

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") is entered into this 21st day of April, 2022, by and between Weber County Attorney's Office (the "Firm") and the University of Utah, a body politic and corporate of the State of Utah, on behalf of its Department of Pediatrics ("University").

### RECITALS

- A. The Firm is a law firm/office and wishes to contract with University for the performance of certain services including certain expert witness services in connection with the Firm's representation of The State of Utah.
- B. University employs qualified physicians and has available other resources necessary to perform the services required by the Firm and wishes to contract with the Firm for the performance of those services.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and the mutual agreements set forth below, the parties agree as follows:

1. SCOPE OF SERVICES. University agrees to perform certain expert witness services as more specifically described in Attachment A attached hereto (the "Services"), through the University's employed physician, Dr. Antoinette Laskey ("Expert").
2. PROFESSIONAL FEES. University shall perform, or cause to be performed, the Services according to the following fee schedule:
  - a. Records review, report writing, trial preparation: **\$400 per hour**
  - b. Depositions, trial testimony: **\$400 per hour**
  - c. Remote depositions, trial testimony (daily cap): **\$4000 per day**
  - d. Travel to/from court proceedings: **\$300 per hour**

The Services shall include and the Firm shall pay University at the above rates for all work effort by Expert in connection with this engagement, including without limitation, all telephone consultations, pertinent emails, interviews, depositions, document review, document drafting, travel, court appearances (including time waiting to testify), and other work effort. The parties agree to work together to manage the scope of Services and effort, and to maximize the efficiency of the work performed.

3. EXPENSES. In addition to the fees, the Firm shall reimburse University for all out of pocket expenses incurred by Expert in performing the Services, including without limitation reproduction of reference materials, travel (airfare, ground transportation, car rental, food, lodging, and other reasonable travel costs), and other expenses reasonably incurred in performing the Services, other than those travel expenses paid directly by Firm or its co-counsel. Personal vehicle travel by Expert

shall be charged at a rate of fifty-five cents (\$.55) per mile. Mileage will not be charged for travel within 20 miles of Salt Lake City.

4. ~~RETAINER. Upon the commencement of any engagement under this Agreement, the Firm shall deliver to University an initial retainer in the amount of One Thousand Five Hundred Dollars (\$1,500), of which One Thousand Dollars (\$1,000) is non-refundable. Billings for services performed or expenses incurred will be charged against the retainer until it is exhausted. Upon completion of the Services or termination of this Agreement, any unused portion of the retainer in excess of One Thousand Dollars (\$1,000) will be refunded to the Firm within 30 days. Alternatively, any remaining balance owed by the Firm will be invoiced and paid according to the procedure set forth below. No retainer required.~~
5. PAYMENT. University shall submit invoices to the Firm for Services provided and expenses incurred under this Agreement. All invoices shall set forth the dates of services, an itemization of expenses incurred, all credits applied against the retainer, and any balance due. Any balance due under any such invoice shall be paid by the Firm within 30 days of receipt.

Invoices will be sent to the Firm at:

Weber County Attorney  
2380 Washington Blvd, Ste 230  
Ogden, UT 84401  
Attn: Kimberley Rhodes

All payments due hereunder shall be made payable to:

Department of Pediatrics  
Attn: Accounting  
PO Box 581289  
Salt Lake City, UT 84158  
[Taxpayer ID #876000525]

The payment of all fees and expenses is the responsibility of the Firm notwithstanding Firm's relationship with third parties. As a convenience, University may agree to prepare a separate invoice for opposing counsel's discovery deposition or other third-party expenses, but responsibility for payment remains that of the Firm.

6. CANCELLATIONS AND POSTPONEMENTS. In the event a deposition or trial is continued, postponed, or otherwise canceled, Expert must be notified three (3) business days in advance. Failure to notify within this time frame will result in the minimum charge of One Thousand Five Hundred Dollars (\$1,500). Any cancellation fees for airfare, hotel, or other travel expenses shall be the responsibility of the Firm.
7. TERM. The term of this Agreement shall commence on the date set forth above and continue until the Firm's completion of its representation of State of Utah v. Costello and Emile, unless sooner terminated by the parties. Either party may terminate this Agreement, with or

without cause, upon 15 days advance notice to the other. University may terminate this Agreement immediately upon the Firm's failure to comply with the payment obligations as set forth herein.

