



NATIONAL ASSOCIATION OF

RETAIL COLLECTION ATTORNEYS

MODEL CONTRACTUAL PROVISIONS

Version 10-21-03

LETTER OF TRANSMITTAL

In mid-2002, the National Association of Retail Collection Attorneys surveyed its membership in an effort to learn which issues were most important. A substantial portion of the membership responded by indicating a need for model contractual provisions which attorneys, credit grantors, and debt buyers could utilize as a basis for their business relationships. The membership noted that there was inconsistency in expectations and no assistance available in confecting reasonable, workable, and equitable agreements. Shortly thereafter, a committee was created to study the feasibility of drafting a model contract.

In the beginning, many were skeptical that such a document could be created. These skeptics argued that the interests of credit grantors and attorneys were far too diverse to make such a document possible. Conversely, others argued that it was this diversity which would form the bedrock for such model contractual provisions.

In order to assure that any model contract created would be acceptable to all components of the creditor industry, both creditors and debt buyers were asked to participate in the process. These model contractual provisions are the result of an extensive, long term effort by the undersigned members of the creditor right's industry.

We believe that the model contract which follows creates a fair and equitable benchmark from which vital relationships can be built. The drafters believe that the model contractual provisions will help all members of the creditor community to better understand the needs and interests of others within that community.

We also believe that there will inevitably be deviations from this contract. Negotiators will now have a benchmark reference point for beginning discussions.

Allen Adkins
Harriger, Brazill & Graff

Darcy Houghton
Harley Davidson Fin. Ser.

Roger Neustadt
TX Collect

Wayne Babovich
Babovich & Spedale

Cynthia Jeffrey
Javitch, Block & Rathbone

Chuck Pona
Weltman, Weinberg & Reis

David Franklin
Franklin & Franklin

Richard Kamerman
Ford Motor Credit

Richard Springer
Discover Fin. Ser.

Bill Hicks
Messerli & Kramer

Dennis Malen
Malen & Associates

Suggested Model Contract Provisions:
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NOTICE

These model provisions are being distributed by NARCA for informational purposes and are not intended as, nor should they be a substitute for, legal analysis and legal advice with respect to any specific contract executed. No lawyer-client relationship is created by distribution of these materials by NARCA to its members and/or to businesses in the creditor industry. No representation or warranty as to the legal accuracy, correctness, or acceptance of these model provisions by any state or jurisdiction is indicated. It is the responsibility of each party to utilize this benchmark in a manner which assures that the final contract fully complies with their specific needs and the specific local law.

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NARCA MODEL CONTRACTUAL PROVISIONS

THIS AGREEMENT made and entered into on the ____ day of _____, 200____,
between _____ (forwarder) and _____
(attorney).

WHEREAS, forwarder wishes to retain attorney for the purpose of collecting debts.

WHEREAS, attorney is engaged in the business of performing collection services for
creditors and forwarders and wishes to offer its services to forwarder.

WHEREAS, forwarder will place, at its sole discretion, claims with attorney for
collection.

WHEREAS, attorney will undertake collection on each claim placed by forwarder.

WHEREAS, forwarder and attorney agree that those claims placed by the forwarder with
attorney shall be governed by the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions
contained in this Agreement and for such other goods and valuable consideration, receipt and
sufficiency of which are hereby acknowledged, forwarder and attorney agree as follows:

I. DEFINITIONS

The following words and phrases as hereinafter used shall have the following meaning:

1.1 “Acceptance”: acquiescence to written terms of representation as proposed by
forwarder. Acquiescence can be by written acknowledgement or actions in conformance with
the terms of representation.

1.2 “Acknowledgement”: written confirmation from a receiving attorney that claim
has been received and that terms of representation as proposed by forwarder are accepted.

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1.3 “Amount Due”: The amount of the claim which includes principal, interest, costs, and attorneys’ fees if allowable by state law.

1.4 “Arbitration”: the reference of a dispute to an impartial third person or panel chosen by the parties to the dispute.

