable without an additional written agreement with the Attorney General.

## **Article II SERVICES**

### **Section 1. Scope of Appointment**

Special Counsel shall conduct any and all legal work assigned by the Attorney General as set forth in the Assignment Letter. Each executed Assignment Letter issued under this Retention Agreement shall become incorporated by reference into this Retention Agreement. Such work shall be performed in a manner consistent with accepted standards of practice in the legal profession. In view of the personal nature of the services to be rendered under this appointment, the Attorney General shall be the sole judge of the adequacy of those services.

### **Section 2. Assignment and Delegation of Work**

Special Counsel may assign legal work to those individuals set forth in Special Counsel's response to the Attorney General's Request for Qualifications (the "RFQ Response") or any individual employed by Special Counsel or the law firm with which Special Counsel is affiliated. Except as set forth above, Special Counsel may only delegate work to other attorneys, legal professionals or firms with the advance written approval of the Attorney General.

In the event that Special Counsel delegates work to other firms, the compensation of such firms shall be a matter beyond the scope of this Retention Agreement to be negotiated in writing between Special Counsel and those firms prior to the commencement of any work by such firms and shall be paid by Special Counsel. A copy of such compensation agreement shall be provided to the Attorney General. Neither the Client nor the Attorney General shall be liable for any fees, compensation or expenses to be paid to other firms retained by Special Counsel. Special Counsel agrees to indemnify, defend, and hold harmless the Attorney General and the State of Ohio against any claim for reimbursement of fees, costs or expenses asserted by any firm retained by Special Counsel.

All firms to whom Special Counsel may delegate work under this Section must have the qualifications and experience necessary to perform the work requested and shall work under the supervision and control of Special Counsel. Although delegation may be permitted as provided herein, delegation shall not relieve Special Counsel of any responsibility or liability for the work performed hereunder. No provision of this Section shall be construed to allow Special Counsel to subcontract with, hire, or retain any law firm for the performance of legal services under this Retention Agreement without the prior written consent of the Attorney General.

### **Section 3. Attorney-Client Relationship and Relationship of the Parties**

Special Counsel shall render services pursuant to this Retention Agreement as an independent contractor. Special Counsel, whether for purposes of applications of ORC Chapter 102, Section 9.86 or Section 9.87, or for any other purpose, shall not be regarded as "in the employment of," or as an employee of, the Attorney General or the Client. It is fully understood and agreed that Special Counsel is an independent contractor and neither Special Counsel nor its personnel shall at any time, or for any purpose, be considered agents, servants, or employees of the Attorney

General, the State of Ohio, or the Client for the purpose of Ohio Public Employees Retirement System benefits.

An attorney-client relationship shall exist between Special Counsel, the Attorney General, and the Client. Special Counsel shall follow the direction, guidance, rules, and policies of the Attorney General in performing legal services under this Retention Agreement. In all pleadings, notices and/or correspondences created pursuant to the work performed hereunder, Special Counsel shall indicate that such document is prepared by Special Counsel in its position as special counsel for the Attorney General.

During the term of this appointment, Special Counsel shall be engaged by the Attorney General solely on an independent contractor basis, and Special Counsel shall therefore be responsible for all of Special Counsel's business expenses, including, but not limited to, employee wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for workers' compensation and unemployment compensation coverage, if any.

### **Article III CASE MANAGEMENT**

#### **Section 1. Reporting to the Attorney General**

##### **A. Quarterly Status Reports**

Unless otherwise required by this Retention Agreement or by the Attorney General's Director of Outside Counsel or designee, Special Counsel shall submit quarterly status reports to the Director of Outside Counsel (electronically at [SpecialCounsel@OhioAttorneyGeneral.gov](mailto:SpecialCounsel@OhioAttorneyGeneral.gov)), the Client, and the Section Chief or other identified Assistant Attorney General in the Assignment Letter not later than the fifth (5th) day of the months of January, April, July and October. Status reports must be identified by the AGO number provided in the Assignment Letter and include: a description of each matter assigned; a report on the current status of the particular cases, transactions, or advice involved; any significant events that have occurred since the previous status report; a prospective analysis of any significant future events, along with a section containing the current budget for the assignment;; the amount currently unbilled; and a budget estimate for the next quarter. Special Counsel shall not be compensated for the time spent preparing and sending quarterly status reports without prior written approval by the Attorney General. Invoices submitted without a corresponding status report during the months in which a quarterly status report is required, or when a quarterly status report is past due, shall be considered incomplete and shall not be eligible for compensation.

