JOINT DEFENSE, COMMON INTEREST, AND
CONFIDENTIALITY AGREEMENT BETWEEN

[Parties]

# **Scope of Agreement**. This Joint Defense, Common Interest, and Confidentiality Agreement (“Agreement”) relates to the [describe litigation] (“Current Litigation”). This Agreement is entered into among [identify parties to agreement] (individually referred to as “Client” or collectively referred to as “Clients”), and the undersigned counsel acting for and on behalf of their respective Clients (together referred to as the “Defense Group”). This Agreement memorializes understandings reached among the Defense Group and Clients (collectively referred to as “Parties”).

# **Common Interest**. The Parties have concluded that the Current Litigation and the relationship among the Clients will present legal and factual issues common to the Clients, thus making essential common and joint efforts in preparation for defense of the Current Litigation. The Parties to this Agreement believe there is mutuality of interest in issues that may relate to the common defense of the Clients. The Defense Group wishes to work together on issues common to their respective Clients without waiving applicable rules of privilege, work product (including mental impressions, conclusions, opinions, or legal theories), trade secrets, and confidentiality.

# **Intent**. Communications among Parties, documents reflecting such communications, and any work product obtained from any Client or member of the Defense Group, shall remain confidential and protected from disclosure to any third party by each Client’s attorney-client privilege, the work-product doctrine, the “joint defense doctrine,” and any other applicable privilege or protections including the self-evaluation privilege. A third party under this Agreement is defined as a person or entity other than: (1) a Client or member of the Defense Group; (2) clerical, paralegal, and secretarial staff employed by a member of the Defense Group who need to review such information in connection with the preparation for any conduct in this Current Litigation; (3) outside experts and consultants working with the Parties; or (4) the Client’s insurance carriers.

# **No Disqualification/Conflicts of Interest**. The participation in and execution of this Agreement, as well as the receipt of any information pursuant to this Agreement, shall not disqualify any representative of a signatory (including a law firm) from accepting any engagement. Each Party to this Agreement knowingly and intelligently waives any conflict of interest that may arise from any undersigned counsel examining any Client at any proceeding. No counsel who has entered into this Agreement shall be disqualified from examining or cross-examining any Client (including any employee or former employee) who testifies at any proceeding because of counsel’s participation in this Agreement or the exchange of information pursuant to this Agreement.

# **Agreement to Share Information**. To further the mutual and common interests of the Clients, the Defense Group and their respective Clients agree to share and exchange among the Parties, as each counsel deems appropriate, witness statements and interview summaries, memoranda of law, debriefing memoranda, factual summaries, transcripts, digests, mental impressions, documents, legal strategies and theories, and other confidential information for the limited purpose of assisting counsel in protecting the rights and interests of their respective Clients.

# **Agreement Not to Disclose Shared Material to Third Parties**. Each Party agrees that he or she will not reveal to any third party any information received under this Agreement, except as follows:

## A Party receiving information from Party pursuant to this Agreement may communicate that same information to a third party only with the advance, written consent of: (i) the Party who contributed it to the joint defense effort; and (ii) every other Party who may be entitled to claim any privilege with respect to the information to be disclosed.

## A Party receiving information from another Party pursuant to this Agreement may communicate that same information pursuant to a Court order. Each Party agrees that if it receives a subpoena or other request to produce information or materials that includes information or materials received under this Agreement (whether formal or informal), it will notify all Parties, provide a copy of such request or demand, and, if reasonably possible, provide not less than seven (7) business days’ notice before production, in order to permit these other Parties to intervene.

## This Agreement shall not apply to documents and information independently obtained by a Client or from another Client through their business dealings or in another manner not governed by this Agreement.

# **New Parties**. The addition of other parties as signatories to this Agreement requires that all Parties execute a new agreement.

# **No Privilege Regarding Facts Not Otherwise Privileged**. The Parties agree that facts that are not otherwise privileged from disclosure shall not gain any privilege simply because such facts may be shared in a joint defense communication. Nevertheless, it is understood by the Parties that the joint defense, work product, and other applicable privileges protect against disclosure of: (a) the fact that particular joint defense communications have been made among the Parties; (b) the contents of such joint communications; and (c) any document reflecting or referring to such joint communications.

# **Parties Are Not Required to Share All Information**. The Parties agree and recognize that information known to one Client or Defense Group member need not be shared with some or all other Parties to this Agreement.

# **Attorneys’ Duty to Zealously Represent Own Client**. The Parties understand and acknowledge that each member of the Defense Group has an obligation to zealously represent his or her own Client. Thus, each member of the Defense Group may take action that may be contrary to the interests of other Parties. These actions include, but are not limited to: (a) advising his or her Client to cooperate with the government or any other entity; (b) generating and disclosing evidence or information to the government or third parties (apart from information obtained pursuant to this Agreement); and (c) cross-examining other Clients at trial or other proceedings. This Agreement does not prevent the Parties from entering into joint defense, common interest, or confidentiality agreements among themselves or with other parties.

# **Not an Agreement to Violate Any Law**. This Agreement is not intended to encourage or commit any violation of law or unlawful interference with any official proceeding or investigation. Each Client and Defense Group member acknowledges that explanation and understanding. Nothing in this Agreement shall be deemed an admission of liability by any Party.

