**Miscellaneous Fee Agreement Provisions**

Instructions: The following provisions are additional terms that may not be included in the above fee agreement samples. A lawyer may need or wish to add one or more of these specific terms to the fee agreement depending on the specific circumstances of the case and the nature of the representation and fee agreement.

• Alternative Business Structures

For questions or concerns regarding the handling of your case, the Compliance lawyer for (Legal Services Business name here) is: (insert name and contact information for your registered Compliance Lawyer)

• Arizona Discovery Rules

Arizona’s discovery rules are comprehensive and substantially different from how discovery is conducted in other states. The rules encourage early Court involvement in case management, require disclosures by the parties and contain presumptive discovery limits. The rules require clients and their lawyers to conduct a reasonable inquiry and investigation about all matters to be revealed in the disclosure statement. We have the duty to investigate facts that are good and bad for you. The failure of you or us to conduct a reasonable inquiry and investigation into these topics and to disclose all relevant information may subject you, or us, or both to sanctions. Furthermore, any evidence favorable to you that is not timely disclosed in accordance with the rules cannot be used at trial.

• Business Transaction with Client

This representation involves a business, property or financial transaction between the lawyer (or legal paraprofessional) and the client. The terms of the transaction as well as all elements necessary to comply with the Rules of Professional Conduct (ER 1.8(a)) are contained in a separate writing attached hereto and signed by you.

[NOTE TO LEGAL PROFESSIONAL: See ER 1.8 and particularly Comment 1 to ER 1.8.]

• Client Files and File Maintenance

During the time we represent you, we will maintain a file relating to your legal matter. At the conclusion of the representation, we will give your file to you. After we give your file to you, information contained in your file will no longer be available through our firm. Take measures to protect your file. If we are unable to return your file to you at the conclusion of the representation, we will maintain your file for five years after representation ends. By signing this fee agreement, you agree that your file may be destroyed after that five-year period ends.

[We maintain records electronically and by use of digital images and do not retain paper copies of documents, unless required by rule or statute. You may obtain paper copies of documents in your file upon request to us, with reasonable notice. By signing this fee agreement, you consent to us maintaining your file electronically.]

[NOTE TO LEGAL PROFESSIONAL: Refer to Ariz. Ethics Ops. 08-02 and 07-02 for a more complete discussion of these issues.]

• Communications

We will make every attempt to return all phone calls within 24 hours. We encourage e-mail communications as well. Non-lawyer (or legal paraprofessional) staff may be directed to communicate with you, if appropriate. We will not communicate confidential information about the representation to third persons, including your family members, unless you specifically direct us to do so. We will send you copies of all relevant documents and correspondence that we receive in the case so that you can maintain a file of the legal matter. All communication with you will be billed for in accordance with the terms of the fee agreement.

[NOTE TO LEGAL PROFESSIONAL: You should update this clause with the specifics of your firm’s communications policy.]

• Conflict of Interest

This representation presents a conflict of interest under the Ethical Rules. However, we believe that we will be able to provide competent and diligent representation to each affected client. We have provided a separate writing describing the nature of the conflict and the risks inherent in proceeding with the representation, as well as reasonably available alternatives. By signing that separate writing explaining the conflict, you agree to the continuation of the representation and waive the conflict described therein.

[NOTE TO LEGAL PROFESSIONAL: There are some conflicts that your client may not consent to. You are responsible for determining whether you must obtain your client’s informed consent pursuant to ER 1.7(b). Additionally, please remember that you cannot ask a client to prospectively consent to a future conflict that is not yet identified. See ER 1.0(e).. For more guidance on what to put in a conflict waiver see Ariz. EO 07-04.]

• Disputed Funds

If we possess funds in which you and someone else have a claim or interest, we must hold the funds in our client trust account until the dispute is resolved. We will promptly disburse, however, any portion of the funds not in dispute. We will not unilaterally assume to arbitrate a dispute between you and a third party, and we may have to file an action to have a court resolve the dispute.

