

RETENTION (RETAINER) AGREEMENT

Revised February 2017

This **Retention (Retainer) Agreement**, effective as of _____, is made by and between _____, legal counsel/law firm ("Company") organized and existing in (state) _____, with offices located at _____ and, Marty P. Gagliardi, MD; Have Scalpel, Will Travel, PLLC, ("Consultant"), a company organized and existing in Florida, with office located at 827 Eden Drive, Santa Rosa Beach, Florida.

BACKGROUND:

Consultant shall describe the specifics of such Services, the compensation to be paid and the schedule, under which such Services shall be provided in the Statement of Work. Company desires to retain Consultant to perform certain services on Company's behalf, and Consultant desires to perform such services as described in the Statement of Work (attached hereto as ["EXHIBIT-A"] and incorporated by reference), subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration of the terms and conditions, the parties, intending to be legally bound, agree as follows:

TERM:

Unless terminated at an earlier date, the term of this Agreement shall be effective on the date of last signature and continue for _____ months after that date, unless extended by Company prior to its expiration.

SERVICE EXPECTATIONS AND ACCEPTABLE CRITERIA:

The work to be performed under this Agreement is illustrated within the attached (EXHIBIT-A) Statement of Work. Upon acceptance of the Statement of Work by both parties, Consultant agrees to perform those services set forth in the attached Statement of Work.

Additional Statements of Work may be entered into in writing and signed by both parties, during the term of this Agreement. Such additional Statements of Work shall be incorporated by reference to this Agreement.

Extension of the period of performance of this agreement may be granted by Consultant and Company, agreed to in writing and signed by both parties during the term of this Agreement. Such extension shall be issued through a Modification to this agreement.

CONSIDERATION AND PAYMENT:

As compensation in full for services performed under this Agreement and the Statement of Work, Consultant shall invoice Company and Company shall pay Consultant in accordance with the fees and schedule set forth in the Statement of Work.

In providing services to Company, Consultant shall be acting as an independent contractor and not as an employee or agent of Company.

Invoices shall be due and payable thirty (30) days from the receipt of invoice and services referenced thereon, unless otherwise specified in the attached Statement of Work.

All invoices will reference the Retention/Retainer Agreement and include the following information:

- 1- Date and type of services performed, number of hours for invoiced period and cumulative hours
- 2- Billing rate, total invoiced amount and cumulative invoiced amount
- 3- Trip report for travel performed, indicating names of persons and companies visited, and purposes of trip
- 4- Itemized expenses, supported by original receipts
- 5- Invoices will be submitted electronically.

Consultant shall be responsible for the payment of all taxes applicable to any compensation paid to Consultant and Company shall not withhold or pay any federal, state, or local income, social security, unemployment and workers compensation taxes related to the work performed under this Agreement.

Company shall be responsible for all expenses incurred in performance of duties under the Statement of Work unless otherwise agreed to in the attached Statement of Work.

Company shall be responsible for all incurred travel and other expenses as have been included in the Statement of Work

Local travel is also authorized for reimbursement by Company. Local travel is considered to be a 300-mile radius from the Consultant's business address.

In addition, Company will also reimburse Consultant for administrative expenses such as postage, photocopying, etc.

CONFIDENTIAL INFORMATION/NON-DISCLOSURE.

During the course of such Services, Consultant may be exposed to confidential and proprietary information including but not limited to products, processes, technologies, innovative concepts, customer information, processing capabilities, and information which may be of a personal nature and other valuable personal identity information designated as confidential expressly or by the circumstances in which it is provided (collectively "Confidential Information").

Confidential Information does not include (i) information already known or independently developed by the recipient; (ii) information in the public domain through no wrongful act of the recipient, or (iii) information received by the recipient from a third party who was free to disclose it; (iv) information disclosed to a third party by the owner without restriction.

