

## Membership Agreement ElderCounsel, LLC

**THIS MEMBERSHIP AGREEMENT** (“Agreement”) is entered into on \_\_\_\_\_,  
20\_\_ (the “Effective Date”) between ElderCounsel, LLC (“ElderCounsel” or “we”) and  
\_\_\_\_\_ (the “Member” or “you”).

### I. CERTIFICATION

Member hereby certifies the following by placing initialing each line:

\_\_\_ **I am a member in good standing with all bar associations and courts I am admitted to practice before.**

\_\_\_ **I agree to the attached “Membership Terms and Conditions” incorporated herein by reference.**

### II. MEMBERSHIP PAYMENTS

Member agrees to pay ElderCounsel as follows:

**Two (2) monthly payments of \$1,495 followed by regular monthly membership payments beginning the third month.**

We will charge an initial fee of \$1,495 the month of your completed application. The following month a second fee of \$1,495 will be charged. If desired, the full amount may be charged in the first month. Beginning in the third month after the Effective Date we will charge a monthly membership payment of \$350 (subject to any discount to which you may be entitled as provided below) for the duration of your initial 12-month Membership Term.

After completion of the Initial 12-month Membership Term, Membership will automatically renew at the then-current monthly membership rate unless notice of your desire to terminate is provided as set out in the attached “Membership Terms and Conditions” attached to this Agreement and incorporated by reference.

I am a current WealthCounsel member in good standing and thus eligible for a \$50 monthly discount on my dues.

I am a current NAELA member in good standing and thus eligible for a \$35 monthly discount on my dues for 12 months.

The above discounts may not be combined. Only one discount will be applied.

**Sales Tax Notice:** If you reside in any of the following states, sales tax will be assessed on the full amount of the Initial Payments and on the first \$25 of each Monthly Membership Payment: OR, NY, FL, WI.

### III. AUTOMATIC CREDIT/DEBIT CARD BILLING AUTHORIZATION

ElderCounsel will charge Member’s credit or debit card for the amount indicated above. ElderCounsel will automatically charge Member’s monthly membership payment each month according to the membership rate indicated above.

**Please return completed Agreement to ElderCounsel:**  
**Email: [sales@ElderCounsel.com](mailto:sales@ElderCounsel.com) or Fax: (888) 320-6782**  
Or mail to: ElderCounsel, LLC, PO Box 13, Sisters, OR 97759  
info@ElderCounsel.com | Office: (888) 789-9908 [www.ElderCounsel.com](http://www.ElderCounsel.com)

Card type:  MasterCard  VISA  AMEX  Discover

Credit card number \_\_\_\_\_

Expires: \_\_\_\_\_ 3-4 digit code \_\_\_\_\_

Cardholder's name: (as shown on credit card) \_\_\_\_\_

Billing Address (from credit card statement) \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Cardholder's Signature: \_\_\_\_\_

Date \_\_\_\_\_

**IV. MEMBER'S PRIMARY CONTACT INFORMATION**

Member Name: \_\_\_\_\_

Firm/Company Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email (primary member): \_\_\_\_\_

Email for member listserv (if different): \_\_\_\_\_

Alternative contact person & phone number: \_\_\_\_\_

Licensed to practice law in: \_\_\_\_\_ Bar number(s): \_\_\_\_\_

**OFFICE AND ELDERDOCX USER INFORMATION**

Location/Address of Primary Office Site:  
(Actual Address) \_\_\_\_\_

Location/Address of Additional Office Site(s):  
(Actual Address) \_\_\_\_\_

**ELDERDOCX USERS - MUST BE EMPLOYEES OF PRIMARY MEMBER WORKING IN PRIMARY OR SATELLITE OFFICE:**

NAME	PHONE NUMBER & EMAIL ADDRESS	PLEASE INDICATE PRIMARY OFFICE OR ADDITIONAL/SATELLITE OFFICE	ADD TO MEMBER LISTSERV?