1.5 “Assignment”: the forwarding of a claim to a receiving attorney for purposes of collection.

1.6 “Attorney”: a person admitted to practice law in his/her respective state and who is retained at the request of a forwarder to perform certain legal functions and ancillary duties associated therewith.

1.7 "Appearance Attorney": one whose function is to appear at a hearing on behalf of an attorney, but who has no authority to deal directly with the client, and whose involvement is limited to specific appearances as required by a court. Functions performed by appearance attorneys include, but are not limited to, walking documents through a court, docket calls, motions for summary judgment, and default hearings..

1.8 “Attorneys’ Fees”: those fees which compensate an attorney for services rendered.

1.9 “Automatic Stay”: Section 362(a) of the Bankruptcy Code provides that the filing of a petition commencing a case triggers a broad stay of litigation, lien enforcement, and other actions, judicial or otherwise, which would affect or interfere with property of the estate, property of the debtor, or property in the custody of the estate.

1.10 “Bankruptcy Petition”: a series of documents filed with the Bankruptcy Court, invoking the jurisdiction of the Bankruptcy Court and commencing a case in bankruptcy under the specified chapter. Upon filing of the Petition, relief is ordered.

1.11 “Chapter 7”: a complete liquidation of assets pursuant to the Bankruptcy Code. All of the debtor's nonexempt assets are converted to cash and distributed to creditors according to statutory rules. At the end of the case, the debtor receives a discharge, which absolves the individual from any obligation to repay most debts.

1.12 “Chapter 13”: a reorganization of the individual debtor's financial affairs pursuant to the Bankruptcy Code. In a case filed under this chapter, the debtor proposes a plan of repayment in which creditors receive some percentage of what they are owed. At the end of the case, which generally has a 36 to 60 month duration, the debtor receives a discharge, which absolves the individual from any obligation to repay debts.

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1.13 “Claim” a claim may be either:

(a) a “commercial claim” which arises from an obligation to pay for goods sold or leased, services rendered, or monies loaned for use, in the conduct of a business or profession, or;

(b) a “retail claim,” which arises from any obligation of a consumer to pay money out of a transaction for which the goods, money, financing, lease, property, insurance, or services rendered are the subject of a transaction which are primarily for personal, family, or household purposes.

1.14 “Cleared Funds”: a check or other negotiable instrument received from a debtor, or on a debtor’s behalf, which has been paid by the issuer’s bank and which has been determined fully available by the attorney’s bank.

1.15 “Client”: one who employs or retains an attorney to represent its interest in any legal proceedings or legal business.

1.16 “Collection Attorney”: one who concentrates in the collection of either retail or commercial debt. Either retail or commercial debt may include governmental agency debt.

1.17 “Commission”: the compensation payable by a forwarder and earned by an attorney for his/her services in effecting collection of a claim, in whole or in part and is normally contingent and computed as a percentage of the sum collected.

1.18 “Compromise”: an agreement between creditor and debtor to resolve the claim for less than the balance claimed due and owing by the creditor.

1.19 “Cost Advance”: a sum of money advanced by the forwarder to the attorney as a fund from which court costs are to be expended.

1.20 “Counterclaim”: a claim which seeks damages, off-sets, or affirmative relief in response to plaintiff’s complaint, pursuant to the applicable procedural rules.

1.21 “Court Costs”: those charges incurred in prosecuting or defending an action as determined by the forum state.

1.22 “Credit Agreement”: the agreement between creditor and customer which outlines the contractual terms and conditions in the extension of credit to the customer.

1.23 “Default”: the failure to perform a legal duty such as timely answering a lawsuit and/or the failure to perform a contractual duty such as timely paying a debt.

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1.24 “Demand Letter”: a written demand to the debtor seeking recovery of monies allegedly owed. This term includes but is not limited to validation notices under the FDCPA.

1.25 “Direct Payment”: a payment received by the creditor or forwarder directly on a claim which has been forwarded to an attorney for collection.