We will send you monthly billing statements for costs, disbursements and expenses incurred in connection with this matter. The statements shall include the amount, rate, basis of calculation or other method of determination of fees and costs and expenses. Each statement is to be paid in full or disputed within [xx days] after the date of such statement. Money held in trust for attorney fees will be transferred to the attorney as payment XX days after the billing statement date.

• Earned-on-Receipt Fee

This fee is earned-on-receipt and will not be billed against on an hourly basis. It will not be deposited into our client trust account but will be deposited into our general operating account. Even though the fee is earned-on-receipt, you may nevertheless discharge us at any time and in that event may be entitled to a refund of all or part of the fee based upon the value of the representation.

• Electronic Communications and Storage

We communicate from time to time with our clients via cellphone, text, fax, an online portal, and unencrypted e-mail. We also use WiFi, an internet portal, cloud storage, video-conferencing and third-party vendors and services for communications and storage. We may also use Artificial Intelligence or Generative Artificial Intelligence in the course of handling communications.

We maintain reasonable security measures to assure the confidentiality of your records and information, however there is always some risk of disclosure, hacking, intrusion when using these forms of communication and storage due to the nature of these tools. You agree to inform us in writing, in advance, if you believe your matter requires a higher degree of security such as using encrypted emails. Alternatively, if you wish to receive only paper communications from us, we will do so. Absent those instructions from you, you understand that we will use our electronic communication and storage pursuant to our standard office policy and procedures.

You are responsible for providing us with an e-mail address that you want us to use for correspondence related to the representation. You should check that e-mail address regularly. You should be sure that you are the only person with access to that account – and that it is not an account anyone else, including family members or employers, may access. (Keep in mind that if you use your work email address, your employer or IT department may have access to it.) We will assume that third parties (e.g., employers or family members) do not have access to that e-mail address so you can receive confidential correspondence from us at that address. We also will assume that you are receiving and reviewing our e-mails at that address unless you alert us to an issue. Please be certain that your e-mail filters do not block e-mails from our office and that the allowable size of incoming e-mails is sufficient to accept e-mails from us with attachments.

• Fee Shifting

The matter for which you have hired us is one in which lawyers’ fees (or legal paraprofessionals’ fees) may be recovered by one party from the other. Regardless of whether fees are awarded, you are responsible for all fees owing under the terms of this fee agreement. If appropriate, we will press a claim asking the Court to award your fees incurred in this matter. Please also understand that the other party may attempt to shift their fees to you. Moreover, the provisions under which a Court may shift fees generally leaves that decision to the discretion of the Court to decide whether, and in what amount, to award fees.

• Interest Charges

If a billing statement is not paid when due or disputed within [xx days] after the date of such statement, interest will be charged on the principal balance (fees, costs and expenses) shown on the statement. Interest will be calculated by multiplying the unpaid balance by the periodic rate of .xxx% per month (XX PERCENT [xx%] ANNUAL PERCENTAGE RATE). The unpaid balance will bear interest until paid. [NOTE TO LEGAL PROFESSIONAL: if seeking to charge interest on past due legal fees, the rate must be “reasonable” and you must have the client’s “informed consent” as defined in ER 1.0. See Ariz. EO 00-07 for more guidance on charging interest.]

• Joint Representation (two or more clients)

We are representing both you and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the same or a related matter. At this time, such representation is permitted because there does not appear to be a conflict of interest between the parties. This may change and a conflict may arise at some later point in the representation. We will continue to evaluate the case and the existence of any possible conflicts of interest. Should a conflict arise, we will advise all affected clients and comply with the requirements of Ethical Rule 1.7, which may include withdrawal. In addition, all parties agree and provide their consent that we may discuss the case with one or all of you, together or apart, and that we will not keep information confidential between the parties while jointly representing you.

