

HESAA

**Outside Counsel
Guidelines**

August 1, 2020

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I. INTRODUCTION

The Higher Education Student Assistance Authority (“HESAA” or “Authority”) is represented by the Attorney General of New Jersey through the Department of Law and Public Safety, Division of Law (“Division”). When appropriate, HESAA will retain outside counsel.

In those cases where HESAA retains outside counsel, the objective of these Outside Counsel Guidelines (“Guidelines”) is to ensure the highest quality legal representation and services for the Authority while maintaining effective supervision and cost controls.

In many respects, these Guidelines resemble those in the private sector. However, some charges and disbursements that private clients may accept as reasonable may not be acceptable in matters for a public agency. Accordingly, these Guidelines contain some important differences from private sector policies of which outside counsel should be aware.

These Guidelines are effective for all work performed beginning August 1, 2019. They supersede previously issued guidelines and, unless exceptions are approved in writing by the Executive Director of HESAA or his or her designee, constitute the terms under which outside counsel are engaged. The “Guidelines of the Attorney General for the Selection of Bond Counsel under Executive Order No. 26” dated March 30, 1995, remain in full force and effect, except that in the event of any conflict between those 1995 Guidelines and these Guidelines with respect to billing and payment of fees to Bond Counsel, these Guidelines shall control.

BY ACCEPTING AN ENGAGEMENT BY HESAA, LAW FIRMS WILL BE DEEMED TO HAVE FAMILIARIZED THEMSELVES WITH THESE GUIDELINES AND TO HAVE AGREED TO ADHERE TO THEM IN ALL RESPECTS, NOW AND AS THEY MAY CHANGE FROM TIME TO TIME UPON WRITTEN NOTICE. THIS ACCEPTANCE IS A MATTER BOTH OF CONTRACT AND PROFESSIONAL RESPONSIBILITY.

HESAA expects you to inform all attorneys, senior managers and billing team members working on HESAA matters of these Guidelines. Any questions about the Guidelines should be promptly directed to the HESAA employee designated in the written engagement letter as the principal point of contact (the “Designated Employee”). HESAA reserves the right to amend these Guidelines from time to time, providing written notification to outside counsel within thirty (30) days of the effective date of any substantive changes.

II. RETENTION

HESAA will retain outside counsel through a written Request for Qualifications (“RFQ”) and a retention letter. (Note that counsel may begin work pursuant to oral retentions; the retention letter will follow shortly thereafter.) As described in the RFQ and the “Additional Requirements for All HESAA Retention Agreements” incorporated therein, New Jersey law contains additional requirements applicable to retentions. Please note that several of these requirements involve submitting additional information on the forms provided and/or referenced.

Outside counsel must properly execute the original of the retention letter and complete and execute all additional forms required by the RFQ.

Invoices will not be eligible for payment until outside counsel has returned the retention letter and all documents properly completed and executed, and until counsel has satisfied all requirements for retention as specified in the RFQ and retention letter.

III. CONFLICTS OF INTEREST

A. Initial Conflicts Check

Outside counsel must be sensitive both to direct conflicts of interest that representation of the State and other clients poses, and to the less direct, but nevertheless serious, conflicts that may arise from the same firm's advocacy, on behalf of other clients, of positions conflicting with important State interests. Prior to your engagement, your firm should carefully review whether any conflicts of either type exist and, if so, bring those conflicts to the attention of the Designated Employee. HESAA expects to be promptly informed of and consulted with respect to all potential conflicts. Although issue conflicts may not necessarily result in a disqualification of your firm, HESAA does expect to be consulted before your firm accepts an engagement that will require the firm to advocate a position that may be adverse to a State legal interest or otherwise prejudicial to the interests of the State. HESAA in its sole discretion shall, after consultation with you, determine whether an impermissible State agency conflict exists, or whether other circumstances exist that would undermine the public's confidence if your representation continued.

Outside counsel's acceptance of an engagement on a matter without written disclosure of any conflicts constitutes outside counsel's representation that it has conducted an appropriate conflict check and no conflict exists.