1.26 “Discharge”: the step which regularly follows the adjudication of bankruptcy and the administration of the estate. Discharge is a bar to all future legal proceedings for the enforcement of the discharged debt, however, the debt is not paid or extinguished.

1.27 “Dismissal in Bankruptcy”: the negation of the bankruptcy petition, as far as practicable, and restoration of all property rights to the position in which they were found at the commencement of the case.

1.28 “Dismissal Of Claim”: The negation or withdrawal of the petition, as far as practical, subject to the rights and limitations of applicable law.

1.29 “Forwarder”: a person who, or an entity which, as the agent of the creditor, refers claims to attorneys for collection. A forwarder may be the creditor, an attorney, a collection agency, a credit bureau, a credit insurance company, or any other entity which acts on behalf of the creditor as its agent, in the referral of claims for collection.

1.30 “Forwarding Contract”: the agreement entered into between the forwarder and the attorney, specifying among other things the commission agreed upon between the attorney and the forwarder as the attorney's compensation for effecting collection, in whole or in part, of a claim.

1.31 “Installment”: the partial payment of a debt or collection of a receivable. An installment is the payment of a portion of the same debt payable at different successive periods as agreed.

1.32 “Interest”: the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money.

1.33 “Mediation”: settlement of a dispute by the action of an intermediary (a neutral party).

1.34 “Order for Relief”: a determination, by decree or operation of law, that a person is a debtor under the Bankruptcy Code. The filing of a voluntary petition constitutes an order for relief pursuant to the chapter under which the petition was filed.

1.35 “Partial Collection”: the receipt of a payment which is less than the total amount of the debt sought.

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1.36 “Petition”: a series of documents filed with the court, invoking the jurisdiction of the court and commencing a legal proceeding.

1.37 “Placement”: the forwarding of a claim for collection to an attorney.

(a) Primary Placement - the first forwarding of a claim for collection by the original creditor to an attorney.

(b) Secondary Placement - the second forwarding of a claim to an attorney for collection..

(c) Tertiary Placement - the third forwarding of a claim to an attorney for collection.

1.38 “Pleadings”: documents propounded by either the plaintiff or defendant to the action, pursuant to the applicable procedural rules.

1.39 “Proof of Claim”: the means by which creditors present their claims to the court, pursuant to the Bankruptcy Code. The document is filed with court on an official form and indicates the amount and classification of the claim.

1.40 “Reaffirmation Agreement”: in the context of a Chapter 7 Bankruptcy proceeding, a voluntary agreement between a creditor and a debtor, for which the consideration is based on a debt that is dischargeable, whereby the debtor agrees to maintain personal liability on a debt and in exchange, the creditor allows the debtor to pay pursuant to the terms of the reaffirmation agreement, which frequently represent the terms of the original contract.

1.41 “Receivership”: a legal or equitable proceeding in which a disinterested third party is appointed for an insolvent corporation, partnership, or individual for protection of its assets and for ultimate sale and distribution to creditors.

1.42 “Relief from Stay”: upon request of a party in interest, after notice and a hearing, the court shall grant relief from the automatic stay, by terminating, annulling, modifying or conditioning the automatic stay upon the grounds set forth in the Bankruptcy Code.

1.43 “Remittance”: money sent by one person to another, either in specie, bill of exchange, check, electronic fund transfer, or otherwise.

1.44 “Remittance Statement”: a written accounting of all funds collected by attorney on behalf of forwarder which sets forth the debtor’s name, account number, dollars collected, commissions and/or suit fees withheld and amount remitted as well as other information which may be required by forwarder.

1.45 “Renewal of Judgment”: the action necessary to extend the effective life of a judgment.

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1.46 “Retail Claim”: a claim which arises from any obligation of a consumer to pay money arising out of a transaction in which the goods, money, financing, lease, property, insurance, or services rendered are the subject of a transaction which are primarily for personal, family, or household purposes.

1.47 “Section 341 Meeting of Creditors”: generally, in a Bankruptcy proceeding, the debtor's first appearance at a hearing. It is intended to give the various parties a chance to examine the debtor and his/her financial affairs. It allows the trustee to learn whatever is necessary to perform the trustee's duties.

1.48 “Service of Process”: the communication of the process or the court papers, to the defendant, either by actual delivery, or by other methods whereby defendant is furnished with reasonable notice of the proceedings against him or her to afford the defendant opportunity to appear and be heard.

1.49 “Settlement Guidelines”: the guidelines established by the forwarder which set forth the parameters which the debt collector must follow in resolving a claim.

1.50 “Skip Trace”: efforts to locate the whereabouts of a debtor.

1.51 “Suit Fees”: a fee payable to the attorney, in addition to the commission, for legal services rendered by the attorney, for the forwarder in connection with the prosecution of a claim.

1.52 “Taxed Costs”: fees and charges required by law to be paid to the courts, the amount of which is fixed by statute or court rule and which are awarded by a court.

1.53 “Taxed Fees”: Attorneys’ fees actually awarded to a party, payable by the other party, by way of a judgment or other enforceable court order.

1.54 “Trust Account”: the non-interest bearing bank account established by an attorney for the deposit of forwarder's monies for the benefit of that forwarder.

1.55 “Trustee”: an independent third party, appointed to administer a case in bankruptcy. The trustee represents the interests of the bankruptcy estate.

1.56 “Validation Period”: the thirty day period following debtor’s receipt of the validation notice in which debtor may request verification of the debt.

1.57 “Voluntary Bankruptcy”: a legal proceeding, brought by a debtor, that seeks relief specifically provided for by the Bankruptcy Code.

1.58 “Withdrawal of Claim”: a claim is removed from an attorney by a forwarder or creditor with or without cause.

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II. ATTORNEY REPRESENTATIONS

Attorney represents and warrants that, for each claim referred:

2.1 Compliance With Law. In performing the services set forth in this Agreement, attorney shall comply with all applicable laws, rules, and regulations, including, but not limited to, the Federal Fair Debt Collection Practices Act, 15 USC §1692, et seq. (“FDCPA”). The firm shall conduct its practice of law in compliance with the laws and court rules of the state in which it maintains its practice of law, including without limitation, court pleadings, court appearances, professional conduct, trust accounts, bookkeeping records, and professional liability insurance.

2.2 Relationship. The relationship between forwarder and attorney shall be that of independent contractor. Under no circumstances is the relationship among the aforementioned to be construed as that of principal/agent, master/servant, employer/employee, joint venturer, partner, or any other similar relationship.

2.3 Confidentiality. Attorney understands and agrees that all accounts, records, documents, and claim information provided to it are proprietary and highly confidential information. Attorney agrees not to directly disclose, publish, cause to be disclosed or published, or use such information for the benefit of any third party or itself.

2.4 Adverse Claim. Attorney shall, immediately upon attorney’s knowledge thereof, notify forwarder of all complaints, counterclaims, actions, suits or threatened litigation received by attorney relating to any claim placed with attorney by forwarder.

2.5 Debtor Contact. Attorney will respond timely to contact initiated by the debtor or debtor’s attorney, and will apprise forwarder of any issues requiring forwarder involvement or follow up.

2.6 Maintenance of Balance Due. Attorney is responsible for maintaining the post-suit legal balance of the claim and providing balance information to forwarder upon request, if the file is active with the attorney.

2.7 Maintenance of Records. Attorney is responsible for maintaining all records for three (3) years from the close of the account. Such records may be maintained electronically.

III. FORWARDER REPRESENTATIONS

Forwarder represents and warrants that, for each claim referred:

3.1 The Amount Due. Forwarder shall represent to attorney that the amount alleged due at the time the claim is assigned to attorney for collection is true and correct.

3.2 Validity of Debt. Forwarder represents that the claim represents a legal and valid debt of the claim holder.

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3.3 Lack of Disputes. Forwarder represents that it is unaware of any disputes regarding the debt which would render it invalid.

3.4 Default Status. Forwarder represents that the debt is in default.

3.5 Right to Sue. Forwarder represents that it is unaware of any circumstances with respect to the claim that would render the claim not subject to legal process.

IV. COMPENSATION

Attorney shall be compensated for services rendered in the following manner:

4.1 Computation of Attorneys' Fees. Attorney shall accept as total satisfaction for its collection services on all claims ever assigned to attorney, regardless of assignment date, a commission as set forth in the fee schedule provided to attorney, as may be amended from time to time upon notice to attorney.

4.2 Commissions Due Regardless of Where Paid. For claims forwarded on a contingent basis, the commission constitutes a percent of the amount collected, whether such monies are physically collected by attorney, forwarder, or any third party. Money collected includes taxed fees on a claim-by-claim basis. In addition, the attorney shall be entitled to receive said commissions with respect to all amounts paid directly to forwarder in connection with the claims, including by set-off, under the terms of any policy of insurance, by welfare or other governmental agencies, or through bankruptcy proceedings involving the debtor.

The commissions set forth herein are subject to the recall provisions set forth in Paragraph VIII of this Agreement. The commission will be calculated as a percentage of the amount collected for each claim individually, after all previously advanced or reimbursed court costs (as defined herein) have been refunded to forwarder.

4.3 Settlement Authority. Attorney is authorized to settle and/or compromise any claim without forwarder's consent as set forth in the settlement procedures provided to attorney. Without forwarder's prior written consent, settlement shall provide for payments over a period not exceeding that period set forth in the settlement procedures provided to attorney by forwarder.

4.4 Subsequent Receipt of Payment. Attorney shall not be entitled to any commission with respect to any claim if payments are received more than one hundred twenty (120) days after termination of attorney's services with respect to such claim except:

- (a) Attorney shall be entitled to reimbursement of those court costs incurred by attorney, prior to the date of termination.

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(b) Attorney shall be entitled to compensation after the termination of this forwarding contract with respect to claims on which a stipulation of settlement or other agreement/arrangement of payment, either in full or installments, has been made, and,

- i) Payments are thereafter timely received, or,
- ii) Payments are received within 30 days of the due date of such installment, or,
- iii) Payments are received within 30 days of an extended term for such payment or installment agreed to by forwarder.

(c) Attorney shall be entitled to compensation with respect to such claim if payment is made pursuant to a valid garnishment, attachment, or judgment filed of record by the attorney.

4.5 Repossession of Collateral.

(a) Upon location or identification of collateral for repossession in full or partial satisfaction of a claim of forwarder, attorney shall immediately notify forwarder. The final decision to repossess and liquidate shall remain entirely within the discretion of the forwarder. If the forwarder elects to proceed with repossession of the collateral, attorney shall initiate the process.

(b) Where goods or property are accepted in full or partial settlement of a claim, rather than money, the attorney shall be compensated based upon the net proceeds by the liquidation of collateral as described in accordance with the fee schedule.

V. APPLICATION OF PAYMENTS, REIMBURSEMENTS, AND REMITTANCES

Payments received shall be allocated and remittances made as follows:

5.1 Trust Accounts. All trust accounts shall be established in accordance with applicable state IOLTA requirements. Attorney agrees that all payments received in connection with the accounts referred to attorney will be deposited in a bank account for the benefit of company designated as "Trust Account" on the first business day after such payment is received. The bank account must bear the title "Trust Account" to distinguish it from any other of attorney's bank accounts. Such trust account shall be maintained at an FDIC-insured financial institution, the name and account number of which the attorney shall provide to the forwarder upon their written request for said information. Attorney shall, at all times, have on deposit in such account sufficient funds with which to pay all monies owed to forwarder.

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5.2 Cost Advances. Attorney may initially advance all court costs necessary for litigation. Attorney shall then submit an itemized listing of such court costs to forwarder for payment on a monthly basis. Such court costs shall be recovered by attorney from the first moneys generated by, and collected from, the claim for which court costs were expended. After subtraction of the court costs, attorney will receive its commission as set forth in the fee schedule provided to attorney, as may be amended from time to time upon notice to attorney.

5.3 Reimbursement of Costs Advanced. If a claim is withdrawn from attorney pursuant to Sections VIII or X, attorney shall be entitled to reimbursement of any court costs incurred prior to the date the claim is withdrawn. In the event attorney is subsequently notified by the court of additional court costs due on a withdrawn claim, forwarder agrees to reimbursement of those court costs for a period of one year after date of withdrawal.

5.4 Endorsement of Checks. Attorney is hereby authorized to endorse checks payable to the forwarder solely for the purpose of depositing said checks into attorney's trust account. The attorney shall not charge the forwarder for any portion of any fees incurred in connection with the trust account unless said account is established specifically for the benefit of forwarder.

5.5 Reporting of Claim Activity. As mutually agreed to by the parties, the attorney shall provide to the forwarder updated information concerning the claims during the course of collection efforts. The attorney shall maintain records pertaining to the claims, including but not limited to the trust account. The forwarder has the right, during normal business hours, to inspect and audit any records concerning the claims and the services provided by the attorney.

5.6 Posting of Payments. All payments shall be posted to the claim and allocated to court costs, taxed fees, interest and principal, in mutually agreed order or in accordance with any applicable state statutes. However, in all instances, for internal accounting purposes only, debtor's payments shall be credited to any outstanding court costs expended by attorney on said claim at the time of receipt of said payment and prior to any commissions being earned by attorney.

5.7 Remittance of Cleared Funds. On a monthly basis, or as otherwise mutually agreed to by the parties, the attorney will remit to forwarder all cleared funds collected to date less the commissions and/or suit fees due to attorney on said claims. In the event invoiced court costs and/or invoiced commissions and/or suit fees due on direct payments remain due and payable pursuant to Sections 5.2 and 5.3 herein, then, such court costs and fees may be deducted from the remittance after attorney provides 14 days written notice to forwarder.

The tender of funds by attorney to forwarder will be forwarded by check to the remittance address provided, or as otherwise mutually agreed to by the parties.

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Every remittance shall be accompanied by a remittance statement sufficient to permit forwarder to determine readily the source of the money collected and the accuracy of the fee calculation and resulting remittance. Such accounting shall at least include the following information: dollars collected, commissions and/or suit fees, and amount remitted, as well as sufficient information to identify the claim to forwarder including claim name and claim number.

5.8 NSF Checks. Collections made by attorney and remitted to forwarder by attorney, on which a check is returned by the bank unpaid, shall be reported on the remittance statement as a minus payment and minus commission.

Forwarder will notify attorney when a check is returned by the bank on a payment made direct to forwarder on which forwarder has paid the attorney the commission due. Attorney will list such returned checks on the next remittance statement for direct payments to forwarder as a minus payment and minus commission.

VI. REPORTING

Attorney shall report its activities concerning its efforts on behalf of forwarder as follows:

6.1 Reports to the Forwarders. Attorney shall provide forwarder with various reports as reasonably requested by forwarder. These reports may include, but are not limited to, acknowledgments of placements, closed file reports, reconciliation reports, liquidation and batch track reports, and status reports.

6.2 Submitting to Forwarder Audits. Forwarder shall have the right to examine and audit attorney's records pertaining to forwarded claims. Forwarder may, among other audit tasks, measure or evaluate attorney's performance and professionalism, verify the accounting of all funds, including any trust account, verify the accuracy and propriety of all charges, verify the timeliness of recording and remitting payments, verify the adequacy of cash controls, and verify the attorney's overall compliance with this Agreement. Audits may be performed, either on-site or remotely, at the forwarder's discretion. Forwarder may delegate the right to audit to any third party auditor or examiner. Attorney shall provide to the auditor a reasonable workspace and the use of on-site photocopying equipment and telephones at no charge to forwarder. Attorney shall allow the auditor the right to photocopy any documents relating to any claim forwarded under this Agreement. Forwarder agrees to advise attorney of the exceptions/discrepancies identified in any audit and agrees to allow attorney a reasonable period of time to respond to them.

VII. SPECIAL CIRCUMSTANCES

The special circumstances described below shall be handled by forwarder and attorney as follows:

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7.1 Bankruptcy. Upon notification of a bankruptcy of the debtor, each party shall promptly notify the other.

If attorney's investigation reveals that there may be debtor assets available for distribution in connection with a bankruptcy claim, or, if attorney deems it in forwarder's best interests, attorney shall, unless otherwise notified in writing by the forwarder, file a proof of claim. Distribution of funds from bankruptcy trustees is to be made directly to attorney and then to forwarder in the same manner as other collections. If attorney's investigation reveals that there are no debtor assets available for distribution, attorney shall close and return the claim to the forwarder.

7.2 Notification of Counterclaims and Defenses. Attorney shall immediately notify forwarder when any of the following situations arise:

- (a) An unusual defense is alleged;
- (b) A counterclaim is filed or alleged;
- (c) The Defendant files a complaint against the credit grantor or forwarder;
- (d) The denial of a judgment as a result of a court ruling which may set a precedent, having a negative effect on future collection litigation.

7.3 Defense of Counterclaims. Whenever a debtor responds to a lawsuit by filing a counterclaim or if the debtor initiates a lawsuit against forwarder, attorney agrees to promptly provide forwarder with a copy of all pleadings filed by both the debtor and the law firm. Where forwarder does not respond with instructions, attorney should take those reasonably necessary steps to ensure protection of forwarder's interests, including maintaining the status quo. Forwarder may either retain attorney and agree upon a mutually acceptable fee arrangement, or, forwarder may retain other counsel for representation at which time attorney agrees to transfer said file to whomever forwarder instructs.

VIII. RECALL AND CLOSING OF CLAIMS

Claims may be withdrawn or closed in the following circumstances:

8.1 Withdrawal of Claims. Forwarder reserves the right to withdraw claims or any portion thereof with or without cause at any time, including claims with a judgment. In the event of the withdrawal of a claim on which attorney has pursued collections, including claims with judgments, forwarder shall pay attorney its contingency fee on all collections received by either forwarder or attorney for a period of forty-five (45) business days following withdrawal of said claim.

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8.2 Closing Claims (i.e., 180 days and no payments). Attorney shall cease collection efforts, and return to forwarder for further handling, all of the original documents on any claims:

- (a) if within one hundred eighty (180) days from the date forwarder referred a claim to attorney, no payment has been received on the claim and no lawsuit is pending in the appropriate court, or;
- (b) if, one year after the claim has been reduced to judgment, no payment has been received, no execution is pending, or, no lien or abstract has been recorded in jurisdictions where property ownership by the debtor(s) has been verified.
- (c) The provisions of 8.2 (a) and 8.2 (b) shall take effect only upon notice by the forwarder that the right to require the return of a claim has been exercised.

IX. INSURANCE

Attorney represents and warrants that it currently has:

- (a) professional liability insurance, and,
- (b) a fidelity bond covering personnel who collect accounts, and,
- (c) errors and omissions insurance.

Attorney will carry, at its sole expense, professional liability insurance, and a fidelity bond, and errors and omissions insurance in the amounts specified by the forwarder.

On an annual basis, commencing with the execution of this Agreement, or upon request from forwarder, attorney will provide forwarder with evidence that its coverages are in effect and shall notify forwarder immediately of the termination of, or any change in, the policy or coverage. At the time and execution of this Agreement, attorney shall provide forwarder with evidence of insurance in the form of a copy of the policies. attorney shall provide forwarder with copies of renewal policies and cancellation notices of the policies within ten (10) days of attorney's receipt of such notice.

X. TERMINATION FOR CAUSE

This agreement shall terminate for cause in the following circumstances and pursuant to the following procedures:

10.1 Grounds for Termination. Forwarder may terminate this Agreement immediately in the event attorney violates any applicable law and a court of competent jurisdiction finds that attorney has breached this Agreement and/or attorney has caused a material breach of this Agreement, or attorney files a petition in bankruptcy which adversely effects attorney's ability to represent forwarder.