##### **B. Communication of Significant Events**

Certain significant events during the course of representation are time-sensitive and require Special Counsel's timely report to the Attorney General. In such an event, Special Counsel shall immediately inform the Director of Outside Counsel, and applicable Section Chief or other designee identified in the Assignment Letter ("Supervising Attorney"), and submit a Significant

Event Update when a criterion set forth below is met, or upon the request of the Attorney General or his designee. An event is “significant” if it involves:

1. Recovery sought against the Client (or which the State is seeking) in an amount equal to or greater than One Hundred Thousand Dollars (\$100,000.00);
2. An important and/or novel legal or constitutional issue;
3. A challenge to a law of the State of Ohio;
4. Injunctive relief that would be extremely detrimental to the State;
5. An issue that is likely to generate significant media or high public interest;
6. A federal district court final judgment or interlocutory appealable order;
7. Where Special Counsel, the opposing party, or a federal district court seeks to certify a state law question to the Ohio Supreme Court;
8. A potential administrative or rule-making appeal to the Sixth Circuit or any other federal appellate court;
9. The possibility that Special Counsel or an opposing party may seek en banc rehearing with the Sixth Circuit or any other federal appellate court; or
10. The possibility of Special Counsel filing a Petition for a Writ of Certiorari or the filing of a Petition for a Writ of Certiorari by an opposing party;
11. Special Counsel or an opposing party seeking attorney’s fees.

**C. Communication of Significant Dates and Deadlines**

Special Counsel shall timely inform the Supervising Attorney via email of the scheduled date for any of the following, if applicable:

1. Pleadings;
2. Discovery cutoffs;
3. Dispositive motions;
4. Court decisions and rulings;
5. Schedule for hearings, conferences, or other court appearances;
6. Trials;
7. Settlement negotiation or other alternative dispute resolution efforts;
8. Appeal or Notice of an Appeal.

Upon the filing of any pleading or the receipt of any communication from a court, Special Counsel shall timely provide a time-stamped copy via email of such filing to the Supervising Attorney.

**D. Communication Regarding Case Initiation and Settlement**

The Attorney General shall approve both the initiation of litigation on behalf of the Client and commencement of formal settlement negotiations of claims on behalf of the State, as well as any final settlement. Special Counsel understands and agrees that the initiation of litigation on behalf of the State and all final settlements must receive the prior approval of the Attorney General and that decisions regarding settlement are reserved exclusively to the discretion of the Attorney General. Special Counsel shall confer with the Supervising Attorney early on in the settlement

negotiation process and shall timely notify the Supervising Attorney of any settlement conferences or other alternative dispute resolution events to allow the Supervising Attorney to participate. Without limitation, Special Counsel agrees to confer with the Attorney General about the following matters when applicable:

1. Confidentiality provisions in settlement agreements;
2. The Ohio Constitution's biennial limitation;
3. Indemnification provisions;
4. Release language;
5. Naming of the State as a party.

#### **E. Communication Regarding Appeals**

In the event of an appeal to any state or federal appellate court, the Attorney General reserves the right to transfer all or part of the representation of the matter to the State Solicitor and Attorney General's Appeals Section, including the filing of any briefs or motions. Special Counsel shall cooperate to effectuate any transition of legal services to the State Solicitor and Attorney General's Appeals Section, although Special Counsel may still be responsible for representation of the Client in the trial or lower appellate courts. The Attorney General may also elect to have Special Counsel continue as co-counsel in the appeal.

### **Section 2. Confidentiality and the Public Records Act**

All material commissioned or gathered by Special Counsel or in Special Counsel's possession that fulfills an obligation of this Retention Agreement shall be considered the property of the State of Ohio. Special Counsel agrees to adhere to Ohio's Public Records Act, ORC 149.43, and maintain all public records in accordance with state law, including any applicable record retention and destruction requirements. Special Counsel shall consult with and obtain the approval of the Attorney General before responding to any public records request. Moreover, Special Counsel shall not disclose any information obtained in performing its services hereunder in violation of any state or federal law including, but not limited to, the Family Education Rights and Privacy Act ("FERPA") and/or the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as the same may be amended or modified from time to time.

