**Indemnity Agreement Letter (Co-Defendants)**

**Agreement**

**[date]**

RE: **[Plaintiff]** v. **[Defendant]**

Dear :

As you know, along with **company** (the “Company”), you have been named a defendant in the lawsuit referred to above. You have requested that the Company provide you with counsel, assume your defense and indemnify you in this lawsuit. Following consultation with the Company, I am writing to advise that the Company will defend you. However, this agreement to provide your defense and to indemnify you is subject to your agreement to the following:

1. This agreement to indemnify you and assume your defense is limited to defense of your interests in the lawsuit above; it is not an agreement to defend or indemnify you with respect to any other matter. Moreover, the agreement to defend and indemnify you is limited to the claims currently being raised by Plaintiff. If any new claims are raised in the lawsuit, the Company reserves its right to review its agreement to defend and indemnify you and, if it deems it appropriate, revoke this agreement and the indemnity, and tender back to you your defense in this action.

2. This agreement to indemnify you and assume your defense is effective only upon your agreeing to the terms of this letter. Your agreement to these terms will be indicated by your signing and returning this letter to me.

3. This agreement to indemnify you and assume your defense is effective only so long as the facts continue to indicate, as they do now, that you have no independent liability for any of the claims raised by plaintiff in this lawsuit, and so long as it appears that any actions you took relating to plaintiff and the claims he is raising, were taken by you in good faith and with the best interests of the Company in mind. In the event the Company becomes aware of evidence suggesting that you did not act in good faith and in the best interests of the Company, or that you did things which could give rise to an independent claim by plaintiff against you personally, the Company reserves its right to revoke this agreement and the indemnity, and to tender back to you your defense in this matter.

4. By signing where indicated below, you acknowledge that any actions you took with respect to plaintiff and/or the claims he is raising in this lawsuit, were taken by you in good faith and with the best interests of the Company in mind. You also acknowledge, by signing below, that you know of no facts which you have not already shared with the Company or its lawyers, which would give rise to any independent claim against you by plaintiff.

5. The Company also reserves the right to revoke the agreement to indemnify you and to tender your defense back to you at any time if, in the opinion of the Company, you fail to cooperate in the investigation and defense of the lawsuit, or you otherwise fail to perform your obligations under this agreement.

6. If the Company exercises its right to revoke the agreement to indemnify you and to tender back to you your defense in this matter, the Company shall be entitled, if it chooses, to seek reimbursement from you for all expenses incurred by it in defending you in the litigation, to the extent those expenses exceeded what the Company otherwise would have had to pay to defend itself. In this regard, the Company shall be entitled to seek reimbursement for costs and attorney[s fees incurred by it in seeking relief under and/or seeking to enforce the terms of this agreement.

7. You shall reasonably cooperate with the Company and its counsel in the investigation and defense of the lawsuit; such cooperation shall include, but not be limited to, making available to the Company and its counsel any and all information in your possession which might be of assistance in such investigation and defense, as well as making yourself available, at the Company[s request, for interview or deposition.

8. You shall promptly notify counsel for the Company of any information or event coming to your attention which you reasonably believe might in any material way affect the litigation or the defense thereof.

9. You shall have the right, at your own expense, to appoint counsel to consult with the Company in the progress of the litigation. The Company shall have final authority to determine all matters in connection with the litigation, including, without limitation, any settlement thereof on your and its behalf, or to bring in third parties or to otherwise pursue affirmative claims against plaintiff or others in the lawsuit.

10. You shall not intentionally take any action which would be detrimental to the defense or conduct of the litigation.

11. The Company shall not be liable for any attorney[s fees, costs or expenses whatsoever related to this litigation incurred by you prior to the date you execute this letter.

12. In the event of a dispute between the parties arising out of or relating to this agreement, which dispute cannot be resolved between the parties themselves, such dispute shall be submitted to arbitration in the **[city]** area, under the rules and regulations then applicable of the American Arbitration Association. Each of the parties agrees to be bound by the decision of any such arbitration and the decision or award of the arbitrator may be presented to any court of competent jurisdiction for a judgment based on such award or decision. In this respect, each of the parties consents to a judgment in any forum including, but not limited to, any United States District Court.

13. By executing this letter agreement, you

a. acknowledge that prior to executing this agreement, you have been provided the opportunity to consult with counsel of your own choosing. You also acknowledge, by signing this agreement, that your signature was obtained without duress or coercion, and without reliance on any promises or statements made to you other than those stated in this letter (**i.e.,** you signed this agreement of your own free will;

b. consent to the Company’s selection of the firm of **[law firm]** to act as its and your counsel in this matter;

c. acknowledge that you have discussed with counsel for the Company any potential conflicts of interest which could arise in this lawsuit, because of the fact that you and the Company are being represented by the same counsel;

d. agree to waive any conflict of interest claims which may currently exist, or which could later arise in the event the Company or its counsel becomes aware of any evidence (other than evidence which **[law firm]** obtains from you) which could give the Company the right to revoke this agreement to provide a defense for you. In the event the Company does revoke this agreement to indemnify you and to provide a defense for you, you agree that the firm of **[law firm]**, or its successor, may continue to represent the Company in this lawsuit, notwithstanding the fact that the firm of **[law firm]** used to represent you as well, but, because of the revocation of this agreement, no longer represents your interests; and

e. acknowledge that you have received and reviewed, either yourself or with the assistance of independent legal counsel of your own choosing, a copy of the American Bar Association[s Formal Opinion 93–372, a copy of which is attached. This opinion discusses potential conflicts of interest which could arise in cases where an attorney represents more than one party in a lawsuit, and in particular, reviews the attorney[s ethical obligations to both clients. You should review this opinion before executing below.

14. In the event the Company revokes this agreement, and in the event the firm of **[law firm]**, or its successor, continues to represent the Company, but not you, in this lawsuit, the Company acknowledges that your agreement to allow the firm of **[law firm]** to continue to represent the Company alone does not mean that the law firm may disclose to the Company confidential information it learned through you in the course of defending your interests. The Company acknowledges that it has instructed the law firm that it should not disclose to the Company any confidential information learned through you alone, in the course of representing your interests, unless such disclosure is agreed to by you at the time disclosure is made.

If these terms meet with your approval, please execute the signature line on this letter where indicated and return it to me as soon as possible. Once I have received your consent to this arrangement, I will contact our attorney to have him file an appearance on your behalf.

If you have any questions at all about this, please do not hesitate to contact me.

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|  | Very truly yours, |
|  | \_\_\_\_\_\_\_\_\_\_\_\_ |
|  | Attorney for Defendant |
| Approved: |  |
| \_\_\_\_\_\_\_\_\_\_\_\_ |  |
| Date:\_\_\_\_\_\_\_\_\_\_\_\_ |  |