

## TERMS AND CONDITIONS / PATENT AND TRADEMARK PROSECUTION INFORMATION

(Last revised: 20230118)

In addition to the terms and conditions set forth in the engagement letter to which this document is attached, this document includes additional terms and conditions as well as patent and trademark prosecution information, which apply to your engagement of Fishman Stewart PLLC ("FS") as your attorneys. This document may be updated periodically, and it is the most recent version that applies to work done after that date. An electronic copy of the most recent version of this document may be found at <https://fishstewip.com/the-firm/terms/>.

### **TERMS AND CONDITIONS OF ENGAGEMENT**

#### **Our Client**

If you are receiving the engagement letter on behalf of a business entity, then you agree that our client for purposes of the engagement, and for present and future conflicts of interest purposes, is only that business entity identified in the engagement letter ("You" or "Your"). Because of the proliferation today of companies affiliated through common or partial ownership, and problems this can create in identifying potential conflicts of interest, we advise our clients that FS will not regard any affiliate of a client (i.e., parent, subsidiary, or other related entity) as a FS client for any purpose, unless an attorney-client relationship with that affiliate has been established by an express agreement with FS. Similarly, FS will not regard representation that is adverse to an affiliate of a client as being adverse to our client. You agree that our attorney-client relationship is so limited, and that we remain free to take on other matters for other clients, including contested litigation matters, that may be adverse to Your affiliates without that constituting a conflict of interest.

In the course of advising You, FS will need to address and discuss issues relating to You with various individuals affiliated with the entity who may serve as directors, members, partners, shareholders, managers, employees, guarantors or other similar capacity (collectively, the "Individuals"). While the Individuals, in their individual capacities, may be impacted by FS's representation of You, FS is not representing or advising any of the Individuals in their individual capacities and FS will not consider them as a client unless they have established an attorney-client relationship by an express agreement with FS. We recommend that You advise the Individuals that they consider obtaining their own, separate counsel.

If You are receiving the engagement letter on behalf of yourself and not a business entity, then You agree that our client for purposes of the engagement, and for present and future conflicts of interest purposes, is only the individual identified in the engagement letter ("You" or "Your"), and not Your employer or any other individual or entity with whom You are affiliated in any way.

If this representation is not directed to a specific lawsuit or other proceeding or dispute and during the course of representation any such lawsuit or other proceeding or dispute arises, FS is not required to represent You in the lawsuit or other proceeding or dispute and FS may send You a separate engagement letter directed thereto.

If this representation involves a matter previously handled by prior counsel, FS assumes no responsibility for and specifically disclaims any responsibility for the actions or inactions of prior legal counsel even if that action or inaction adversely affects our representation.

FS assumes no responsibility for determining or advising You whether You have any insurance coverage that would apply to any lawsuit or other proceeding or dispute, or to any fees, expenses, costs, settlements or judgments arising therefrom. FS also assumes no responsibility for taking any steps to preserve Your claim to any insurance coverage, as one example only, by providing notice of any claim to any insurance carrier. You should consult with both Your insurance agent or broker and with a qualified independent insurance specialist concerning the availability or scope of Your possible insurance coverage for any such lawsuit or other proceeding or dispute, as well as any steps You should take to preserve any possible insurance coverage.

#### **Services We Will Provide**

We will perform the legal services that we have agreed to undertake on Your behalf in a professional manner and keep You informed of all material developments in a reasonable and timely manner. Although we may give You our professional judgment concerning a particular matter, the likelihood of a favorable outcome on a particular case, the amount of a potential recovery, what a clause in a document says, or whether a particular contract or negotiation will result in the desired outcome, we are never able to make any guarantees. What we will endeavor to do is to give You our best judgment in light of the law and the particular facts made known to us. For us to render our best advice and represent You in the manner most beneficial to You, we need, and You agree to provide, Your cooperation and Your candor. The integrity and reliability of those with whom You do business is Your responsibility; unless we otherwise agree in writing, we will not investigate any aspect of any such persons or entities.