### **Section 3. Media Statements**

Neither Special Counsel nor any partner, associate, employee or any other person assisting with the work contemplated by this Retention Agreement shall publish any material, including online or social media publications, or speak to or otherwise communicate with any representative of a television station, radio station, newspaper, magazine, website, or any other media outlet concerning the work outlined or contemplated by this Retention Agreement without first obtaining approval by the Director of Outside Counsel or the Attorney General's Director of Communications. This Retention Agreement specifically excludes any right or ability on the part of Special Counsel to speak on behalf of the Attorney General to any member of the news media. Provided, however, the restrictions in this Section shall not apply to any professional or other

publication of (i) the fact that Special Counsel is representing or has represented a Client as to a specific matter (the “Representation”) and (ii) the nature of the Representation.

#### **Article IV COMPENSATION**

Special Counsel shall only be compensated for the satisfactory performance of the services provided as set forth herein and in the Assignment Letter. In view of the personal nature of the services to be rendered, the Attorney General shall be the sole judge of the adequacy of those services.

Special Counsel shall be compensated on an hourly basis established by the Attorney General in the Assignment Letter (“the Hourly Rate”) unless otherwise specified in the Assignment Letter.

Special Counsel shall not be compensated in excess of the express budget amount within the Assignment Letter or Amended Assignment Letter (the “Budget Limit”), or in excess of the Hourly Rate, without first receiving an Amended Assignment Letter from the Attorney General.

In providing legal services under this Retention Agreement, Special Counsel shall act with reasonable diligence and promptness in the representation of the Client in a cost-effective and efficient manner. Special Counsel may bill for reasonable travel time subject to the Attorney General and the Client’s approval. The Attorney General will not approve compensation for Special Counsel’s actions that do not meet this standard, including but not limited to the following: clerical or administrative work; introductory work, such as familiarizing and training new attorneys regarding factual and legal issues; or legal research into areas of law for which the Attorney General is uniquely qualified to provide a cost-effective answer, such as public records or sovereign immunity. Additional restrictions on billing and/or compensation may be provided in the Assignment Letter or by the Client. The Client and the Attorney General reserve the right to disapprove specific charges in Special Counsel’s bill that the Client or the Attorney General do not find reasonable, appropriate, or within the scope of legal representation contemplated by the Client and the Attorney General under the terms of the Assignment Letter.

Except for expenses and reimbursements as outlined in this Retention Agreement, no other compensation shall be paid to Special Counsel, except as otherwise provided in the Assignment Letter. Special Counsel shall only be compensated by the Client upon the final approval of Special Counsel invoices, by the Director of Outside Counsel as set forth in Article VII of this Agreement.

It is expressly understood and agreed by the Parties that none of the rights, duties or obligations described in this Retention Agreement shall be binding on either Party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, ORC 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio.

In the event that any other comparable client negotiates a lower fee structure for comparable services, Special Counsel shall promptly notify the Attorney General and shall extend the lower

negotiated rate to the Attorney General retroactively to the first date the lower rate was offered to another client. Should Special Counsel fail to provide the Attorney General the lower negotiated rate within ninety (90) days, Special Counsel shall be required to reimburse the Attorney General the difference between the amount the Attorney General was charged under its original rate as set forth in the Assignment Letter and the amount the Attorney General would have been charged under the lower negotiated rate. This paragraph shall not apply to pro bono work or work done for charitable clients.

## **Article V BUDGET LIMITS**

Special Counsel understands it has sole responsibility to monitor its Budget Limit monthly. Special Counsel must notify the Director of Outside Counsel and the Client via email or telephone promptly when Special Counsel reasonably believes billings under the Assignment Letter will exceed 80% of the applicable Budget Limit.

## **Article VI EXPENSES AND REIMBURSEMENTS**

### **Section 1. Advancement of Expenses and Costs**

Special Counsel shall advance all litigation costs, expenses and disbursements, including expert witness fees and costs, deposition costs, and document production. Special Counsel shall not be compensated for the time or work performed by expert witnesses in the employ of the Client. Neither the Client nor the Attorney General shall advance payment for any services rendered or costs, expenses or disbursements incurred.

### **Section 2. Expenses and Format**

Special Counsel shall only be reimbursed for expenses incurred in the performance of Special Counsel's duties in accordance with the terms of this Retention Agreement and the Assignment Letter. Reimbursement shall only be provided for invoices submitted with itemized receipt documentation.