PLEASE ATTACH ADDITIONAL PAGES AS NECESSARY  
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 Or mail to: ElderCounsel, LLC, PO Box 13, Sisters, OR 97759  
 info@ElderCounsel.com | Office: (888) 789-9908 www.ElderCounsel.com

ADDITIONAL CONDITIONS: \_\_\_\_\_  
\_\_\_\_\_

**THE TERMS AND CONDITIONS ON THE FOLLOWING PAGES ARE INCORPORATED HEREIN BY REFERENCE. BY SIGNING BELOW, MEMBER IS APPROVING AND ACCEPTING THE TERMS AND CONDITIONS.**

Approval and acceptance signed by Member:

Approval and acceptance signed by ElderCounsel, LLC:

By: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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## Membership Terms and Conditions

1. **Criteria for ElderCounsel Membership.** You represent and warrant that you are licensed or authorized to practice law as defined by the disciplinary rules of the state bar association or other licensing authority of your state and that you are actively engaged in the practice of law. You agree that you will use the software to draft legal documents in the course of the practice of law. You further expressly agree that if at any time you are no longer licensed or authorized to practice law you will immediately cease to use the software, and that you will not engage in or assist any other individual or entity to engage in the unauthorized practice of law in any jurisdiction. You assume sole responsibility for the installation, use and results obtained from use of any software ElderCounsel provides.

2. **Services.** Under the terms of the Membership Agreement establishing your relationship with ElderCounsel, ElderCounsel grants you a non-exclusive, non-transferable limited license to use the ElderDocx software, any other software applications provided by ElderCounsel as a part of ElderCounsel membership, and any other resources ElderCounsel delivers to you as part of membership (referred to collectively as “Membership Benefits”). You expressly agree that you will not license, sublicense, lease, sell, reverse engineer, decompile, or offer any membership benefit for resale, or otherwise allow any third party to use any membership benefit.

This license will cease immediately upon termination of this Agreement. All software and other Membership Benefits are licensed, not sold, to you by ElderCounsel for use only as provided under the terms of this Agreement, and only for the duration of your membership in ElderCounsel. ElderCounsel reserves all rights not expressly granted to you.

If the law firm listed on the Membership Application is one legal entity with multiple office locations, the pricing set forth below will apply. If the law office is comprised of multiple separate law practices in an office suite or office sharing arrangement, each law practice would require a separate Membership Agreement and “Site Licensing” pricing will not apply. For purposes of this Agreement a “site” means a law firm practicing as one legal entity in one physical office location, with all attorneys covered under the same malpractice insurance policy. A law office arrangement with multiple legal entities is not considered to be a single “site” for purposes of this Agreement. Each separate legal entity constitutes a “site” regardless of physical location or office sharing arrangements. Likewise, “of counsel” relationships are not considered to be the same law firm even if located in the same office. You agree to provide a copy of the firm’s malpractice policy page listing firm members to ElderCounsel upon request. Each attorney must be listed as a firm partner, associate, or employee.

**SITE LICENSING:** In consideration of the Membership Payments as set forth in this Agreement, the Membership Benefits are licensed to you for you use as a site license for each law office location covered by your Membership Agreement. The Nonrefundable Initial Fee and Monthly Membership Dues are determined as follows:

**First site:** Nonrefundable Initial Fee of \$2,990.  
Monthly Membership Dues of \$350 per month, subject to any discounts applied

**Additional sites:** Nonrefundable Initial Fee of \$500 per site.  
Monthly Membership Dues equals 50% of First site Monthly Membership Dues

Payment of the Membership Payments ensures your access to member-only listservs, unlimited software support (via email or telephone), the ElderCounsel Knowledge Base, an online file storage area containing numerous and helpful resources for alternative language, presentation materials, legal research links as well as software updates. Each software update will also be governed by the terms of this Agreement, unless the software update is accompanied by a separate license, in which case the terms of that license will govern.