It is agreed that Confidential Information shall not be revealed or disclosed to any third party at any time, except as may be authorized in writing by an officer or authorized representative of the party that is the proprietary owner of the Confidential Information, or when such disclosure is required by law, subject to the receiving Party giving prior notice to Company to allow it to seek protective or other court orders. Each party receiving Confidential Information hereby agrees that it shall not use, commercialize or disclose such Confidential Information to any person or entity, except to the individuals having a "need to know" (and who are themselves bound by similar nondisclosure restrictions).

In the event that the Receiving Party or its Agents become legally compelled to disclose any of the Confidential Information, the Receiving Party shall use its best efforts to promptly notify Company and provide reasonable cooperation to Company in connection with its efforts to lawfully avoid or limit disclosure and preserve the confidentiality of the Confidential Information in such circumstances.

Both parties acknowledge and agree that the unauthorized disclosure of Company Confidential Information could cause harm and significant injury to the Company, which may be difficult to ascertain. Upon termination of this Agreement or at the request of Company, the Receiving Party shall immediately return all Confidential Information and copies thereof, or if directed by Company, shall immediately destroy all copies of such.

TERMINATION.

Notwithstanding any contrary provision contained elsewhere in this Agreement, this Agreement and the rights and obligations hereunder may be terminated by Consultant immediately if Company defaults in the performance of Company's obligations under this Agreement, including, but not limited to, failure to provide records or documents set forth in the Statement of Work within the times specified. Any moneys due to Consultant shall be immediately compensated by Company for actual work performed if Company defaults in the performance of its obligations under this Agreement and specified in the Statement of Work.

INTELLECTUAL PROPERTY:

Consultant shall retain all rights to pre-existing ideas, processes, procedures, and materials used by Consultant in developing or providing services to Company.

Consultant warrants that the Intellectual Property and products Consultant will produce, shall be original and shall not infringe any third party's patents, trademarks, trade secrets, copyrights or other proprietary rights. To the extent that Consultant is required to incorporate a third party's proprietary materials into the Intellectual Property and products Consultant produces for Company, Consultant shall obtain all authorizations necessary for such incorporation and shall obtain such permissions as are required by Company to allow Company to fully exploit the Intellectual property and products produced by Consultant.

OWNERSHIP OF PREPARED INFORMATION:

All business information, in whatever medium or format, including but not limited to drawings, records, reports, and related documentation, research or other information (herein collectively referred to as "Information"), originated or prepared by or for Consultant in contemplation of, or in the course of, or as a result of, Services performed hereunder, shall be promptly furnished to Company. All such Information shall become the exclusive property of Company. Consultant hereby assigns to Company all rights, title and interest in and to such Information. All such Information shall be deemed "Confidential Information;" subject to the terms and conditions set forth herein.

ASSIGNMENT:

This Agreement and Company or Consultant's rights and obligations shall not be assignable without the prior written consent of Company or Consultant. If Company or Consultant is doing business as a partnership or corporation, any change in ownership is an "assignment under this provision." Any assignment without Consultant or Company consent is void.

GOVERNING LAW:

This Agreement shall be construed and enforced in accordance with the laws of the State of Florida without reference to that body of law governing conflicts of law.

SEVERABILITY:

The parties recognize the uncertainty of the law with respect to certain provisions of this Agreement and expressly stipulate that this Agreement shall be construed in a manner that renders its provisions valid and enforceable to the maximum extent possible under applicable law. To the extent that any provisions of this Agreement are determined by a court of competent jurisdiction to be invalid or unenforceable, such provisions shall be deleted from this Agreement or modified so as to make them enforceable and the validity and enforceability of the remainder of such provisions and of this Agreement shall be unaffected.

FORCE MAJEURE:

Neither party shall be liable for any failure to perform under this Agreement when such failure is due to causes beyond that party's reasonable control, including, but not limited to, unexpected illness to Consultant or immediate family, personal crisis, acts of state or governmental authorities, acts of terrorism, natural catastrophe, fire, storm, flood, earthquakes, accident, strikes, and prolonged shortage of energy. In the event of such delay the date of delivery or time for completion shall be extended by a period of time reasonably necessary to overcome the effect of any such delay.