B. State Agency Conflicts

HESAA has a duty to protect the public interest. As part of this responsibility, HESAA is chiefly represented by the Division of Law. The Division of Law sets policies to ensure that the legal system operates in a manner that safeguards the public's confidence in the integrity and impartiality of its administration. For this reason, in addition to insisting that its attorneys follow the Rules of Profession Conduct, the Division prohibits outside counsel that represents a State agency, while such a matter is pending, from:

1. Representing private parties before that State agency (or its officers) in adversarial, transactional or non-adversarial proceedings. By way of example (and not limitation) outside counsel are prohibited from representing any private party before HESAA in connection with applications for government approvals. Outside counsel also may not, on behalf of a private client, lobby HESAA.
2. Representing private parties in any matter in which HESAA is also a party if the private party has interests adverse to HESAA.
3. Representing HESAA in a matter involving a private party, if the firm concurrently represents that private party in other matters.
4. Being adverse to HESAA on behalf of a private client (i.e. within the meaning of RPC 1.7).
5. Representing another client if that representation would present a substantial risk that outside counsel's responsibilities to HESAA would limit its ability to provide independent advice or diligent and competent representation either to the State agency or to the other client.
6. Representing another client where the outside counsel's knowledge of HESAA's legal positions or strategy, derived from its representation or prospective representation of HESAA, could be used to the advantage of the other client or the disadvantage of HESAA.

Note that, pursuant to New Jersey law, HESAA cannot consent to or waive conflicts of interest.

In accordance with the disclosure obligations set forth above, outside counsel must promptly and fully disclose to the Designated Employee any potential conflict of interest. As noted above, HESAA's determination, in its sole discretion, that a conflict exists shall be binding on outside counsel.

C. Continuing Obligation

The obligation to disclose conflicts continues throughout the course of the representation. Outside counsel must review conflicts of interest on an ongoing basis as new matters are opened. Any new attorney/client relationships that potentially create a conflict shall be reported to the Designated Employee immediately.

D. No Representation of Other Persons/Entities Absent Approval

Outside attorneys engaged to represent HESAA (as opposed to a named person) should consider themselves to have formed an attorney-client relationship only with HESAA, and not any of its individual employees. When speaking with current or former employees of HESAA, outside counsel should, as appropriate, advise those employees that although their dialogue will be considered attorney-client communications to the fullest possible extent, counsel's responsibility is to HESAA and they do not represent those employees in their individual capacities. As a matter proceeds, if employees of HESAA will be examined under oath or interviewed in other adverse contexts, and if outside counsel believe it advisable for them to represent the employees in their individual capacities at such events, outside counsel must obtain the Designated Employee's advance consent before agreeing to represent such persons in their individual capacities. The Designated Employee will determine if it is appropriate for the individual to receive representation and, if so, by whom. Outside counsel who are engaged to represent both HESAA and HESAA employees simultaneously are expected to take all necessary steps to ensure the continuing absence of conflicts, and to preserve their ability to continue representing HESAA in the event that conflicts develop between HESAA and individual clients.

IV. Our Working Relationship

A. Identification of Objectives/Relationship Attorney

The Designated Employee will be your regular point of contact for financial and strategic decisions. Only the Designated Employee, that person's superior, the Director of Legal & Governmental Affairs or the Executive Director have authority to direct outside counsel in the handling of the matter. Outside counsel shall not initiate contact with any other State employee unless specifically authorized. If a State employee other than one listed above asks outside counsel to proceed in a certain fashion or to perform certain activities with respect to a specific legal matter, outside counsel should report the request to the Designated Employee and obtain direction prior to proceeding. The Designated Employee will be your firm's principal contact with HESAA. Outside counsel shall designate a Relationship Attorney to be the Designated Employee's principal contact. Outside counsel may expect the Designated Employee to provide clear, specific instructions; communicate HESAA's objectives; closely monitor the management plan and budget; follow the progress of the matter; keep outside counsel informed of important developments; and act as liaison between outside counsel and HESAA. In all matters, HESAA remains ultimately responsible for making all substantive decisions and determining the costs and benefits of contemplated legal activity. As you will be handling the day-to-day conduct without State Counsel as co-