All expenses must include the following information: (1) the name of the attorney incurring the expense; (2) a legible copy of an itemized receipt documenting the expense, and (3) a detailed description of the expenses. No reimbursement shall be made for "miscellaneous" listings or for expenses missing any of the requirements listed above. No reimbursement shall be made for expenses that are not a proper public purpose.

### **Section 3. Receipts**

All receipts shall be retained for at least one (1) full year following the Termination Date and shall be made available to the Attorney General and the Client upon request or as otherwise set forth herein.

## **Section 4. Maximum Reimbursement**

Unless otherwise expressly approved by the Attorney General in writing prior to invoicing, the following permitted expenses shall be reimbursed only in accordance with Section 2, above, and only as follows:

### **A. Paralegals / Law Clerks / Litigation Support Staff**

Reimbursement for the services of paralegals, law clerks, summer associates, litigation support staff, nurse practitioners and other legal assistants shall be made at Special Counsel's normal billing rate, not to exceed the greater of One Hundred Dollars (\$100.00) per hour or sixty percent (60%) of the Hourly Rate. In no event shall the hourly billing rate for such individuals exceed One Hundred Seventy-Five Dollars (\$175.00) per hour without prior written consent of the Attorney General prior to invoicing. No reimbursement shall be made for information technologies, case managers, secretaries, docket clerks/managers or librarians, nor for any work deemed clerical/administrative in nature.

### **B. Experts and Consultants**

Special Counsel shall be reimbursed for retention of outside experts or consultants, including fees and other reasonable costs, only when expressly authorized by the Attorney General. Upon request by the Attorney General, Special Counsel must provide the Attorney General with any written agreements between Special Counsel and any expert or consultant doing work for or with Special Counsel on any matter under this Retention Agreement.

### **C. Travel**

Approval of travel expenses for reimbursement to Special Counsel is subject to the State of Ohio Travel Policy as set forth by the State's Office of Budget and Management and found at Ohio Administrative Code 126-1-02. Subject to the Attorney General and the Client's approval, Special Counsel may be reimbursed for necessary flights and accompanying use of rideshare services pursuant to the State of Ohio Travel Policy. Special Counsel shall not be reimbursed for mileage. Subject to the Attorney General and the Client's approval, Special Counsel may charge the Hourly Rate for travel by car, with reimbursement at 100% of the Hourly Rate for the first hour and 50% of the Hourly Rate for every hour thereafter. Subject to the Attorney General and the Client's approval, Special Counsel shall be reimbursed for lodging, meals, and incidentals at Per Diem Rates. See <http://www.gsa.gov/portal/category/100120>. No reimbursement shall be made for the purchase of alcohol.

### **D. Photocopying / Document Imaging / Electronic Storage**

In-house photocopying/document imaging (including faxing, scanning and color copies) shall be reimbursed at Special Counsel's actual expense, not to exceed fifteen cents (\$0.15) per copy and is to be itemized on the invoice as "photocopies, document images, faxes, or scanned pages" (number of copies @ rate per copy/image). Reasonable amounts for outside photocopying/document imaging/electronic storage shall be reimbursed at actual cost if receipts are provided at



the time of invoicing. Special Counsel shall strive to find the most cost-efficient method of storing records electronically, whether in the normal course of preparing the Client's file, or for the purpose of transmitting records to the Client or another party. The Client and the Attorney General reserve the right to reject the reimbursement amount charged by Special Counsel to store records on compact disks (CD), external drives, flash drives, or such other applicable technology if it is determined that a less expensive method was reasonably available to Special Counsel. If Special Counsel seeks reimbursement for cloud storage, Special Counsel shall only be reimbursed for that portion of the cloud storage incurred for records pertaining to the assigned matter. Special Counsel shall not be reimbursed for routine printing costs incurred during the performance of legal work.

#### **E. Priority / Overnight Mail**

Charges for priority or overnight mail and courier services shall be reimbursed only if a reasonable basis exists for using the service and only if itemized receipts are provided at the time of invoicing. In no event shall Special Counsel be reimbursed for the cost of sending invoices or status reports to the Attorney General by overnight or priority mail services.