#### **Conflicts of Interest**

FS represents many other clients in connection with their intellectual property matters. It is therefore possible that a present or future FS client may have a dispute with You (or with a party related to You) during the time we are representing You. In light of conflict of interest rules governing attorneys, we ask for Your consent and acknowledgement that our representation of You will not disqualify FS from representing other present or future clients in other matters directly adverse to You, provided that both (1) our other representation is not substantially related to any work we have done for You, and (2) our work on the other representation would not place FS in a position to use any of Your confidential information adversely to You. Before agreeing to such waiver of future conflicts of interest, You should consider whether such a situation might affect our commitment to zealously represent You, and whether our representation of clients in disputes against You would place FS in a position to use Your confidences against You. Although we do not believe there is a likelihood of harm to You in light of the two limitations mentioned above, You should consider these issues for Yourself and may wish to consult with independent counsel to guide You in deciding whether to waive those specific types of future conflicts described in this paragraph. By engaging FS, You are waiving these types of future conflicts.

FS represents both intellectual property owners and persons against whom intellectual property owners seek to enforce rights. In some instances, we may advocate an interpretation of the law that, if adopted by the court or agency, might be in the interest of some clients but not of others. You understand that such situation might affect the matter(s) we handle for You, and You agree to our representation of You notwithstanding that possibility.

With respect to patent matters, where another present or future client seeks to engage our services to secure patent protection in a field of technology that may be within Your area of activity, but not specifically overlapping with the claimed subject matters You have assigned to us (and therefore not constituting an ethical conflict), we will accept such assignment without prior notice to You. By engaging FS, You acknowledge that FS's representation of other clients may result in another client obtaining patent rights that might cover present or future activities of Your company, and You expressly waive any alleged conflict that might result from our work on another client's patent application. You understand that You have the option of engaging other patent counsel who do not represent other clients in Your industry, and You also understand that You may seek advice from other counsel as to the advisability of giving the consents and waiving the conflicts described in this paragraph before engaging FS.

#### **Fees**

Our attorneys have varying degrees of expertise and amounts of experience and different billing rates. Our goal in each instance is to render the best legal services we can in the most efficient manner. In

order accomplish this goal, the attorney in charge of a particular matter for You may assign different members of our staff to perform various services for You in connection with different matters or different aspects of the same matter.

Our fees are generally based on the amount of time that is spent by our staff on Your matter and our hourly billing rates in effect at the time the services are performed. Our hourly billing rates are adjusted from time to time and vary, depending on the experience and specialized expertise of professionals assigned to Your matter. Those rates are ordinarily adjusted on December 1<sup>st</sup> in each calendar year, although there are exceptions to the timing of these adjustments. Hourly fees are billed in tenth-hour or half tenth-hour increments with a minimum increment of two-tenths of an hour. We also base our fees on any flat rates we quote You. While we do not publish or announce rate changes, You are welcome to inquire about our rates at any time.

If we have required a "security" retainer to be paid by You before we begin work on Your matter(s), You agree that the retainer provides security for the payment of our fees and expenses incurred on Your behalf, and we will not draw against the retainer for the payment of our ongoing fees and expenses, unless You fail to pay FS's fees and expenses within thirty (30) days. If that occurs, we reserve the right to deduct the unpaid fee and expense amounts from the retainer, and to suspend our work on Your behalf until the retainer is restored to the full original amount or such larger amount as may be necessary to secure the future payment of our fees and expenses. At the end of our representation, the unused portion of the retainer will be returned to You. Your retainer will be deposited in an interest-bearing client trust account until used or returned to You.