counsel, HESAA expects to be consulted on a regular basis throughout the course of your engagement and to be kept fully informed of the current status and proposed course of the matters assigned to your firm. All strategic, tactical, staffing (including any proposed staffing changes) and significant resource allocation decisions about HESAA legal matters must be made in collaboration with the Designated Employee. Documents prepared for service or filing should be sent to the Designated Employee with enough lead time to allow for meaningful review (e.g., a minimum of one week for major briefs). Only in exceptional circumstances should the lead time for any non-urgent matter be less than three business days. You should ask the Designated Employee about exceptions to this requirement for routine documents, such as stipulations extending time, and when extraordinary circumstances will prevent you from providing the reasonable lead time specified in this paragraph. No motions, briefs or other correspondence with a court may be filed on behalf of HESAA unless those briefs have been approved by the Designated Employee (or, in the event of the Designated Employee's unavailability, with the approval of another authorized contact). Unless otherwise instructed, outside counsel shall forward copies of all substantive pleadings and correspondence to the Designated Employee, once sent or filed. In certain types of cases, the Designated Employee may agree to alternate procedures for review of documents prior to filing. The Designated Employee will advise outside counsel as to whether these alternative procedures govern the entire matter or specified portions of it.

In some instances, HESAA may elect to use cost-effective internal resources or expertise for particular aspects of a legal matter. It is therefore essential that HESAA be consulted in advance of all contemplated significant steps in a matter. In that way, we can jointly determine, for instance, whether a particular research project is necessary, whether a task can be handled internally, if a motion should be made, how document gathering and review can be handled most economically, if and when settlement discussions should begin, and who should conduct those discussions. Obviously, HESAA expects that the time, money and other HESAA resources spent on any legal matter must be commensurate with its significance. HESAA expects the outside counsel it retains to work with it to successfully resolve matters with dispatch and cost effectiveness.

HESAA WILL NOT BE RESPONSIBLE FOR ANY LEGAL FEES OR COSTS INCURRED WITHOUT THE SPECIFIC APPROVAL OF THE DESIGNATED EMPLOYEE OR OTHERWISE INCURRED OUTSIDE THESE GUIDELINES.

B. Early Case Assessment/Cost Assessment

Each complex matter is to be thoroughly evaluated at its outset. The same applies to actions in which HESAA is the plaintiff, except that the analysis will be performed before the case is filed. In any matter where the legal costs or exposure may be substantial (i.e., where \$250,000+ is at stake or the prospect exists of significant injunctive relief), HESAA may ask that you provide an early case assessment that includes analysis of (1) likely costs to HESAA from the process, (2) possible outcomes, indicating the likelihood of each, and (3) strategy and tactics for termination or resolution. The format of the early case assessment may vary from a formal written document to a verbal briefing or a combination of a written budget with a verbal briefing on other aspects of the case. You should discuss the most desirable format with the Designated Employee when you are requested to prepare an early case assessment.

In most matters, unless the Designated Employee advises outside counsel to follow a different procedure – in which case the Designated Employee will advise as to when a budget should be prepared and for what period of time – outside counsel will be required to provide a budget for the life of a case and cost estimates for important phases of a case as soon as practicable after counsel are engaged. In general, a life-of-case budget should reflect major assumptions; conform to the established management plan;

identify specific work phases; and estimate the cost of each phase, identifying projected fees and disbursements. HESAA reserves the right to revise any budget prepared by outside counsel, and may offer a template budget based on the State's past experience in similar cases. HESAA has final authority to approve any budget. Counsel should update budget estimates whenever a significant change to prior estimates is contemplated.

Please note that time spent preparing a budget is not billable, but counsel may bill for time spent preparing an early case assessment or a recommended discovery plan.

HESAA places significant reliance on cost estimates and expects outside counsel to prepare them with care. Although HESAA understands that unanticipated events may have an impact on costs, we expect to be consulted promptly if you believe that the most recent cost estimate you have provided is no longer accurate. **Should total fees or costs exceed the agreed budget, or should fees or costs for a phase of the case exceed the agreed estimate for that phase, without adequate explanation in advance that the increased expense will be necessary, HESAA reserves the right not to pay outside counsel for any amounts incurred or expended in excess of the approved budget or estimate.**