#### **F. Other Expenses**

Actual costs shall be reimbursed for certain extraordinary expenses including transcripts, deposition costs, witness fees, subpoena service, postage, printing, cab and bus fares, parking, and long-distance telephone calls when itemized receipts are provided at the time of invoicing. Routine expenses, such as office supplies, online legal research fees (i.e. LexisNexis or Westlaw), or secretarial costs, are not reimbursable. Special Counsel shall obtain the Attorney General's approval before incurring any individual expense exceeding Two Thousand Five Hundred Dollars (\$2,500.00) as well as any other extraordinary or unusual expenses or significant category of expenses incurred in fulfilling the terms of this Retention Agreement.

### **Article VII INVOICES**

Unless approved otherwise by the Director of Outside Counsel or his designee, Special Counsel shall submit monthly invoices for services rendered under each Assignment Letter (each a "Special Counsel invoice") electronically through the e-billing system used by the Attorney General ("e-billing system"). Special Counsel shall clearly identify the name or initials of the attorney or paralegal and titles of other experts who performed work on a given assignment, the date the services were rendered, a detailed description of the services rendered, and the number of hours worked on all invoices submitted through the e-billing system.

Compensation for services rendered shall be computed from the Special Counsel invoice. The Director of Outside Counsel or his designee will then forward approval notification to the Client for payment as approved by the Attorney General. For purposes of ORC 126.30, the required payment date of a Special Counsel invoice may be enforceable, but only after the Client first receives a proper approval notification prepared by the Attorney General. Special Counsel shall not submit invoices for work performed more than two (2) years prior to the date submitted, and

invoices received more than two (2) years after the date the services were rendered shall not be eligible for compensation.

If the Attorney General finds discrepancies or errors in a Special Counsel invoice, an adjustment to the invoice will be made and may be viewed, along with the reason for the adjustment, by Special Counsel in the e-billing system with the amount approved for payment by the Client reflecting such adjustment. Invoices submitted in excess of the Budget Limit for the assignment or in contradiction of any billing guidelines set forth by the Attorney General may be rejected in their entirety upon submission. The Attorney General may also request that Special Counsel submit a corrected invoice. Special Counsel shall not resubmit any invoice unless requested to do so by the Attorney General.

## **Article VIII OTHER TERMS AND CONDITIONS**

### **Section 1. Equal Opportunity**

In the hiring of employees for the performance of work under this Retention Agreement, Special Counsel agrees not to discriminate on the basis of race, color, religion, sex, age, national origin, military status, ancestry, disability, sexual orientation or gender identity, characteristics, or expression in the employment of a person qualified and available to perform the work to which this Retention Agreement relates.

Special Counsel further agrees not to discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Retention Agreement on account of race, color, religion, sex, age, national origin, military status, ancestry, disability, sexual orientation, or gender identity, characteristics or expression.

ORC 125.111 requires any company doing business with the State of Ohio to maintain a written affirmative action program addressing employment practices and to file a copy of this program annually with the Department of Administrative Services, Equal Opportunity Division.

Special Counsel represents that it has a written affirmative action program and has filed a description of the affirmative action program with the Equal Opportunity Division of the Ohio Department of Administrative Services. Compliance and the liability for non-compliance with ORC 125.111(B) is the sole responsibility of Special Counsel.

When retaining individuals, companies or firms to aid in the performance of work under this Retention Agreement, Special Counsel is responsible for obtaining the representation of each contractor that it abides by the requirements of this Section. Contractors and subcontractors must agree not to discriminate on the basis of race, color, religion, sex, age, national origin, military status, ancestry, disability, sexual orientation or gender identity, characteristics, or expression in the employment of a person qualified and available to perform the work to which this Retention Agreement relates. Additionally, contractors, subcontractors and any person acting on behalf of any contractor or subcontractor in any manner may not discriminate against, intimidate, or retaliate against any employee hired for the performance of work in relation to this Retention

Agreement on account of race, color, religion, sex, age, national origin, military status, ancestry, disability, sexual orientation, or gender identity, characteristics or expression.

## **Section 2. Jurisdiction and Choice of Law**

This Retention Agreement and the rights of the Parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. Only Ohio state courts shall have jurisdiction over any action or proceeding concerning the Retention Agreement and/or performance hereunder. Special Counsel hereby irrevocably consents to jurisdiction in a court of proper jurisdiction in Franklin County, Ohio.