[NOTE TO LEGAL PROFESSIONAL: If you intend to represent two or more clients jointly, seek each client’s informed consent confirmed in writing. See Ariz. EO 07-04 for details regarding what to include in a waiver, including issues arising out of conflicting testimony, conflicting settlement positions and the impact of the joint representation on the attorney-client privilege. You must also discuss with your clients and should clearly articulate prior to or within a reasonable time after beginning your joint representation which client will get the original file and which will be given a copy of the original file at the conclusion of the representation. See ER 1.16(d), comment 9.]

• Limited Scope Representation

**LIMITED SCOPE:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hires **[NAME/LAW FIRM]** to pursue claims he or she may have in connection with [INSERT DESCRIPTION OF REPRESENTATION OF WHATYOU SPECIFICALLY ANTICIPATE DOING, INCLUDING WHEN THE REPRESENTATION STARTS AND WHEN THE REPRESENTATION CONCLUDES (e.g. DECREE IS ENTERED). ALSO INDICATE WHAT IS NOT INCLUDED IN THIS FEE AGREEMENT, (e.g. APPEAL, MISTRIAL, QUADRO AND IF FURTHER REPRESENTATION IS NEEDED AFTER THAT A SEPARATE FEE AGREEMENT WILL BE DRAFTED).

You are agreeing that the scope of this representation is limited as follows:

Notwithstanding anything to the contrary in this agreement, this representation is terminated when the services listed in this document have been completed, and you will not expect any further services to be performed, including document-drafting, giving legal advice, or court appearances, unless you sign a new fee agreement with this firm.

Unless the opposing party or attorney knows of this firm’s representation, you are considered to be unrepresented; you will be expected to communicate with the opposing party or attorney as though you do not have a lawyer representing you.

[OR]

We will inform the opposing party or attorney of the limited scope representation, and we will instruct them as to when they may communicate directly with you. These instructions will include which of us to contact concerning specific matters, to whom and where they should send pleadings, correspondence and other notices, and whether you have authorized us to accept service on your behalf.

If this matter involves litigation, we will notify the Court that we have agreed to provide you with limited scope representation, specifying the matters, hearings or issues on which we will represent you. When we have completed the representation, we will withdraw from the action with your consent, and we will surrender all documents and property to which you are entitled, and all documents reflecting work done for you. We will provide your contact information, including your address, telephone number, and e-mail address to the Court and the other parties.

You agree not to unreasonably withhold your consent to our withdrawal or make it subject to any conditions.

At the end of the representation, we anticipate that the status of the matter will be as follows: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. We will inform you of any outstanding deadlines at that time. Unless you get another lawyer to represent you, you will be responsible for representing yourself. This includes communicating with the opposing attorney, but if the party is unrepresented, then with the party directly. This also includes appearing at all court hearings and filing whatever documents are appropriate within the timeframes specified by statute, order or rule, and sending copies to the opposing party or their lawyer.

• Local Counsel in Pro Hac Vice Matter

Our role in this matter is to serve as local counsel for an out-of-state firm. The out-of-state firm will have principal responsibility for the litigation. While we will attempt to avoid undue costs and expenses caused by having two firms duplicate their efforts, we are required by the ethical rules to conduct a reasonable inquiry to ensure that pleadings and filings are well grounded in fact and law and otherwise meet the applicable standards. Accordingly, although we understand and will seek to accommodate your interest in avoiding duplicate legal fees, our professional obligations compel us to undertake activities and investigations deemed necessary to discharge these obligations.

• Miscellaneous Bank Fees and Merchant Fees or Credit Card Transaction Fees

We/You agree to pay merchant fees or credit card transaction fees incurred on your behalf. Merchant fees and credit card transaction fees are deducted from the amount of the credit card charge to pay the company that issued your credit card, the lawyer or law firm’s credit card processing service, the credit card association (e.g. Visa, MasterCard) and related charges. The [gross/net] amount of the credit card payment will be credited to your account.

We/You agree to pay bank fees incurred on your behalf. Typical bank fees include, but are not limited to: returned deposit fees, electronic transfer fees, stop payment fees, wire fees, and copy charges. The amount of the bank fee incurred will either be deducted from your current trust account balance or included on your billing statement.