3. **Restrictions and Transfer.** All software distributed by ElderCounsel contains trade secrets. You may not decompile, reverse engineer, disassemble or otherwise reduce any software to any other form. Except for the ElderDocx Customization feature built into ElderDocx, YOU MAY NOT MODIFY, ADAPT, TRANSLATE, RENT, LOAN, RESELL, DISTRIBUTE OR OTHERWISE ASSIGN OR TRANSFER THE SOFTWARE, OR CREATE DERIVATIVE WORKS BASED UPON ANY PART OF THE SOFTWARE.

4. **Protection and Security.** You agree to use your best efforts and take all reasonable steps to safeguard Membership Benefits to ensure that no unauthorized person has access to ElderCounsel software or other Membership Benefits. You

agree that you will not allow any unauthorized copying, publication, disclosure, or distribution of any software in whole or in part in any form. You acknowledge that the software contains valuable confidential information and trade secrets and that unauthorized use or copying is harmful to ElderCounsel.

5. **Termination.** You may terminate this Agreement only after completing all payments of the Initial Membership Term of twelve months. Either party may terminate this Agreement after the Initial Membership Term by 30 days written notice delivered to the other party. Upon termination of this Agreement, your license to use the Software will terminate and you will no longer be entitled to use any ElderCounsel software, any customized document templates, component files, or interview files, and will no longer be entitled to receive software updates, any software or member support, or any other ElderCounsel Membership Benefit. Termination will not end any obligation to pay charges incurred before the effective date of the termination. Your rights under this Agreement will terminate automatically without notice if you fail to comply with any of the terms of this Agreement.

6. **Limited Warranty and Maintenance.** ElderCounsel provides a 30-day refund policy (the "Warranty Period"). If you return ElderCounsel software within 30 days, ElderCounsel will give a full refund of your Initial Membership Payment. Any obligation for future monthly payments will be cancelled. This is conditioned on a return of the software and removal from all computers and/or services on which it was installed, and the acknowledgment of the ElderDocx™ and ElderCounsel® copyrights. This warranty (the maintenance and refund policy) does not cover any software that has been altered or changed in any way by anyone other than ElderCounsel. ElderCounsel is not responsible for problems associated with or caused by incompatible operating systems or equipment, or for problems in the interaction of the software with any software not furnished by ElderCounsel. No oral or written information or advice given by ElderCounsel or its dealers, distributors, employees or agents shall in any way extend, modify or add to the foregoing warranty.

ELDERCOUNSEL MAKES NO OTHER WARRANTIES OF ANY KIND. THE LIMITED WARRANTIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES MADE BY ELDERCOUNSEL WITH RESPECT TO THIS AGREEMENT. ANY OTHER REPRESENTATIONS, WARRANTIES, OR GUARANTEES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, QUALITY, ACCURACY, PERFORMANCE, OR FREEDOM FROM ERROR ARE DISCLAIMED AND EXCLUDED.

\_\_\_\_\_ Your Initials

7. **Limitation of Liability.** YOU AGREE THAT ELDERCOUNSEL WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING DAMAGES FOR LOST PROFITS OR INCREASED COST OF OPERATIONS RESULTING FROM SERVICES PROVIDED UNDER THIS AGREEMENT. YOU AGREE THAT ELDERCOUNSEL'S TOTAL LIABILITY SHALL BE LIMITED TO PROVEN DIRECT DAMAGES NOT TO EXCEED THE AMOUNT OF MEMBERSHIP PAYMENTS ACTUALLY PAID BY YOU. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ELDERCOUNSEL MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY REPRESENTATION OR WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE.

\_\_\_\_\_ Your Initials

8. **Governing Law and Severability.** This Agreement will be governed by and construed in accordance with the laws of the State of Delaware without reference to its conflict of law principles.

9. **Complete Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes any other understandings.