If we have required an "evergreen" retainer to be paid by You before we begin work on Your matter(s), the retainer provides security and a source of funds for the payment of FS's fees and expenses incurred on Your behalf, and we will regularly draw against the retainer for the payment of our ongoing fees and expenses. We will not deduct any money from the retainer until twenty (20) days after the statement date printed on the invoice detailing those fees and expenses. This delay provides You with the opportunity to review the bill, and to ask and receive answers to any questions that You may have before we deduct any money from the retainer for each invoice. If You do not raise any questions or objections to the fees and expenses stated in our monthly invoice within twenty (20) days of the statement date, we will automatically deduct the full amount of the invoice from the retainer. If the retainer amount remaining on account falls below the amount You and FS has agreed to with respect to the evergreen retainer, You agree to replenish the retainer to the full original amount within ten (10) days of our notice to You that You must do so. If You do not replenish the retainer within ten (10) days, we reserve the right to suspend all work or disbursements on Your behalf until the retainer is restored to the full original amount, or such larger amount as may be reasonably necessary to provide adequate security for the payment of our fees and expenses. At the end of our representation, the unused portion of the retainer, if any, will be returned to You. All amounts that You pay to us under the retainer arrangements described in this letter will be deposited in an interest-bearing client trust account until used or returned to You.

If we have required a "advance payment" retainer to be paid by You before we begin work on Your matter(s), the retainer amount reflects at least a portion of our then best estimate of the total fees and costs that will be expended in the matter(s). However, this is only an estimate based upon our past experience, and the actual fees and costs may be higher or lower. You agree that the retainer provides payment for our estimated fees and expenses incurred on Your behalf. We will draw against the retainer for the payment of our ongoing fees and expenses until the matter(s) are concluded or until the retainer has been exhausted. If we become aware that the retainer is or is likely to be less than the total fees and expenses incurred in the matter(s), we will let You know promptly and reserve the right to require You to pay an additional retainer amount to complete the work. At the end of our representation, any unused portion of the retainer will be returned to You. Your retainer will be deposited in an interest-bearing client trust account until used or returned to You.

#### **Billing and Payment**

Unless we have agreed otherwise, a monthly invoice will be furnished to You, describing the day-by-day services we have rendered during the preceding month, and listing our expenses and the disbursements made on Your behalf, as explained below.

In addition to our fees for professional services, our bills will include out-of-pocket expenses that we advance on Your behalf. These expenses may include such items as government fees, travel costs, on-line computer research time, courier services, extraordinary mailing or photocopying charges, court reporter fees and foreign associate fees. Where a disbursement is substantial, we may ask that You pay us in advance, whether or not You have previously paid us a retainer. Rather than tracking and itemizing certain charges such as routine postage, photocopying, telephone, and faxing charges, as well as subscription databases and other services to which FS subscribes for the benefit of clients, we typically enter a "non-metered" cost computed at 2.5% of the total service billing on each invoice, a figure that our experience has shown is a fair and average amount for the range of assignments we handle.

You agree to pay our invoices in full within thirty (30) days of the statement date printed on the invoice unless You have a legitimate question or dispute about the amount or necessity of our fees and expenses. If You have a legitimate question or dispute about the amount or necessity of our fees and expenses, You agree to participate with us in the dispute resolution procedures described in these terms and conditions.

You agree that FS may suspend work and/or withdraw from this engagement if You fail to pay our bills when due.

Whether or not we require a retainer from You to begin representation, we reserve the right to require the payment of a security retainer if You develop a pattern of failing to pay our invoices in full within thirty (30) days of the statement date printed on the invoice. If it becomes necessary to implement this retainer, You agree that the retainer amount shall be twice the estimated monthly billings in the Matter, and that we shall be entitled to suspend work on the Matter until we receive Your retainer. The retainer amount is subject to adjustment depending upon the projected fees and expenses over the next few months of the representation. If we are required to use the retainer or any portion of it to pay our fees and expenses, You agree that You shall replenish the retainer to the original amount or such other reasonable amount as FS requests based upon the terms of this paragraph.

#### **Resolution of Disputes**

Even though we intend to give You our best advice in light of the law and the information You provide us, we cannot guarantee any particular result. If You have questions or disputes about our bills, You agree to pay in full the undisputed amount of fees, expenses and disbursements within thirty (30) days of the statement date, and to notify us in writing of the question or dispute within the same thirty (30) day period. Any fee, expense or disbursement amounts that are not questioned or disputed in writing and that remain unpaid after thirty (30) days may (if a pattern of such delinquencies occurs) be subject to interest charges at the rate of one percent (1%) per month (based upon the unpaid balance on the first day of the month in question). In addition, we reserve the right to establish a security retainer, to suspend work, or to withdraw altogether as described in these terms and conditions.

