

**Edelson PC**

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June 3, 2019

**VIA ELECTRONIC MAIL**

Mr. Stephen Kane  
Assistant Corporation Counsel  
Affirmative Litigation Division  
City of Chicago Department of Law  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602  
stephen.kane@cityofchicago.com

**Re: Marriott Data Breach Litigation - Retention Agreement**

Dear Mr. Kane:

Thank you for selecting Edelson PC (“EPC”) to represent the City of Chicago (“City”) with respect to the litigation of claims against Marriott relating to its recent data breach and the litigation arising out of the same (“Marriott Matter”).<sup>1</sup> This letter details the scope of EPC's representation of the City, as well as the method of compensation for such representation. By signing this retention agreement, you will have retained EPC as well as such attorneys as may work with us to represent you in the Marriott Matter.

**Client | Scope of Representation**

EPC will represent the City in its litigation of the Marriott Matter. The representation shall also include, as needed, providing advice to the City, City Counsel, and other City entities with respect to such litigation.

**Opinions**

Any beliefs or opinions that we express about the City's claims, various courses of action, or anticipated results are only our best professional estimates. They are necessarily limited by our knowledge of the relevant facts at the time the opinions are expressed and the law then in effect. Nothing in EPC's engagement with the City should be construed as a promise or guarantee of any particular outcome.

**Compensation**

We will represent the City on a contingent basis in the Marriott Matter. The City shall

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<sup>1</sup> For purposes of this retention agreement, “Marriott Matter” shall include the claims asserted by the City that are currently pending in the multidistrict litigation captioned *In Re: Marriott Int'l, Inc., Customer Data Security Breach Litig.*, No. 8:19-md-02879-PWG (the “MDL”), as well as any subsequent litigation which may be commenced by the City related to those claims in any other form or forum.

have no obligation to pay EPC attorneys' fees or expenses unless the City achieves a recovery, settlement, and/or judgment in the Marriott Matter. In the event that EPC achieves a recovery on behalf of or for the benefit of the City, the City agrees that EPC shall be entitled to recover attorneys' fees according to the following schedule:

- 12% after filing suit but before discovery;
- 15% after filing suit through sixty (60) days before jury selection;
- 20% up to and including verdict; and,
- 25% after resolution of any appeal.

The percentages outlined in the above schedule shall apply if we achieve a recovery, settlement, and/or judgment in any form of proceeding.

The City also agrees that, to the extent there is a recovery, it will reimburse all reasonable out-of-pocket costs incurred by EPC, so long as they comply with the City's Outside Counsel Guidelines. EPC will not incur any such cost that exceeds \$5,000 without prior express approval.<sup>2</sup> If unsuccessful or if no recovery is made, the City will not be responsible for any costs. In no event will EPC's attorneys' fees and costs exceed any total recovery by the City in the Marriott Matter.

### **Staffing**

Although EPC reserves the right to staff all matters as we see fit, we will of course confer with the City as appropriate to ensure, among other things, continuity of representation that is both effective and avoids any real or perceived conflicts of interest. You understand that we may determine to associate with other attorneys to more efficiently and effectively represent you in the Marriott Matter and that we may share a percentage of any attorneys' fees awarded and/or costs reimbursed with such attorneys. EPC shall provide the City with advance notice and shall receive written approval of the same before engaging any other attorneys.

### **Confidentiality and Evidence Preservation**

The City understands that it may have to produce evidence to support its claims. We understand that the City may object to the opposing party's unchecked access to its information. We will vigorously oppose the production of any irrelevant information and seek protective orders that limit any defendant's access to any evidence that contains confidential information (including attorney-client communications). All information, documents, records, reports, data or other materials furnished by the City to EPC or other such information, documents, records, data or other materials to which EPC has access during its performance pursuant to this retention agreement are deemed confidential and shall remain the property of the City. EPC shall not make

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<sup>2</sup> The costs shall include, without limitation: client expenses, travel costs, court costs, fees and expenses of consulting and testifying experts, court reporters, videographers, deposition and transcription costs, external document reproduction, coding and organization services, meeting expenses, travel expenses of experts, investigative services, jury consultants, costs of photography, exhibits, and graphic design or other media used to present or illuminate evidence or argument. We do not charge clients for in-house copying, long distance telephone calls, or in-service Westlaw/LEXIS charges.

oral or written disclosure of such documents or materials, other than as necessary for its performance under this retention agreement, without the prior written approval of the City.