## **Section 3. Indemnification**

Special Counsel agrees to indemnify and hold the Attorney General, the State of Ohio, and the Client harmless and immune from any and all claims for injury or damage arising from this Retention Agreement that are attributable to Special Counsel's own actions or omissions or those of its partners, associates, officers, employees, subcontractors, suppliers, third parties utilized by Special Counsel, or joint ventures while acting under this Retention Agreement. Claims means any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime, or employment matters and any claims involving collection activities. Special Counsel shall bear all costs and fees associated with defending the Attorney General, the State of Ohio, and the Client against any such claims.

## **Section 4. Termination**

### **A. Termination by the Parties**

The Attorney General reserves the right to modify or cancel the appointment of Special Counsel and/or terminate this Retention Agreement at any time, in its sole discretion, and without cause or duty of explanation. Special Counsel may terminate this appointment and this Retention Agreement upon thirty (30) days' written notice to the Attorney General. If there is pending litigation, termination by Special Counsel shall not be effective unless Special Counsel first obtains leave of court to terminate its representation in the matter.

### **B. Compensation in the Event of Termination**

In the event this Retention Agreement is terminated by either Party, Special Counsel shall be paid for all properly documented services and expenses rendered prior to termination at the agreed upon rate. Invoices for such services and expenses with required receipts shall be submitted in accordance with Articles VI and VII of this Retention Agreement.

### **C. Transfer of Work**

If Special Counsel is removed from any case or matter, Special Counsel agrees to effectuate a speedy and efficient transfer of the work and to cooperate fully with the Director of Outside Counsel. Special Counsel agrees to protect the Client's interests in any transfer of work. The

Attorney General or Client may withhold any outstanding payments due to Special Counsel if Special Counsel fails to transfer all files, documents and materials when so requested by the Attorney General.

### **Section 5. Campaign Finance Compliance**

Special Counsel hereby certifies that neither Special Counsel nor, to Special Counsel's knowledge, any of Special Counsel's partners, officers, directors, shareholders, or employees, nor the spouse of any such person, has made contributions in excess of the limitation specified in ORC 3517.13.

Special Counsel shall, at all times, have a completed, notarized Affidavit of Eligibility on file with the Attorney General. Failure to provide a completed, notarized Affidavit of Eligibility may result in termination of the Special Counsel appointment.

### **Section 6. Compliance with Rules of Professional Conduct**

Special Counsel represents and warrants that the attorneys performing the legal work contemplated by this Retention Agreement are currently licensed to practice in, and in good standing before the bar of, the applicable jurisdiction or jurisdictions listed on the RFQ Response (each an "Admission Jurisdiction"). If necessary, those attorneys will comply with all out-of-state attorney pro hac vice registration requirements of the Ohio Supreme Court or the applicable jurisdiction. If, during the appointment as Special Counsel, a complaint is issued against Special Counsel or any attorney providing services pursuant to this Retention Agreement, alleging a violation of the Supreme Court Rules for the Government of the Bar of Ohio, the Ohio Rules of Professional Conduct, or the applicable rules governing the state bar in any Admission Jurisdiction, Special Counsel must give timely written notice, with a copy via email, of such complaint to the Director of Outside Counsel. Such notice must include the nature of the allegations set forth in the complaint.

### **Section 7. Conflicts of Interest and Ethics Compliance**

Special Counsel represents and warrants that, as of the date of this Retention Agreement, Special Counsel has no conflict of interest that has not been consented to in writing under the Rules in undertaking Special Counsel's representation hereunder. Special Counsel agrees that if a conflict of interest, potential or otherwise, arises pursuant to Rule 1.7 of the Ohio Rules of Professional Conduct, then Special Counsel will give timely written notice to the Client and the Attorney General. Special Counsel must request and obtain a written consent or waiver prior to undertaking representation adverse to any agency, board, commission, department, college, university, or retirement system if either Special Counsel or any attorney in Special Counsel's firm is then engaged under an Assignment Letter to represent such agency, board, commission, department, college, university, or retirement system. Moreover, Special Counsel must also request and obtain a written consent or waiver prior to undertaking representation adverse to the State of Ohio as a named party, the Attorney General as a party, including but not limited to, as a relator on behalf of the State (e.g., *State ex rel. Attorney General v. Respondent*), the Governor, and/or the Ohio General Assembly, irrespective of whether Special Counsel views the State of

Ohio, the Attorney General, the Governor, or the General Assembly to be clients. If Special Counsel's representation of a party adverse to the State of Ohio as a named party pre-dates the initiation of the case by the Attorney General that creates the conflict, Special Counsel shall promptly notify (not to exceed 30 days from the time the conflict arises) the Director of Outside Counsel and obtain a written consent or waiver.