In the event that a dispute arises concerning our representation or the payment of our fees, expenses and disbursements, FS and You will try to resolve the disputed portion in a mutually fair and reasonable manner. If we cannot promptly reach a mutually satisfactory compromise, You agree to join with us (on an equal cost-sharing basis) in engaging a facilitative mediator to assist us in reaching a voluntary settlement. That process offers the potential of expeditious and economic resolution of most disputes. Any such mediation will be scheduled and conducted within forty-five (45) days of the notification by either party to the other that such mediation is desired, and the notice shall describe with particularity the issue to be mediated.

## **Expanding Services**

You may expand the scope of our representation beyond the scope of the matter for which You initially engaged FS, provided we agree. Unless otherwise agreed in writing, these Terms and Conditions of Engagement and the engagement letter to which it was attached will apply to all other matters for which we are engaged by You.

## **Termination of Engagement**

If at any time You wish to terminate our services, please notify us in writing. Likewise, if at any time we decide to discontinue representing You, we will notify You in writing. Unless earlier terminated, our representation with respect to any matter we undertake on Your behalf will end at such time as that matter concludes. After termination, we will send You our final invoice relating to the matter, together with the balance of any retainer that may remain after all fees and expenses have been paid, and we will have no continuing obligation to advise You with respect to future legal developments concerning such matter. If, at any time, You need additional services from us, please let us know. If we agree to provide those services, we agree that they will constitute a separate engagement and we may initiate a separate engagement letter.

In our experience, failure to receive timely responses from clients may impair our ability to fully represent and protect their legal interests. Without limiting our rights under applicable rules or law, if at any time You fail to respond promptly to three (3) written requests for information or instruction, You agree that such failure shall constitute good cause for termination of our representation of You. As a default, our representation shall terminate automatically five (5) days after the last such request.

In matters other than patent and trademark application filing and prosecution matters, or active litigation matters, You agree that our representation in a matter shall automatically terminate without any further notice or action one hundred eighty (180) days after the later of the last substantive communication we have with You concerning a matter, or the date of the last invoice that You receive from us for work performed on the matter, unless the representation has been previously terminated. For prosecution matters, our representation terminates no later than upon registration/issuance.

## **Document Retention Policy**

Once matters on which we are representing You are concluded, we will close Your files on those matters. Closed files may be sent to storage off site or maintained in a digital archive. Therefore, there may be an administrative cost for retrieving them. Under our document retention policy, we ordinarily destroy a closed file at the end of our normal document retention term. We may communicate with you if we wish to destroy a closed file before the end of our normal document retention term.

## **Privacy Policy**

We will not disclose Your nonpublic information we obtain in the course of our practice except (1) as permitted or required by law; or (2) as You may authorize. On occasion we may indicate that You are an example of the type of client we represent (a "representative client") and the reality is that client representation is typically a matter of public record as part of filings we make on Your behalf with governmental agencies. Nevertheless, if You do not wish for us to identify You as a representative client, please let us know. Otherwise, permitted disclosures that are not subject to opt out include, for instance, providing information to our employees and in limited situations to unrelated third parties who need to know that information to assist us in providing services to our clients.

## **Electronic Communications**

From time to time we may provide information or documents by facsimile, e-mail or other electronic means. While electronic communication has begun to augment, and even replace, postal and courier services, it is not as secure. Like cell telephones, information sent through the internet is subject to interception, and, like faxes, it is subject to being inadvertently sent to the wrong address. While interception and misuse may be illegal, generally it is not worth pursuing a remedy. To provide You the most

efficient services, we may communicate using such electronic means notwithstanding the small risk involved. If You would prefer that we not use such means in connection with Your matters, please so inform us in writing.