• Outside Lawyers/Law Firms

Should it become advisable to associate with another lawyer or law firm to assist in the representation, we will advise you immediately in writing. We will only associate with outside counsel if you agree, in writing, to the participation of each lawyer/law firm. We will identify each lawyer or law firm who we believe should participate in the representation and whether they will assume joint responsibility for the representation, or will perform certain service(s) for which they will receive a proportionate amount of the total legal fee. We assure you, with or without associating with another lawyer or law firm, the total fee will be reasonable.

• Property for Services

This representation involves the exchange of your property (or services) for legal services or the securing of a legal fee via lien or encumbrance of your property. The terms of the transaction as well as all elements necessary to comply with the Rules of Professional Conduct (ER 1.8(a)) are contained in a separate writing attached hereto and signed by you.

• Succession Planning

My goal is to provide you with excellent legal services. I also want to protect your interests in the event of my unexpected death, disability, impairment, or incapacity. In order to accomplish this, I have arranged with another attorney/ legal paraprofessional to assist with closing my practice in the event of my death, disability, impairment, or incapacity. In such event, my office staff or the assisting attorney will contact you and provide you with information about how to proceed.

• Third Party Payor

Your legal fees are being paid by a third party. Both you and the third party must understand that our ethical duties of confidentiality and communications are owed to you, not to the person paying the fees. All decisions regarding the legal status and strategy of your case shall be discussed only with you unless you give express written consent Any refund shall be returned to the party who provided the funds.

[NOTE TO LEGAL PROFESSIONAL: You should determine whether a third-party payor situation creates a conflict of interest that would require compliance with ER 1.7(b) and securing your client’s informed consent in writing, if the conflict can be waived. See, ER 1.8(f).]

• True Retainer

You agree to pay a retainer in the amount of $\_\_\_\_\_\_\_\_\_\_. This retainer serves merely to ensure our availability to represent you and to preclude us from taking adverse representation. This retainer DOES NOT cover any legal services to be provided. Legal fees will be charged separately under the terms of a fee agreement.

• Trust Account Deposits and Payment of Interest

Interest earned on any funds that we receive from you or on your behalf that are deposited to our IOLTA (Interest on Lawyer Trust Account) will be paid directly by the financial institution or investment company to the Arizona Foundation for Legal Services and Education pursuant to Rule 43, Ariz. R. Sup. Ct. The Foundation uses the interest or dividends to support programs to assist in the delivery of legal services to the poor, for law-related education programs, to fund studies or programs designed to improve the administration of justice, to maintain a reasonable reserve and to pay administrative costs.

• Use of Associate Lawyer

I will be the lawyer ultimately responsible in connection with the representation; however, I may call upon other lawyers and personnel in our office for a variety of reasons to the extent necessary to assist me. A list of the firm lawyers and personnel, and their respective rates, is attached to this agreement.

• Legal Paraprofessionals

Include the following information in your fee agreement/engagement letters:

(LP Name), Arizona Legal Paraprofessional, license number \_\_\_\_\_\_\_\_\_.

(LP name) holds a valid license to provide limited legal services in Family Law matters except, (LP name) may not provide services related to: preparation of a Qualified Domestic Relations Order (QDRO) or supplemental orders dividing retirement assets; division or conveyance of formal business entities or commercial property; an appeal to the court of appeals or supreme court; nor the adoption process. These services are outside the scope of this agreement and would require the retention of a qualified attorney to the extent they arise.

(LP name) holds a valid license to provide limited legal services in Civil Law matters which are or could be in a municipal or justice court of the State of Arizona with the exception of matters in which a licensed attorney is not permitted to appear. (LP name) has performed an initial evaluation of this representation and determined that the scope of practice is within their license. To the extent (LP name) determines that the scope of this representation will exceed their authority, client would need to retain a qualified attorney to carry out those services.