8. RELATIONSHIP OF THE PARTIES. In performing the Services, University is acting as an independent contractor and University's physicians and technical staff shall not be considered employees of the Firm. The parties agree that, as an independent contractor, the physicians and technical staff provided by University retain sole and absolute discretion and judgment in the manner and means of providing the Services hereunder. In no event shall this Agreement be construed as establishing a partnership or joint venture or similar relationship between the parties hereto, and nothing herein shall be construed to authorize either party to act as agent for the other.
9. ALLOCATION OF LIABILITY.
  - a. Each of the parties assumes full responsibility for the negligent operations, acts, and omissions of its own employees, agents, and experts. It is not the intent of the parties to incur by contract any additional liability for the negligent operations, acts, or omissions of the other party or its agents or employees.
  - b. In the event that a court of competent jurisdiction makes a final determination in a case that Firm and University share the liability for all or part of any injury, loss, or claim for damages by a third-party (or an agent or employee of the parties hereto), each party shall bear its respective comparative negligence share of the damages, and each party shall also pay its own respective costs and expenses incurred as a co-defendant. Where such claims are settled out of court, with no determination of comparative negligence, the parties agree to arbitrate their comparative negligence.
  - c. University is a governmental entity and is subject to the Governmental Immunity Act of Utah (the "Act"), Section 63G-7-101 *et seq.*, Utah Code Ann., as amended. Nothing in this Agreement shall be construed as a waiver of any rights or defenses applicable to University under the Act, including without limitation, the provisions of Section 63G-7-604 regarding limitation of judgments.
10. UNCONTROLLABLE CIRCUMSTANCES. Neither Firm nor University shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to uncontrollable forces (including without limitation adverse weather conditions) the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. In the event that new state or federal legislation is enacted during the term of this Agreement that could have a materially adverse effect upon this Agreement as a whole or upon any element of this Agreement, then the parties agree that this Agreement or any particular element of this Agreement may, at the option of and effective immediately upon written notice from either party, become null and void and of no effect. The parties agree to negotiate in good faith within a reasonable period of such event to agree upon new terms or a new agreement designed to address the problems presented by such legislation.

11. CONFIDENTIALITY. The parties acknowledge that in the performance of this Agreement, each may have access to patient medical records and other protected health information, the confidentiality of which is protected by law, and certain other confidential information (the "Confidential Information"). Neither party nor its employees shall disclose any Confidential Information to any third party without the prior written approval of the other party, except where required by law. To the extent applicable, both parties shall comply with all federal and state laws and regulations, and all rules, regulations and policies regarding the confidentiality of patient information, including without limitation the Health Insurance Portability and Accountability Act ("HIPAA") and all similar laws and regulations. The Firm acknowledges that University is subject to the Utah Government Records Access and Management Act, Section 63G-2-101, *et. seq.*, Utah Code Ann. ("GRAMA"), as amended; that certain records in connection with this Agreement may be subject to public disclosure; and that University's confidentiality obligations shall be subject in all respects to compliance with GRAMA. Pursuant to Section 63G-2-309 of GRAMA, any confidential information (other than protected health information) provided to University that the Firm believes should be protected from disclosure must be accompanied by a written claim of confidentiality and a concise statement of reasons supporting such claim
12. NOTICES. All notices and other communications required to be in writing shall be deemed to have been given either at the time of delivery if delivered personally or by an independent contract carrier; or twenty-four (24) hours after the time of postmark if mailed Express Mail, postage prepaid, return receipt requested; or three (3) days after the time of postmark if mailed registered or certified mail, postage prepaid, return receipt requested, and in each case, addressed as set forth below:

To Firm:

Weber County Attorney  
2380 Washington Blvd. Ste 230  
Ogden, UT 84401  
Attn: Kimberley Rhodes

To University:

Department of Pediatrics  
University of Utah School of Medicine  
P.O. Box 581589  
Salt Lake City, UT 84158  
Attn: Administrative Director

or to such other address as any party shall designate at any time in writing by notice to the other party in accordance with this paragraph.

13. MISCELLANEOUS. This Agreement may not be amended, modified, superseded or canceled, and none of the terms and conditions hereof may be waived, except by a written instrument executed by the parties or, in the case of a waiver, by the party waiving compliance. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof.

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties. No assignment of any rights or delegation of any obligations for which provision is made in this Agreement may be made by any party without the prior written consent of the other party.

14. COUNTERPART AND FACSIMILE SIGNATURES. This Agreement may be executed in any number of counterparts, each of which will be considered an original and together which will constitute one and the same instrument. This Agreement may be executed by facsimile signature which shall be treated as an original signature.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

WEBER COUNTY ATTORNEY  
("Firm")

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

UNIVERSITY OF UTAH  
("University")

By: \_\_\_\_\_  
Samuel R. G. Finlayson, MD, MPH, MBA  
Associate Vice President for Clinical Affairs  
University of Utah Health Sciences  
Chief Clinical Officer for University of Utah Health

By: \_\_\_\_\_  
Angelo P. Giardino, M.D., Ph.D.  
Chair, Department of Pediatrics  
University of Utah School of Medicine

**ATTACHMENT A**  
**SCOPE OF SERVICES**

Expert agrees to perform such investigation and research as requested by Firm and to advise the Firm concerning progress and findings. Expert will formulate with due care and will truthfully express Expert's opinion in those areas where Expert is qualified. Expert also agrees to assist in trial preparation, testify as an expert witness, and assist the Firm in other matters within the scope of his/her expertise. The full scope of work will be determined as the matter proceeds and as agreed upon by Expert and Firm.