## **PATENT AND TRADEMARK PROSECUTION INFORMATION**

### **Patent Searches**

Ordinarily, we recommend that a patentability or novelty search be performed before filing a patent application, to provide You with a better idea of whether Your invention is sufficiently different from the prior art to be patentable and worth the expense of filing a patent application. However, even a favorable result from such a search provides no certainty that a patent application would be approved by the U.S. Patent and Trademark Office examiner, because the official search that the examiner would perform for Your application may uncover more pertinent prior art than was found in Your patentability search. If the representation is limited to a patentability search, it is understood that FS is not required to file any applications for patent without first sending You a separate engagement letter directed to such applications and receiving any required retainer.

### **Patent Applications**

A provisional application cannot itself result in the issuance of a patent. It is a less expensive way to establish an early filing date for a later-filed non-provisional or "utility" application to be filed within one year of the filing date of the provisional application and at additional expense if You are still interested in securing patent protection at that time.

A U.S. patent will generally not be granted to an applicant unless the priority application is filed prior to any public use or public disclosure of the invention anywhere in the world although there may be a limited exception under certain circumstances in the U.S. if the disclosure came from the applicant directly or was derived from the applicant's work. Most foreign countries provide no exceptions, whatsoever.

If You have asked us to file a non-provisional or "utility" application, we will work diligently to obtain a U.S. patent with claims that cover and protect Your invention. However, the U.S. Patent and Trademark Office examiner may find prior art so close to Your invention as to either preclude any patent on Your invention or to limit the scope of any resulting patent to something less than You had sought. By engaging FS, You acknowledge that FS's efforts on Your behalf may be unsuccessful to accomplish Your purposes, and that Your obligation to pay FS's fees and costs incurred on the matter is not dependent upon the outcome of such efforts to obtain a patent on Your invention. We also remind You that an issued patent on Your invention gives You the right to exclude others from making, using or selling a product, or employing a method, that is covered by Your patent claims, and does not give You the right to make, use or sell Your own invention. Your rights in that respect depend upon whether Your activity would infringe another party's unexpired patent, a determination that can only be made by conducting a patent infringement search.

If You have asked us to file one patent application, the estimated cost, including attorney fees and government filing fees, to prepare and file the application is set forth in the engagement letter. In contrast, if there is an ongoing engagement that will cover several applications over time, we will discuss with You the estimated cost to prepare and file each patent application in advance of beginning work on each application, if You would like us to do so. The initial fees of preparing and filing an application only cover the cost of placing the application on file at the U.S. Patent and Trademark Office; they do not cover additional legal and government fees that typically arise once the application is filed (e.g., the reporting out of filing receipts, assignment recordings and published applications). Moreover, an examiner issues a first written opinion or action, usually six to eighteen months after filing. The examiner usually raises a challenge to at least part of the application, requiring a response including possible revisions and arguments to overcome the challenge. We will not prepare such a response without first advising You concerning the likelihood of success and obtaining Your approval to proceed. There may be a second challenge by the examiner, necessitating another response on Your behalf. Thus, You can expect to incur one or more instances of post-filing

fees, each of which we will discuss with You and obtain Your approval before expending further time on these efforts. These efforts may or may not result in ultimate approval of Your application. Of course, You can discontinue the process at any time if the likelihood of success does not warrant further effort and expense.

Unless FS has agreed otherwise in writing, our standard practice is to have half of the estimated cost of preparing and filing a patent application remitted before work commences with the balance due when the application is complete to Your satisfaction and before filing the application. For Your convenience, we accept Visa and Mastercard.

When, and if, the U.S. Patent and Trademark Office allows a patent application, a Notice of Allowance will issue, which in turn will require that we prepare transmittal papers to accompany payment of a governmental issue fee. As in the case of the other post-filing legal and governmental fees, timely payment of these charges will be Your responsibility.

Please be aware that the above prosecution scenario is merely exemplary. We cannot predict what a particular examiner may do with Your patent application, and how many steps may be required to secure the grant of a patent. It may be desirable to petition the examiner to extend the process, or to appeal an examiner's "final" rejection of Your application to the Board of Patent Appeals and Interferences. Each of these options entails additional fees and costs, which cannot now be predicted. However, at each step and if required by you, we will provide You with an estimate of the fees and costs for the next step so that You can make an informed decision whether it is worthwhile to proceed.

