

Jenner & Block or paid by Jenner & Block on behalf of epicRealm Licensing. This monthly statement shall also include an accounting of the time expended by Jenner & Block attorneys and legal assistants in representing epicRealm Licensing in each Enforcement Activity and shall specifically identify the applicable Infringing Party for such Enforcement Activity.

7. Impairment of Rights. The Parties covenant that they will not take or forebear from taking any activity or action that would or could be reasonably expected to impair the other Party's rights under this Agreement or in any Enforcement Activity in which Jenner & Block is representing epicRealm Licensing.

8. Arbitration of Disputes.

a. Generally. The Parties acknowledge that situations may arise which are not specifically addressed or contemplated in this Agreement. In that event, the Parties shall make a good faith effort to resolve any dispute relating in any manner to the Agreement or to any services provided pursuant to this Agreement in accordance with the general spirit of this Agreement. If the Parties cannot reach a satisfactory resolution, the Parties (or their authorized successors or assigns) agree that such dispute shall be finally adjudicated by arbitration conducted in Dallas, Texas under the auspices of JAMS®. The details concerning such arbitration, will be agreed upon by the Parties prior to the commencement of arbitration or, failing such agreement, by JAMS®. The arbitrator shall be selected by the mutual agreement of the Parties or, failing such agreement, from a panel of three arbitrators nominated by JAMS®, with each Party having the right to strike one of the arbitrators nominated by the other Party.

b. Disputes Regarding Non-Monetary Compensation. The valuation of any Non-Monetary Compensation shall be made in the reasonable judgment of the Parties in accordance with generally acceptable accounting principles or other appropriate methodologies related to the valuation of non-cash consideration or nonmarketable securities. If the Parties are unable to agree, the value shall be set by a binding arbitration before a single arbitrator in Dallas, Texas, under a "baseball format" (as defined below). The arbitrator shall be selected by the mutual agreement of the Parties or, failing such agreement, from a panel of three arbitrators nominated by JAMS®, with each Party having the right to strike one of the arbitrators nominated by the other Party. For purposes of this Agreement "baseball format" means that each of the Parties shall submit to the arbitrator on an ex parte basis, a proposal on the correct value of the NonMonetary Compensation and the arbitrator shall select one of these proposals (as opposed to the arbitrator's separate determination of the value of such Non-Monetary Compensation).

9. Termination.

a. Termination by epicRealm Licensing. This Agreement may be terminated by epicRealm Licensing at any time by providing 30 days prior written notice to Jenner & Block. If epicRealm Licensing elects to terminate this Agreement, epicRealm Licensing shall: (i) compensate Jenner & Block for all time expended by Jenner & Block on any Enforcement Activity undertaken on behalf of epicRealm Licensing at the regular hourly billing rates charged by Jenner & Block for its attorneys and legal assistants (in lieu of the Contingent Fee Award applicable to such Enforcement Activity); provided, however, that epicRealm Licensing has not terminated this Agreement as a result of a material breach of this Agreement by Jenner & Block (and such breach was not cured within thirty (30) days of the receipt by Jenner & Block of written notice from epicRealm Licensing of such material breach); (ii) reimburse Jenner & Block for all previously unreimbursed Enforcement Expenses incurred by Jenner & Block under this Agreement; and (iii) at the conclusion of any Enforcement Activity, pay Jenner & Block an appropriate and fair portion of the Contingent Fee Award based upon Jenner & Block contribution to the result achieved as of the time of termination of this Agreement (to the extent that Jenner & Block has not already been compensated under Section 9.a.(i) hereunder).

b. Termination by Jenner & Block. If Jenner & Block determines at any time that it is not in its economic interest to continue the representation of epicRealm Licensing pursuant to this Agreement, Jenner & Block may terminate this Agreement by providing 30 days prior written notice to epicRealm Licensing provided that the timing of such a termination shall be in full accord with any applicable ethical or legal responsibilities (e.g. those promulgated by the American Bar Association (ABA) or those outlined by the Illinois Disciplinary Rules of Professional Conduct), which bind or otherwise control the behavior or actions of Jenner & Block. Subsequent to the termination, Jenner & Block shall use best efforts to secure substitute counsel for epicRealm Licensing. If Jenner & Block terminates this Agreement, it shall continue to be entitled to receive compensation from epicRealm Licensing pursuant to (i), (ii) and (iii) in the preceding paragraph up to the date of such termination LESS the reasonable costs incurred by epicRealm Licensing to transition any pending or on-going Enforcement Activities that had been commenced with Jenner & Block to successor legal counsel.

10. Right to Files; Cooperation. Within sixty (60) days of the termination of this Agreement or promptly upon receipt of a written request from epicRealm Licensing, Jenner & Block shall deliver copies of all files and documents, including, without limitation, all reports, memoranda, or other materials held by Jenner & Block arising out of or related to any Enforcement Activity in which Jenner & Block represented epicRealm Licensing. Jenner & Block covenants to cooperate with any successor or additional legal counsel engaged by epicRealm Licensing in connection with any Enforcement Activities.

11. Successors and Assigns. This Agreement (and the right, duties and obligations arising hereunder) may not be assigned without the prior, written consent of the non-assigning Party. In the event that a Party ceases to exist as a legal entity, the other Party shall have the right (but not the obligation) to continue under the terms of this Agreement with any successor entity to the dissolving Party.

12. Notices. All notices, demands, or requests provided for or permitted to be given pursuant to this Agreement must be in writing to be effective and shall become effective either when: (a) personally delivered to the Party to which such notice, demand, or request is directed; (b) mailed by registered or certified mail with return receipt requested on the earlier of the date actually received by the Party to which such is directed or (whether ever received or not) or three (3) Business Days after the same is deposited in the United States Mail, addressed to such Party at the address set forth in the signature page; or (c) if sent via facsimile upon receipt with proof of confirmed answer back of the date of transmission.

13. Choice of Law. THIS AGREEMENT AND THE OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE INTERPRETED, CONSTRUED, AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO CONFLICTS OF LAWS PROVISIONS THEREUNDER.

14. Waiver. No consent or waiver, express or implied, by any Party to, or of, any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations hereunder. Failure on the part of either Party to complain of any act or failure to act of the other Party or to declare such other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by the non-defaulting Party of its rights hereunder.

15. Amendment; Modification. This Agreement may be amended or modified from time to time but only by a written instrument executed by the Parties. This Agreement may not be amended by oral statements. This written Agreement represents the final and complete agreement of the Parties regarding the subject matter of this Agreement and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements. There are no oral or unwritten agreements regarding the subject matter of this