# **Disclosure**. Each Defense Group member has explained the terms of this Agreement to his or her Client and is satisfied that the Client: (a) understands the terms; (b) agrees to abide by them; and (c) authorizes that attorney to execute this Joint Defense, Common Interest, and Confidentiality Agreement.

# **No Creation of Attorney/Client Relationship**. Nothing in this Agreement shall be construed to create an attorney/client relationship. Each Client represents and acknowledges that he or she is represented exclusively by his or her own Attorney. Each Attorney participating in the Defense Group is obligated to maintain the confidentiality of information as specified in the Agreement, but each Attorney does not act on behalf of any person other than his or her own Client.

# **Right to Terminate Participation**. Any Client is free to withdraw from this Agreement at any time. In the event any Client decides to withdraw from this Agreement for any reason, that Client shall immediately notify the remaining signatories in writing of his or her withdrawal from this Agreement; provided, however, that no such termination shall affect or impair the obligations imposed by this Agreement upon any Client or member of the Defense Group with respect to information previously furnished pursuant to this Agreement. Upon withdrawal of any Client, that withdrawing Client shall return or destroy all materials provided or produced under this Agreement, including any copies of such information or materials that such recipient person made or had made, or any documents such recipient has created reflecting or referring to the information or materials of a remaining Client or Defense Group member. A Client is required to withdraw, and provide written notice of withdrawal to all other Parties, should there come a time when it no longer has a common interest with the other parties to the Agreement or is no longer a party to the Current Litigation (by dismissal, judgment, settlement, or otherwise).

# **Potential Disputes Among the Parties**. If there is a dispute among the Parties in the future, no Party shall make use of information or materials provided to that signatory under this Agreement in that dispute, unless expressly agreed to and permitted by the Parties or unless the Party seeking to use the information or materials obtained the information or materials from an independent source without violation of this Agreement or any other legal duty or obligation. Nor shall any oral or written statements covered by this Agreement be deemed an admission in any civil, alternative dispute resolution, criminal, administrative or other proceeding. But nothing in this Agreement shall bar a Client or Defense Group member from using in any subsequent dispute any unprivileged information obtained through a legitimate discovery mechanism during the course of that dispute. The Parties agree that the sharing of any information or materials shall not be grounds for disqualification of undersigned counsel in any current or subsequent civil, alternative dispute resolution, criminal, administrative, or other proceeding, and each Party knowingly and intelligently waives the right to rely on the sharing of information or materials as the basis for disqualification of undersigned counsel in any subsequent disputes among any of the Parties. Nothing in this Agreement shall affect any claims or defenses that may be asserted by one party to this Agreement against another or against any person not a party to this Agreement.

# **Replacement of Counsel**. If a member of the Defense Group is later replaced by successor counsel, the member will continue to protect the confidentiality of all information and materials received from a Client or Defense Group member, as if the member were still actively representing his or her former Client. Successor counsel shall be bound by the provisions of this Agreement to the same extent and in the same manner as his predecessor counsel, unless and until the Clients and Defense Group members execute a new agreement that supersedes and replaces this Agreement. Any undersigned counsel withdrawing from this Agreement agrees to either destroy information or materials provided or produced under this Agreement or to provide such information or materials to successor counsel.

# **Continuance of Agreement**. This Agreement shall continue in effect notwithstanding any conclusion or resolution as to any Client in any pending or future civil, alternative dispute resolution, criminal, administrative, or other proceeding arising from or relating to the Current Litigation. Each of the Parties agrees that it will continue to be bound by this Agreement following any such conclusion or resolution.

# **Non-Waiver**. Any waiver of the rights and limitations contained in this Agreement is not intended to be a general waiver of any rights or limitations pursuant to this Agreement.

# **Entire Agreement**. This Agreement constitutes the entire agreement among the Parties regarding the Parties’ joint defense agreement and supersedes all prior or contemporaneous agreements, representations, or understandings.

# **Amendment**. Modifications to this Agreement shall be in writing signed by all Parties.

# **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original.

# **Construction**. None of the Parties shall be considered to have been the drafter of this Agreement or any of its provisions for the purpose of any statute, case law or rule or interpretation or construction that would or might cause any provision of this Agreement to be construed against the drafter of this Agreement.

# **Severability**. Any provision that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions and without affecting the validity or enforceability of any provision in any other jurisdiction.

# **Notice**. Any notice required or otherwise contemplated to be made under this Agreement shall be in writing and shall be deemed to have been made (a) if delivered personally, when received; or (b) if transmitted by facsimile or email, upon receipt of confirmation. All such notices shall be addressed as follows (or to such other address as may be specified in writing and delivered in accordance with this section):

[identify notice parties]

# **Specific Remedies to Enforce Confidentiality**. Each of the Parties acknowledges that disclosure of any communication in violation of this Agreement will cause all Parties to this Agreement to suffer irreparable harm for which there is no adequate legal remedy. Each of the Parties acknowledges that immediate injunctive relief is an appropriate and necessary remedy for any violation or threatened violation of this Agreement.

# **Choice of Law and Forum**. This Agreement and the rights and obligations of the Parties hereunder shall be governed by, and construed and interpreted with, the laws of [identify], without regard to conflict of law principles. [Forum selection.]

# **Application**. This Agreement is binding upon, and shall inure to the benefit of, the Parties and their respective agents, employees, representatives, officers, directors, subsidiaries, assigns, heirs, executors, administrators, insurers, and successors in interest.

AGREED AND ACCEPTED:

[Name] [Name]

Date: Date: