

## **AGREEMENT**

THIS AGREEMENT (the "Agreement") is by and between COUNSEL CAPITAL LLC ("Company"), an Illinois LLC, and the undersigned ("Assignor").

### **WITNESSETH:**

**THAT WHEREAS**, Assignor desires to transfer, sell or assign certain receivable accounts arising out of certain pending indigent fee declarations or applications (Assignor's Accounts) as security for cash advances by Company of certain of Assignor's Accounts, as hereinafter defined, which Accounts arose from bona fide rendering of services in the regular course of Assignor's profession; and

**WHEREAS**, Company desires to advance, purchase, and/or use such as collateral to make cash advances upon such Eligible Accounts which Company deems acceptable, in its sole discretion, upon the terms and conditions outlined in this Agreement.

**NOW THEREFORE**, for and in consideration of the premises and covenants set forth herein, the receipt and sufficiency of which is hereby acknowledged, Company and Assignor agree as follows:

1. **Definitions.** In addition to the terms elsewhere defined in this Agreement, the following terms shall have the following respective meanings, unless the context clearly indicates a different meaning:

"Account" or "Accounts" means all rights of the Assignor to payment for services rendered, whether now existing or hereafter arising

"Account Debtor" means a customer of Assignor for whom services have been rendered, or the party with whom the Assignor has contracted, in connection with an Account, such as the State of Illinois or a division thereof.

"Eligible Accounts" means those Accounts of the Assignor, each of which meets the following requirements:

- (i) such Account arose in the ordinary course of the Assignor's business,
- (ii) the right to payment has been fully earned by completed performance,
- (iii) any fee claim has been filed with the appropriate court or clerk of court or will be filed with the appropriate court or clerk of court within 24 hours of executing the assignment schedule,
- (iv) such Account is not subject to any offset, defense, counterclaim, credit, allowance or adjustment,
- (v) the Assignor's title to such Accounts is absolute and is subject to no assignment, claim, lien or security interest,
- (vi) the full amount reflected on the Assignor's books and on any invoice or statement delivered to Company related to such Account is owing to the Assignor and no payment has been made thereon,
- (vii) such Account is payable not more than ninety (90) days from the date of assignment of the Account to Company,
- (viii) such Account did not arise out of a contract or ethical obligation containing provisions prohibiting assignment thereof,
- (ix) the Assignor has received no notice and has no knowledge of there having occurred the death of the Account Debtor or of the dissolution, termination of existence, insolvency, bankruptcy, or appointment of a receiver for any part of the property of, or an assignment for the benefit of creditors made by, the Account Debtor,
- (x) such Account is not payable by any affiliate or subsidiary of the Assignor,
- (xi) the Account is not an Account of an Account Debtor which the Company, in its sole discretion, deems to be unacceptable for any reason and has notified or so notifies the Assignor thereof, and
- (xii) the Assignor has not received any note, trade acceptance, draft or other instrument with respect to or in payment of the Account or any chattel paper with respect to the services giving rise to the Account, and if any such instrument or chattel paper is received, the Assignor will immediately notify the Company and, at the Company's request, endorse or sign and deliver the same to the Company.
- (xiii) there are no liens of any type that are subject to the account or assignor.
- (xiv) that the account, fee declarations, and the like are valid and have not exceeded any statute of limitations or a duplicate.

2. Assignment of Eligible Accounts. Assignor hereby agrees to assign, transfer, set over, convey and deliver to Company, with recourse, and Company agrees to purchase:

- (a) such Assigned Accounts, which are, in Company's sole discretion, acceptable to Company,
- (b) all proceeds, guaranties, security, and all of Assignor's interest in the services giving rise to such Assigned Accounts,
- (c) any items substituted therefore as replacements and,
- (d) all additions thereto.

The Eligible Accounts purchased by Company hereunder shall be transferred by individual assignments stamped or otherwise notated on the face of each invoice, contract or voucher and by such other instruments as Company may from time to time request.

3. Purchase Price, Fees, Reserve Account, and Interest.

(a) The purchase price or amount to be advanced by Company for each Eligible Account shall be the gross amount of such Eligible Account, less any discount or allowances of any nature allowed to Account Debtor, and less Company's expenses, such as bank charges, postage, shipping, and any reserve amount held by Company, as set out hereinafter. Each Eligible Account purchased shall be evidenced by a written assignment of the Eligible Account on the ASSIGNMENT SCHEDULE ("SCHEDULE"), which shall make reference to this Agreement.

(b) In order to protect Company against possible returns, claims, allowances, expenses, and all other obligations of Assignor hereunder, Company may, in its sole discretion, reserve an amount not to exceed fifty percent (50%) of the Net Amount of each Eligible Account, which amount is considered reasonably necessary to cover such obligations and contingencies. Company shall have the right, in its sole discretion, to make charge backs to, or make deductions for any claims, short pays, setoffs against, or any other charges the Company deems to be in the Company's best interest to deduct from the reserve fund, in order to satisfy any obligations of Assignor to Company as provided in this Agreement. The Company shall pay, i.e., "rebate," to Assignor the balance of the reserve fund, after deducting all fees and charge backs (short payment because of Payor deductions, Assignor-intercepted payments, etc.) on each Account included on the SCHEDULE. The Company will generally rebate the reserve on an invoice-by-invoice basis, but reserves the right under appropriate circumstances to delay the rebate until all the Accounts included on the SCHEDULE have been collected in full by the Company.

(c) Subject to the foregoing provisions in 3(b), the Company will advance to Assignor such sum in its discretion of an Eligible Account, and will charge a fee, agreed upon by both Company and Assignor, on the gross amount of said Account. The Company's fee shall be consideration for its services in paying cash for said Accounts in advance of their expected due date. The terms of this fee are set forth on the SCHEDULE.

(d) The fees set out on the SCHEDULE shall continue to accrue upon the balance due of each Eligible Account until each Eligible Account is respectively paid in full.

(e) All funds received on behalf of Assignor by Company shall be applied to fees first, and then to the principle funded.

4. Representation, Warranties and Agreements. Assignor represents, warrants, and agrees that:

(a) The Assignor is in good standing, and licensed to practice Assignor's profession in the state in which Assignor's professional services were rendered for each Eligible Account. Should Assignor be an entity, the Assignor has all requisite power to enter into this Agreement and to consummate the transactions contemplated hereby on behalf of the entity. Such entity Assignor has, by all necessary corporate or company action, duly authorized the execution, delivery and performance of this Agreement, and when duly executed and delivered by the Assignor and the Company, this Agreement shall constitute a legal, valid and binding agreement of such Assignor entity.

(b) The Assignor shall provide written notification to Company within 10 days of the revocation or suspension of Assignor's professional license.

(c) With respect to an Eligible Account purchased by Company hereunder:

(1) the Eligible Account is not yet past due, is not evidenced by a judgment, lien, instrument or chattel paper (except such judgment as has been assigned and such instrument or chattel paper as has been endorsed and delivered to Company) and represents a bona fide completed transaction;

(2) the amount shown on Assignor's books and on any invoices or statements delivered to Company is a legally enforceable debt owed by Account Debtor;

(3) the title of Assignor to the Eligible Account and, except as against the Account Debtor, to any services representing the Account, is absolute;

(4) the Account has not been transferred to any other person, and no person, except Assignor, has any claim thereto, and, with the sole exception of the Account Debtor, to the services represented by the Account;

(5) no partial payment has been made by anyone on such Eligible Account;

(6) no setoff, counterclaim or defense to such Eligible Account exists, and no agreement has been made with any person or entity under which any deduction or discount may be claimed.

(7) any fee declaration/application has been filed with the appropriate court or clerk; or will be filed with the appropriate court or clerk within 24 hours of executing the SCHEDULE.

(8) should any funded fee declaration or account not be paid in full or at all from the original source then Assignor will hereby be liable and make immediate payment of the amount initially funded and fees to Company.

(9) Assignor guarantees the payment of each Account.

(10) Assignor agrees that all proceeds being used from this transaction are for commercial purposes only

(d) Assignor shall indemnify and hold Company harmless against any misrepresentation or breach of warranty hereunder by Assignor, any dispute resulting in liability, loss, expense, cost or attorney's fees caused by or arising out of the rejection of any fee application or any part thereof, or any alleged claim, deficiency, defense or set off of every kind and nature asserted by any Account Debtor.

5. Accounts. The Assignor and the Company agree as follows regarding the Eligible Accounts accepted by Company:

(a) Upon the assignment or transfer of any Eligible Account accepted by Company, Assignor shall issue an invoice or voucher to or enter into a contract with the Account Debtor. The Assignor shall:

(i) deliver to the Company a copy of each declaration, application, invoice, voucher or contract, and a fully executed SCHEDULE, and documented confirmation that each declaration, application, invoice, voucher or contract has been submitted to the appropriate court or office,

(ii) stamp or print conspicuously on all declarations, applications, invoices, vouchers, or contracts that the Accounts represented by such have been assigned to Company, and all rights to payment thereunder have been assigned to the Company, and

(b) All fee declarations/invoices shall be clearly marked to provide notification to the Account Debtor that the Account is payable by Account Debtor directly to Company to 368 W Huron Street Suite 2S Chicago, ILL 60654. All payments made with respect to any Assigned Account purchased by Company hereunder shall be made directly to Company. If the Assignor should receive full or partial payment on any Assigned Account, the Assignor shall immediately deliver such payment to the Company. The Assignor agrees that all such payments or proceeds while in the hands or possession of the Assignor, shall be held by Assignor as a fiduciary of Company, in trust for the benefit of the Company.

(c) Provide Company with such documents which the Company may reasonably require to further evidence the assignment of such Eligible Account.

(d) The Company's granting of extensions to Account Debtors or the suffering of any delay or breach by the Account Debtors in connection with the Accounts shall in no way be construed as a waiver of any subsequent delay or breach or of the rights of the Company against the Assignor and the Account Debtors.

(e) The Company shall not, under any circumstances, or in any event whatsoever, have any liability for any error, omission or delay of any kind occurring in the settlement, collection or payment of any Eligible Account or of any instrument received in full or partial payment thereof or in dealing with any lien, security or guaranty of any such Account.

(f) The Assignor shall not, without the express written consent of the Company, release, compromise or adjust any Assigned Account purchased hereunder, or any guaranty, security or lien therefore, or grant any discounts, allowances or credits thereon, or bring any suit or enforce payment thereof.

(g) The Company shall have the right, but not the obligation, at any time, at its option, to collect any or all of the Assigned Accounts purchased hereunder, directly or through its agents or attorneys. The Company shall also have the right, but not the obligation, upon default by Assignor, to collect any or all of Assignor's accounts, directly or through its agents or attorneys. For such purposes, the Assignor hereby irrevocably makes, constitutes and appoints the Company its true and lawful attorney in fact with full power to sell, transfer, set over, comprise, discharge or extend the whole or any part of any such Account or Assigned Account as appropriate, and to do all acts or things necessary or incidental thereto, including but not limited to, the right to bring suit, endorse or sign the Assignors signature and draw funds directly from any bank account of the Assignor, contact and change any mailing address or payment method or routing information or wire transfer information, from a debtor of the Assignor, notify any court or debtor of the Assignors obligation and offset that obligation with any account receivables. The Company has no obligation to take the actions authorized by this power of attorney.

(h) The Assignor agrees that the terms of this Agreement creates a fiduciary duty owed by Assignor to the Company. It is the responsibility of Assignor to protect the Company's interest in each Eligible Account. Assignor shall use Assignor's best efforts to insure that each Eligible Account/declaration is approved by the judge presiding over such proceeding, and the same is timely processed through the respective court system and state personnel. Company does not expressly or implicitly assume any contractual or other duty, obligation or liability of Assignor to Account Debtor or to any other person or entity.

6. Power of Attorney. In addition to the provisions in the preceding paragraph, Assignor does hereby constitute and appoint Company as its true and lawful attorney with power to receive, open and dispose of all mail addressed to Assignor; to endorse the name of Assignor upon all remittances payable to Assignor with respect to Accounts purchased hereunder; to sign and endorse the name of Assignor on any invoice, assignment of Accounts sold, claims, request for payment, finance statements in favor of Company, checks, drafts, money orders and any other instrument or document which will facilitate payment of any Account purchased hereunder. Also, Company shall have the right to collect any default account balance owed to Company by Assignor by endorsing/signing the Assignor's signature and draw funds directly from any bank account of the Assignor; contact and change any mailing address or payment method or routing information or wire transfer information from an Account Debtor, the State Comptroller, State treasurer, or any other debtor; open any U.S. mail or other correspondence believed to be negotiable instruments or other documents relating to the fee declarations or account. Company shall have the right to notify any court or Account Debtor of the Assignors obligation and offset that obligation with any of Assignor's accounts with said account Debtor. Assignor grants Company the right to contact the State Comptroller, U.S. Treasury, any government or civilian entity, or other Account Debtor, and obtain from such party any and

all information said party may have about Assignor, either written or otherwise. Assignor shall hold Company and such party or Account Debtor harmless, and shall indemnify Company and said Account Debtor, loss, damage, expense, costs or attorney fees associated with this power of attorney. **It is understood that this power is coupled with an interest and is irrevocable.** Assignor further grants Company, at the cost and expense of Assignor, the power of attorney to sign, file, and renew any UCC lien or other documents to protect Company and/or to give notice of Company's lien on Assignor's assets. Cost of any filings shall be the responsibility of Assignor, and Assignor agrees to pay all such costs directly or the cost shall be added to Assignor's accounts and accrue interest at the contractual rate herein.

7. Books and Records. Assignor shall keep proper and accurate books, accounts, correspondence, records and papers pertaining to all Accounts of Assignor, and shall make proper entries on its books and records disclosing to Company the sale of the Eligible Accounts accepted by Company. Assignor's accounting and financial records shall be maintained according to GAP. Company may at all reasonable times inspect, verify and audit Assignor's books and records and may remove any part of them for the purpose of making photo static copies of any part thereof.

8. Financial Statements, Credit Reports and other Documents. Assignor shall furnish from time to time as may be reasonable required by Company, statements showing its financial condition, including, without being limited to, income statements and balance sheets. Assignor grants Company the right to obtain Assignor's credit report at any time.

9. Termination. This Agreement may be terminated by Company without cause, and such balance will be due within thirty (30) days "termination period" of such notice. During the termination period, Company does not waive any of its rights under this Agreement, and the terms and rights under this Agreement shall continue until such indebtedness is paid in full by Assignor. Assignor may terminate this Agreement by providing written notice to Company along with the entire balance due.

10. Attorney's Fees and Expenses. Company shall be entitled to recover from Assignor reasonable attorneys' fees, court costs, and all other expenses which may be incurred by Company in the enforcing or interpretation of this Agreement, or the provisions of any related documents, the collection of any disputed or undisputed balance under this Agreement, whether or not an action is commenced. Further, Company shall be entitled to additional reasonable attorney's fees for any appeal, or in bankruptcy proceedings.

11. Security Interest.

(a) As security for the due and punctual payment and performance by Assignor of all obligations under this Agreement, together with all costs and expenses (including attorney's fees) incurred by Company in connection with the enforcement by Company of its rights hereunder, Assignor hereby grants to Company a security interest in and to the following property of Assignor:

(i) All Accounts, wherever located or situated and whether now existing or hereafter arising or whether now owned or hereafter at any time acquired by Assignor, all sums of money due or becoming due on such Accounts, all guaranties and security for such Accounts, all of Assignor's interest in the services giving rise to such Accounts and the rights pertaining to such services, including without limitation the right of stoppage in transit and all related insurance, any times substituted therefore as replacements and all additions thereto;

(ii) All of Assignor's records, instruments, chattel paper, general intangibles and contract rights associated with the Accounts; and

(iii) All proceeds of any of the foregoing, including but not limited to insurance proceeds.

(iv) Any fee declaration payments or accounts payable to Assignor that have not been assigned to Company.

12. Default.

(a) Conditions of Default.

(i) If Assignor breaches any warranty made in this Agreement, or fails to observe or perform

any of the provisions of this Agreement, Assignor shall be in default of this Agreement.

- (ii) Payment upon an Eligible Account is paid to Assignor and the payment is not forwarded to Company within 3 days,
- (iii) Assignor negotiates any payments from a paying entity that should have been forwarded to Company,
- (iv) Assignor transfers to Company an account which is not an Eligible Account,
- (v) An account thought to be an Eligible Account at time of funding, fails to be an Eligible Account,
- (vi) Assignor’s professional license has been suspended or revoked.

(b) Remedies Upon Default. In the event of a default by Assignor, Company may accelerate payment of the entire indebtedness owed by Assignor to Company, and proceed to file suit in a court of law for damages. Company shall also have the right to take all actions necessary to collect the Eligible Accounts to include; but not limited: to offset the Assignors’ reserve account held by Company, to enforce its rights under this Agreement as a secured creditor and under the powers granted in this Agreement in Article Six to obtain payment directly from the Account Debtors, the State Comptroller, State Treasurer, or the government entity charged with accounts payable of such accounts. Assignor waives any bond requirement that Company would normally be required to secure from any court, statute, or law to enforce this provision, and shall hold Company and Account Debtor or any other party harmless. Assignor hereby waives any bond requirement for the collection, lien, or claim of this account in any court. Assignor hereby submits to any liens or garnishments to collect any balance owed to Company under this agreement from any third party wherever located either intrastate or interstate. This submission to liens or garnishments shall include but is not limited to any pre-judgment writ of execution.

13. Successors and Assigns. This Agreement shall be binding upon the heirs, successors and assigns of Assignor, and shall ensure to the benefit of the successors and assigns of Company. No notice to or demand on Assignor in any case shall entitle Assignor to any other or further notice or demand in the same, similar or other circumstances. Time is of the essence.

14. Further Assurances. Upon the request of Company, Assignor shall duly execute and deliver, or cause to be duly executed and delivered, at the cost and expense of Assignor, such further instruments as may be necessary or proper, in the judgment of Company, to carry out the provisions and purposes of this Agreement.

15. No Delay. No delay on the part of the Company in exercising any power or right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any power or right hereunder preclude other or further exercise thereof or the exercise of any other power or right.

16. Notices, Etc. Any notice, request or demand hereunder shall be in writing and shall be deemed to have been received by Assignor and Company and shall be effective on the date on which delivered to Assignor or Company at the address specified below (or at such other address as such party shall specify to the other parties in writing), or, if sent by registered or certified mail return receipt requested, shall be effective on the date on which mailed, addressed to such party at such address:

In the case of Assignor:  
(Physical address, NO P.O. Box)

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

In the case of Company:

Counsel Capital LLC  
368 West Huron Street  
Chicago, Illinois 60654

17. Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, shall be enforced to the extent that same is deemed to be enforceable by said court, as if originally executed in that form by the parties hereto. The validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Should any provision of this agreement be redundant or inconsistency with any other provision of this Agreement then it is the agreement of the parties that the provision that benefits Company shall prevail.

18. Governing Law. This Agreement is being executed and delivered in the State of Illinois and the laws of the State of Illinois shall govern the rights of the parties to this Agreement and the validity, instruction, enforcement and interpretation of this Agreement. The parties to this Agreement acknowledge that each have had significant contact with the State of Illinois for the purposes of subject matter and personal jurisdiction of the Illinois state courts. Company and Assignor submit to the jurisdiction of the State Court for Cook County, Illinois for the purpose of deciding any questions, disputes or causes of action, arising under this Agreement. In the event Assignor is not qualified to do business in the State of Illinois, the Secretary of State of Illinois is hereby designated as Assignor's agent for service of process for any actions commenced under or to enforce this Agreement in the State of Illinois, provided that a copy of any such process shall be mailed to Assignor in accordance with the notice provisions of this Agreement. The parties hereto hereby waive any right to trial by jury, and any right to punitive damages on any claim, counterclaim, setoff, demand, action or cause of actions (a) arising out of or in any way pertaining or relating to this Agreement, or (b) in any way connected with or pertaining or related to or incidental to any dealings of the parties hereto with respect to this Agreement, or the exercise of either party's rights and remedies hereunder, in all of the foregoing cases whether now existing or hereafter arising, and whether sounding in contract, tort or otherwise. Each party hereto, knowingly and voluntarily, irrevocably waive their right to trial by jury and to punitive damages.

19. Plurality and Gender. The use of the singular herein shall be deemed to include the plural and vice versa, and the use of the neuter shall be deemed to include the masculine or feminine, and vice versa.

20. Headings. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning, limit the terms, limit the application throughout this agreement, or act as an interpretation of the parties' intent.

This Agreement shall and does amend, replace and supersede each and every prior Agreement between the Assignor and the Company, except this Agreement shall relate back to the effective date of any prior Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

ASSIGNOR:

COMPANY:

COUNSEL CAPITAL LLC

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Social Security No. \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Federal Employer ID \_\_\_\_\_ - \_\_\_\_\_

Driver's License No. \_\_\_\_\_ Issuing State \_\_\_\_\_  
(Include photocopy of License with Agreement)

Attorney State Bar Code \_\_\_\_\_

ACKNOWLEDGMENT OF ASSIGNOR SIGNATURE

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_

**ENTITY PARTY JOINDER TO THIS AGREEMENT**

The undersigned hereby approves, joins and ratifies the foregoing Agreement.

\_\_\_\_\_  
NAME OF ENTITY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

Federal Employer ID \_\_\_\_\_ - \_\_\_\_\_

**ACKNOWLEDGMENT OF ASSIGNOR SIGNATURE**

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
Notary Public

**PROVIDE ENTITY RESOLUTION AUTHORIZING EXECUTION OF AGREEMENT, A COMPLETE COPY OF ENTITY ORGANIZATIONAL DOCUMENTS, CERTIFICATE OF GOOD STANDING.**