To maintain an issued utility patent in force for its full potential term of twenty years from its effective filing date, You must periodically pay maintenance fees to the government. If a patent is granted, we will inform You at that time concerning the need for payment of such maintenance fees so that You can calendar those future dates in Your own calendar system. However, upon issuance of Your patent, You agree that our attorney-client relationship for that particular patent matter will be concluded, and we will close our file. Therefore, we strongly recommend that, if and when the Patent and Trademark Office grants a patent on Your application, You then either hire a commercial service to remind You of those due dates or that You place payment reminders in more than one calendar system. You agree that You, rather than FS, bear full responsibility for the timely payment of those maintenance fees. You also agree that even if we do in the future provide You with a courtesy payment reminder, such future reminders will not constitute an ongoing attorney-client relationship concerning that matter after the patent issues.

### **Trademark Searches**

Ordinarily, we recommend that a trademark clearance search be performed before using a mark or filing a trademark application for Your mark. A clearance search will provide You with a better idea of whether Your mark conflicts with prior marks found in the clearance search and will be helpful in assessing the risks associated with the use and registration of Your mark. However, even a favorable result from a search does not guarantee that a trademark application would be approved by the U.S. Patent and Trademark Office, because the official search that the Patent and Trademark Office would perform for Your mark may uncover more or different relevant prior marks than were found in Your clearance search or the Patent and Trademark Office may refuse registration on grounds other than a prior mark found in the examining attorney's search. If FS's representation is limited to a clearance search, it is understood that FS is not required to file a trademark application for Your mark.

### **Trademark Applications**

If You have asked us to file a U.S. trademark application, we will work diligently to obtain a registration for Your mark. However, the U.S. Patent and Trademark Office will likely issue one or more substantive refusals to register and/or non-substantive requirements, to either preclude a registration or limit the scope of registration protection to something less than You had sought. By engaging FS, You acknowledge that FS's efforts on Your behalf may be unsuccessful to accomplish Your purposes, and that Your obligation to pay FS's fees and costs incurred on the matter is not dependent upon the outcome of such efforts to obtain a registration.

The initial fees of preparing and filing an application only cover the cost of placing the application on file at the U.S. Patent and Trademark Office; they do not cover additional legal and government fees that are incurred during the registration process, by, for example, responding to refusals and complying with other Patent and Trademark Office requirements. These efforts may or may not result in ultimate issuance of a registration. Of course, You can discontinue the process at any time if the likelihood of success does not warrant further effort and expense.

Unless FS has agreed otherwise in writing, our standard practice is to have the estimated cost of preparing and filing a trademark application remitted before the application is filed.

We cannot predict what a particular examining attorney at the Patent and Trademark Office may do with Your trademark application, and how many steps may be required to secure the grant of a registration. You may be required to appeal an examining attorney's refusals or objections to, for example, the Trademark Trial and Appeal Board. In addition, if and when Your application is published for opposition, it may be opposed by an individual or entity who believes they may be damaged by registration of Your mark, requiring You to defend the opposition. Each of these possible scenarios would entail additional fees and costs, which cannot now be predicted. However, we can provide You with an estimate of the related fees and costs so that You can make an informed decision on whether it is worthwhile to proceed.

To maintain a registration in force once it has issued, You must periodically file declarations verifying that the registered mark remains in use in the United States and pay the related government fees. If a registration is granted, we will inform You at that time of the need for filing such maintenance documents so that You can calendar those future dates in Your own calendar system. However, upon issuance of Your registration, You agree that our attorney-client relationship for that particular registration will be concluded, and we will close our file. Therefore, we strongly recommend that, if and when the Patent and Trademark Office grants a registration, You then either hire a commercial service to remind You of the maintenance due dates or that You place reminders in more than one calendar system. You agree that You bear full responsibility for the timely filing of such documents and associated government fees. You also agree that even if we do in the future provide You with a reminder, such future reminders will not constitute an ongoing attorney-client relationship concerning that matter after the registration issues.