Please be reminded that in order to protect the confidentiality of both the City's communications with us and our advice to the City under the attorney-client privilege, it is important that the City not divulge sensitive information to anyone who is not within the protection of the privilege.

Please also understand that the City has an obligation to preserve evidence, including electronic evidence such as its electronic communications with third parties. The City must preserve evidence that common sense would dictate is relevant to the claims and defenses in question. We should communicate prior to the City destroying or disposing of any evidence that might be relevant to the Marriott Matter. The City should also suspend any routine document destruction policies that it has in place and refrain from implementing new document destruction policies while the matter is ongoing.

### **Authority**

EPC shall be designated as "Special Assistant Corporation Counsel." The City will maintain control of the litigation and will make all key decisions, including whether and how to proceed with the litigation, which claims to advance, what relief to seek, and whether and on what terms to settle the litigation. EPC will be responsible for carrying out the litigation and for making day-to-day decisions regarding court filings, court appearances, discovery matters, trial, and any appeal. EPC will provide regular reports to the City on the status of, and any significant developments in, the Marriott Matter. The City retains veto power over any decisions made by EPC. The City will designate a point of contact who will supervise the litigation and who will be available directly to EPC in the Marriott Matter as needed.

### **Term of Engagement**

EPC will endeavor to represent the City promptly and efficiently, and we anticipate a mutually satisfactory relationship. The City, however, has the right to terminate EPC's services upon written notice at any time. EPC also has the right to terminate its services upon written notice, if it discovers that the City has misrepresented or failed to disclose material facts to us, if it fails to cooperate with a reasonable request, or in the event EPC determines, in its sole discretion, that continuing services on behalf of the City would create a conflict of interest or be illegal, unethical, impractical, improper or otherwise inappropriate. Following such termination, any otherwise non-public information the City has supplied to EPC that is retained by us will be kept confidential in accordance with applicable rules of professional responsibility or returned to the City as the parties hereto may otherwise agree.

### **Conflict**

EPC has conducted a conflicts check and has determined that there exist no actual or potential conflicts related to its representation of the City in the Marriott Matter. As we discussed, Eve-Lynn J. Rapp of EPC has been appointed to the Steering Committee representing

the consumer plaintiffs in the MDL (as defined above). Ms. Rapp will not have primary responsibility for the City's representation nor be involved in the representation day-to-day. And regardless of that, we do not foresee any conflict emerging as a result of Ms. Rapp's role on behalf of consumers in the MDL. That said, we do believe that there is a possibility of global or aggregate settlement discussions involving the City and the consumer plaintiffs at some point. To the extent that any conflicts arise with respect to the division of any money (or on any other issues), we will so advise you and work with the City to ensure that its interests are being fully represented without issue, conflict or delay.

**Binding Nature of Agreement | Choice of Law**

This retention agreement is meant to bind and benefit the heirs and successors of each of the parties to this agreement. This retention agreement shall be construed in accordance with the laws of the State of Illinois, without regard to rules governing conflicts of law.

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If you have any questions about the terms of this retention agreement, please do not hesitate to contact me at your convenience. On behalf of EPC, we look forward to working with you on this matter.

Sincerely,

EDELSON PC



Jay Edelson

**Agreed to by:**

**City of Chicago,**

Signature:



Printed Name:

Mark A. Flessner

Title:

Corporation Counsel

Date:

6/3/2019