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10.2 Return of Documents. Upon such termination of this Agreement, attorney shall return any and all of the original documents and appropriate pleadings to the forwarder or to another attorney of forwarder's choice for each claim referred. All claims in attorney's possession, regardless of the status of the claim, will be returned to forwarder or another attorney of forwarder's choice. This includes, but will not be limited to, claims where a judgment exists, claims where a judgment exists on which execution has taken place in any form, whether wage garnishment or otherwise, and any other claim in attorney's possession.

10.3 Payment of Invoices. Upon termination, attorney shall, immediately upon demand, either return all referred claims and associated files, or transfer them to another attorney of forwarder's choice and in accordance with its instructions. Attorney shall prepare a final invoice of costs, expenses, and subject to 10.4 below and fees actually earned and a statement of remittances, and present both to forwarder. Forwarder shall pay the final invoice within 30 days of forwarder's receipt of the invoice and statement. Attorney agrees to cooperate with forwarder and with any successor attorney(s) in making a smooth transfer of the claims and transition of any litigation.

10.4 Subsequent Receipt of Payment. Upon termination, attorney shall not be entitled to any commission with respect to any claim unless:

- (a) Payments are received within 14 days of termination, or,
- (b) Payments are received within 180 days of termination with respect to claims on which a stipulation of settlement or other agreement/arrangement of payment, either in full or in installments, has been made prior to termination, and, payments are thereafter timely received, or received within 30 days of the due date of such installment.
- (c) Payments are received within 180 days of termination with respect to claims on which a valid garnishment, attachment, or judgment has been effected prior to termination.

XI. GENERAL PROVISIONS

The general provisions set forth below shall apply to this Agreement and all claims forwarded.

11.1 Indemnification by Forwarder. Forwarder shall be liable to and shall indemnify and hold attorney, its officers, directors, and employees harmless from and against any losses, arising out of, connected with, or resulting from any breach by forwarder of its obligations hereunder, including those warranties set forth herein.

**Suggested Model Contract Provisions:
Not To Be Used Without Review Of
Applicable State Laws, Rules and
Bar Regulations And Requirements**

11.2 Indemnification by Attorney. Attorney shall be liable to and shall indemnify and hold forwarder, its officers, directors, and employees harmless from and against any losses, arising out of, connected with, or resulting from any breach by attorney of its obligations hereunder, including those warranties set forth herein.

11.3 Contractor Retained Counsel. Forwarder reserves the right to approve any legal counsel, other than attorney's associates, partners, or appearance counsel, which may be retained in connection with litigation of claims, provided written notice of the exercise of the right is provided at the time the claim is placed with the attorney. Unless forwarder exercises the right to approve legal counsel in writing upon placement of a claim, attorney shall exercise his sole discretion in retaining counsel.

11.4 Entire Agreement. This Agreement contains the entire agreement between forwarder and attorney as to claims placed. No representations, promises, or conditions that are not incorporated herein shall be binding upon either party. This Agreement supersedes all prior understandings, agreements or arrangements between the parties.

11.5. Modifications. No modifications or amendments to this Agreement shall be binding unless made in writing and signed by each party.

11.6. Notices. Unless otherwise agreed to, any notices required or permitted under this Agreement shall be sufficiently given if sent by registered or certified mail, postage prepaid, addressed as follows:

If to attorney to: _____

If to forwarder to: _____

or such other address as shall be furnished in writing by any of the parties and any such notice or communication shall be deemed to have been given as of the date so mailed.

If remittances are to forwarder at an address different than that set forth above, then reports and remittances shall be sent, postage prepaid, addressed to forwarder as follows:

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Bar Regulations And Requirements**

IN WITNESS WHEREOF, the duly authorized representative of each party has signed this Agreement in duplicate on the dates written below.

Name

Name

Signature

Signature

Title

Title

Date

Date

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