Special Counsel represents, warrants and certifies that, to Specials Counsel's knowledge, it and its partners, associates, employees, and other persons assisting with the legal work contemplated by this Retention Agreement are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws set forth in ORC Chapter 102 and ORC 2921.01, 2921.42, 2921.421, and 2921.43. Special Counsel further represents, warrants, and certifies that neither Special Counsel, nor any of its partners, associates, employees or other persons assisting with the legal work contemplated by this Retention Agreement will do any act that is inconsistent with such laws.

### **Section 8. Findings for Recovery**

Special Counsel warrants that it is not subject to an "unresolved" finding for recovery under ORC 9.24. If the warranty is deemed to be false, this Retention Agreement is void ab initio, and Special Counsel must immediately repay to the State of Ohio any funds paid under this Retention Agreement.

### **Section 9. Insurance**

Special Counsel shall maintain, or cause to be maintained at no cost or expense to the Attorney General, adequate professional liability insurance in accordance with Gov. Bar R. III, Section 4. Unless otherwise stated, such insurance shall remain in force at all times from the date hereof through the term of this Retention Agreement, with companies authorized to do business in Ohio with an A.M. Best or Fitch Rating of at least "A" unless otherwise approved in writing by the Attorney General.

Special Counsel warrants that it will comply with all conditions of each policy to assure that each policy is kept in full force and effect. Any and all insurance claims must be made on a timely basis as required in the conditions of each policy.

### **Section 10. Compliance with Law**

Special Counsel agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances in the conduct of the work hereunder.

### **Section 11. Boycotting**

Pursuant to ORC 9.76(B), Special Counsel warrants that Special Counsel is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Retention Agreement.

## **Section 12. Miscellaneous**

### **A. Counterparts**

This Retention Agreement may be executed in one or more counterpart(s), each of which shall be an original and all of which shall constitute one and the same instrument.

### **B. Severability of Terms and Conditions**

If any provision of this Retention Agreement shall be held invalid, illegal, or unenforceable in any respect, said provision shall be severed. The validity, legality and enforceability of all other provisions of this Retention Agreement shall not in any way be affected or impaired unless such severance would cause this Retention Agreement to fail of its essential purpose.

### **C. Waiver of Terms and Conditions**

Failure to enforce or insist on compliance with any of the terms and conditions of this Retention Agreement by the Attorney General shall not constitute a waiver or relinquishment of any such term or condition of the Retention Agreement on the part of the Attorney General but the same shall remain at all times in full force and effect.

### **D. Entire Agreement / Integration**

This Retention Agreement, and any Assignment Letter issued pursuant to the Retention Agreement, constitute the entire understanding of the Parties. Both Parties agree that there is no other understanding or agreement other than the terms expressly stated herein or in the Assignment Letter.

### **E. Amendment or Modification**

No amendment or modification of this Retention Agreement shall be effective against either Party unless such amendment or modification is set forth in writing and signed by both Parties.

### **F. Headings**

The headings herein are for reference and convenience only. They are not intended and shall not be construed to be a substantive part of this Retention Agreement or in any other way to affect the validity, construction or interpretation of any of the provisions of this Retention Agreement.

### **G. Conflict**

In the event of conflict between the terms of this Retention Agreement and the terms of any Assignment Letter, the terms of the Assignment Letter shall control.

## **H. Successors and Assigns**

Neither this Retention Agreement nor any rights, duties or obligations hereunder may be assigned or transferred in whole or in part by Special Counsel, without the prior written consent of the Attorney General.

[Remainder of Page Intentionally Left Blank]

The undersigned represent that they are authorized to enter into this Retention Agreement. The undersigned acknowledge they have read and understand all terms set forth herein. By affixing their signatures below, the Parties evidence their intent to be bound hereto.

OHIO ATTORNEY GENERAL

SPECIAL COUNSEL

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

Firm: \_\_\_\_\_

Name: Shawn Busken

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

Title: Director of Outside Counsel

Name: \_\_\_\_\_

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

Title: \_\_\_\_\_

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