10. **Acknowledgment.** You acknowledge that you have read this Agreement, understand it, and agree to be bound by its terms and conditions. You further acknowledge and expressly represent that you:

- a) are an active member of the bar in good standing engaged in the practice of law, as defined by the disciplinary rules of your state;

- b) do not have any pending malpractice actions or client grievances against you;
- c) understand the Initial Membership Term commitment;
- d) will only use the Software to draft documents in the ordinary course of the practice of law for the benefit of your clients;
- e) will not use the Software to engage in or assist anyone else to engage in the unauthorized practice of law;
- f) will not transfer the Software to any other individual or entity; and
- g) will not use the Software to create or assist in the creation of any documents for any other individual or entity that is not also a ElderCounsel member.

11. **Enforcement of Rights.** ElderCounsel shall be the exclusive owner of all right, title, and interest in and to the Software. ElderCounsel shall have the sole discretion to take any action that it deems to be appropriate to enforce its ownership rights.

12. **Costs of Enforcement.** You agree to pay ElderCounsel all reasonable collection and attorney fees incurred by ElderCounsel whether incurred prior to or after the commencement of formal legal action. You agree to pay a return check fee of \$25. In addition, you agree that you will be charged interest at the rate of one and one-half percent (1.5%) per month on amounts payable aged beyond fifteen (15) days. Your obligation to pay ElderCounsel is an independent covenant and shall be payable free from any expense, charge, deduction, offset, or counter-claim by reason of any obligation of ElderCounsel or any other reason. All of the provisions of this Agreement shall be construed and interpreted accordingly.

13. **Time is of the Essence.** Time is of the essence with respect to the performance of all covenants and conditions in this Agreement for which time is a factor.

14. **Notices.** All notices or notifications which may or are required to be given by either party to the other hereunder shall be in writing and delivered in person or sent by United States mail, facsimile, or e-mail as follows:

If to ElderCounsel, at the ordinary business address listed on ElderCounsel’s website: [www.ElderCounsel.com](http://www.ElderCounsel.com), or at the official corporate address as indicated on the website of the Delaware Secretary of State at <http://corp.delaware.gov>. If to you, at the address indicated on the Membership Application, or at the address indicated by the bar association or other professional licensing association in which you are licensed or registered to practice.

15. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void, illegal or unenforceable, that provision shall be considered separate and severable from the Agreement. All remaining provisions shall remain in full force and be binding upon the parties as though such invalid, void, illegal, and unenforceable provision had not been included.

16. **Authority to Execute Agreement.** The person signing on your behalf represents that he/she has the authority to execute this Agreement on your behalf. If Membership is to be registered in the name of an entity, then you agree to personally guarantee prompt payment of all amounts due under the Membership Agreement. ElderCounsel may require you to sign a separate Personal Guaranty.

17. **Amendment of Agreement.** No amendment to or modification of this Agreement will be binding unless in writing and signed both by you and an authorized representative of ElderCounsel. Notwithstanding the foregoing, upon completion of payment of the Initial Membership Term, you may unilaterally choose a different level of Membership service according to ElderCounsel’s then-current Membership pricing. You may only exercise this ability to choose a different level of service one time every twelve months unless agreed upon by ElderCounsel. You and ElderCounsel will execute an Amendment to this Agreement to document your selection of a different level of Membership.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Member’s Signature

**Personal Guaranty**  
**(REQUIRED IF MEMBER IS AN ENTITY)**

The undersigned jointly and severally guarantee the prompt payment of all amounts due under the Agreement. Each Guarantor waives all rights guarantor may have under the Agreement or otherwise to require that ElderCounsel exhaust any particular right and remedy that ElderCounsel has or may have against the Guarantor. The exercise by ElderCounsel of any right or remedy hereunder shall not preclude the concurrent or subsequent exercise of any other right or remedy. This guaranty is for the benefit of ElderCounsel and its successors and assigns and in the event of an assignment by ElderCounsel, the rights and benefits hereunder, to the extent applicable to the Agreement, may be transferred.

Dated: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

Dated: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title