ENTIRE AGREEMENT:

This Agreement inclusive of the attached Statement of Work embodies the Initial authorization between the undersigned parties and supersedes all prior contracts, representations, negotiations, or letters, whether written or oral, regarding the subject matter hereof. The parties shall not be bound by or liable for any statement, representation, promise, inducement, or understanding of any kind not set forth in this Agreement.

No statement or writing subsequent to the date of execution of this Agreement purporting to modify or add to the terms and conditions hereof shall be binding unless consented to in writing by duly- authorized procurement representatives of Company and the Consultant in a document making specific reference to this Agreement.

IN WITNESS WHEREOF the parties have caused this Retention/Retainer Agreement to be executed and delivered by their duly authorized representatives.

Have Scalpel, Will Travel, PLLC

Marty P. Gagliardi, MD, Owner

DATE

[COMPANY NAME]

[NAME], [TITLE]

DATE

EXHIBIT - A

STATEMENT OF WORK

Summary of Services Offered:

Consulting/expert witness services to include records review, report preparation, depositions, trial testimony, rendering opinions related to injuries involving the extremities and pelvis. (shoulder, arm, elbow, forearm, wrist, hand in the upper extremity and hip, thigh, knee, leg, ankle, foot in the lower extremity). **SPINE EXCLUDED.**

Retention agreement must be signed by retaining counsel prior to initiation of expert's services.

Initial retainer of \$3,000 required prior to commencement of services, \$1,500 of which is non-refundable. All fees to be paid before a report is released or testimony is given.

Provisions:

- 1- Standard Cost: \$500/hour. Includes all time spent on case for attorney consultation, records review, telephone conferences, report preparation, previous deposition review, in-person conferences etc. (not including deposition or trial testimony)
- 2- Deposition Cost: \$1,400/hour- advanced payment
- 3- Trial Testimony: \$2,500/hour- advanced payment
- 4- Expert has the right to withdraw from case for failure of payment
- 5- Reimbursement for all reasonable travel expense to include air fare (direct flights if available), local travel (fuel, mileage at \$.30/driven mile, travel time @ \$100/hr.), hotel
- 6- No report shall be released and no testimony given unless all accounts have a zero balance.
- 7- Unpaid moneys under this agreement shall be subject to interest of 1.5% per month.
- 8- Retaining counsel shall be responsible for paying the expert for all time spent on case, including depositions called by other parties, preparation time reviewing other depositions.
- 9- Counsel will provide the expert with all arguably relevant non-privileged documents.
- 10- Counsel will provide reasonable notice to the expert of all Daubert, Frye, Rule 702 and similar challenges seeking to limit the admissibility of the expert's testimony
- 11- Counsel agrees to be available to prepare with the expert for any testimony
- 12- Retaining counsel agrees to promptly notify the expert of all parties and lawyers in the case so that the expert may check for conflicts of interest
- 13- Thirty days after the conclusion of the engagement, the expert shall either return all files to counsel upon written request from counsel or expert will destroy said files
- 14- Counsel shall promptly notify the expert regarding any settlement or final resolution of the underlying case

- 15- Expert shall have the right to withdraw from the case if retaining counsel breaches any requirements of professional conduct
- 16- Counsel shall consult with expert before drafting any answers to interrogatories dealing with the expert or expert's proposed testimony
- 17- Expert shall have the right to withdraw if expert is not provided adequate time and resources to form a well-founded opinion
- 18- There will be no refund for testimony cancelled with less than 48 hours' notice. Expert may retain 50% of advance payment for testimony cancelled within 5 business days of its scheduled time
- 19- Expert requires at least 4 weeks' notice for depositions and at least 6 weeks' notice for trials.
- 20- Expert is not available the following days: _____.
- 21- Expert is under no duty to work for successor law firms.

Read and Acknowledged by:

_____; Date: _____
Marty P. Gagliardi, MD, FACS, Owner
Have Scalpel, Will Travel, PLLC

_____; Date: _____
(name)
(Company, Law Firm)