(LP name) holds a valid license to provide limited legal services in Criminal Law matters including any initial appearance or in subsequent criminal proceedings for the limited purpose of advocating for release of client from pretrial detention. LP is also authorized to represented client in criminal misdemeanor cases in Municipal or Justice Court that does not carry the potential penalty of incarceration upon conviction. To the extent the charges for which (LP name) has been retained are modified or increased so that incarceration might be possible, regardless of the likelihood, LP must withdraw from representation and client will need to retain a qualified attorney to complete the representation.

(LP name) holds a valid license to provide limited legal services in Administrative Law matters. (LP name) is not authorized to represent client in an appeal of an administrative agency’s decision to any court, with the exception of filing an application or notice of appeal. To the extent client desires or requires the appeal of an administrative agency’s decision, client understands and agrees that they will need to retain a qualified attorney to complete the representation.

(LP name) holds a valid license to provide limited legal services in Juvenile Law matters. LP has/ has not met additional qualifications necessary to assist client with the adoption process. LP name may represent client with respect to juvenile dependency proceedings except that LP name cannot: conduct a contested dependency adjudication; conduct a contested termination adjudication proceeding; or represent any party where a child named in the petition is subject to the Indian Child Welfare Act. To the extent LP name determines that the scope of services required exceeds their authority, client will cooperate with LP regarding their withdrawal from the matter and retain a qualified attorney to complete the representation.

In the event that circumstances arise which require LP to withdraw due to lack of licensure, client may be entitled to a refund of all or part of any fees. Client agrees to provide consent for LP to withdraw if the scope exceeds LP’s authority and will cooperate as necessary to accomplish that goal.

• Inherent Risks of Litigation

Client understands that, to the extent this matter proceeds to litigation, there are inherent risks involved. The risks of litigation include, but are not limited to: increased costs, significant additional time until resolution, no guarantee of a positive outcome and the potential award against client for the other party’s attorney fees.

• Fee Arbitration

Any dispute regarding fees shall be resolved by binding arbitration through the State Bar of Arizona’s Fee Arbitration Program. This arbitration is a free service provided by the State Bar and can be initiated by either party. In accordance with the State Bar’s arbitration rules, the arbitrator shall have the authority to award any appropriate relief, including awards to either party participating in the arbitration. Notwithstanding the foregoing, nothing in this clause shall prevent either party from seeking temporary or preliminary injunctive relief in a court of competent jurisdiction in Arizona.

The parties acknowledge that by agreeing to arbitration, they are waiving their right to a jury trial.

• Firm’s Use of Technology/ Artificial Intelligence Disclosure

Client is advised that (Firm) uses various technology programs and applications in the furtherance of working on Client’s matter. These include, but are not limited to, email communications, cloud computing, online case management and/or artificial intelligence, including generative AI. Client is advised that, as with all technology, there are inherent risks to the use of these technologies, including the risk of confidential information being inadvertently intercepted or disclosed. Firm agrees to use its best efforts to prevent any such disclosures and conduct due diligence into any applications or vendors to ensure that appropriate confidentiality safeguards are in place. If Client has any particular security or confidentiality concerns, Client should notify firm so that appropriate additional safeguards can be taken.

* Requirements to Keep Contact Information Current

You agree to notify us promptly if your current contact information, including your name, mailing address, email address and phone number, changes. You also agree to notify us if you plan to be unavailable for a period of two or more weeks. [NOTE TO LEGAL PROFESSIONAL: when you undertake representation, you commit to communicating with the client. If you anticipate difficulty at the outset, consider asking for an alternative contact you are authorized to reach out to if you cannot reach the client for an extended period.]

* Notice of No Malpractice Insurance

I/we and this Firm does not carry professional liability insurance.

[NOTE TO LEGAL PROFESSIONAL: effective January 1, 2024, ER 1.4(d) requires legal professionals in private practice to inform clients in writing, prior to or at the commencement of the representation, if they do not have professional liability insurance. If you do not need to make this disclosure, because you have insurance, note that if you lose your coverage during the representation of the client, you have thirty (30) days to notify the client.]