For bond matters and other transactional engagements, counsel may be expected to provide a fee cap for the transaction, approved by HESAA, prior to commencing work. Only where a transaction materially changes in scope will HESAA consider revisions to an agreed fee cap. **No payments above the agreed fee cap shall be made unless and until a revised fee cap has been approved in writing by the Executive Director of HESAA or his/her designee.**

C. Staffing

Law firm staffing decisions regarding the attorneys who will work on a HESAA matter, including both the overall staffing structure and the specific individuals involved, should be discussed in advance with the Designated Employee. HESAA expects to approve all attorney staffing. Unless otherwise agreed, HESAA expects the lead attorney retained to be directly and ultimately responsible for the entire assignment. The day-to-day involvement of that lead attorney, however, should be appropriate to the magnitude of the matter and the efficiency required for a timely, cost effective, quality work product. When a senior lawyer can handle an assignment most efficiently (based on skill and experience), we expect that lawyer to complete the assignment. Work suitable to more junior attorneys should be delegated. Attorneys should never bill to perform tasks that could be effectively handled by support personnel.

HESAA expects lean staffing on its matters. HESAA generally expects to be billed for only one attorney to attend events such as depositions, witness meetings, settlement conferences, negotiations and meetings with other parties' counsel. We recognize that in more complex matters and those with multiple work-streams, it may occasionally be appropriate for multiple attorneys to attend significant events and for members of the team to consult with each other. We insist, however, that no more than the minimum number of attorneys necessary to an event attend, that billable internal conferences and charges for drafting and reading internal email correspondence occur only when absolutely required, and that the Designated Employee be regularly informed both of the number of attorneys who will attend significant events and the reason for the attendance of each billing timekeeper.

HESAA believes that it is most efficient for a single attorney or group of attorneys to handle a matter from beginning to end and expects outside counsel to strive for such continuity. HESAA will not pay for learning

time that may result from staffing changes at your firm. In addition, HESAA will not reimburse outside counsel for any routine training or supervisory time, including time spent at seminars, unless specifically approved in advance and included as part of the budget. HESAA will not ordinarily pay for summer associate time unless such time has been identified as part of the approved staffing plan for appropriate work. HESAA does not expect to be billed and will not pay for time submitted by librarians; secretaries; billing, filing, docketing or document clerks; internal messengers/couriers; temporary or clerical support staff; word processors; and IT professionals other than electronic discovery specialists serving a function similar to that of paralegals/case managers. HESAA also will not pay for time billed by attorneys or paralegals to perform tasks (filing, indexing, etc.) that could and should have been handled by support personnel.

If HESAA determines, after consultation with outside counsel, that staffing is inappropriate for particular tasks performed, the hourly rate charged may, in HESAA's sole discretion, be reduced to a rate consistent with that of a lower level professional. Similarly, if HESAA determines that excessive time was spent on a particular task, the time billed may be reduced at HESAA's sole discretion. **Please review the Acceptable Fees/Charges section below for a list of clerical and administrative tasks that should not be billed, and will not be paid, no matter who performs the work.**

In those cases being handled on a contingency fee basis, the above requirements should serve as guidelines for determining outside counsel's lodestar. Similarly, outside counsel shall, whenever possible, comply with these Guidelines concerning fees, administrative tasks, disbursements and costs, and travel, notwithstanding the fact that outside counsel may not be submitting monthly invoices for payment to HESAA.

D. Rates

HESAA will pay for actual services rendered at rates established in Requests for Qualifications or otherwise agreed to in advance. At the time of your initial engagement, your firm shall furnish the Designated Employee with a schedule of billing rates for partners, associates and all other timekeepers expected to bill time against the matter for review and approval prior to billing time to HESAA. **Because of State procurement rules, the rates applicable at the inception of each specific matter must remain in effect for the duration of that matter.** Hourly rates should include all overhead costs (see Acceptable Fees/Charges, below), none of which should be included in disbursements.

Time must be billed in 0.1 hour increments and on a per-task basis. The time entry description must be specific, detailing the action taken and the subject matter. **Absent prior consent, HESAA will not pay for more than ten (10) hours of time by a single timekeeper in a single day,** but the Designated Employee may increase that number of permissible hours in matters of special urgency or where cases are in or approaching trial.

HESAA will consider alternatives to traditional hourly billing, including fixed-fee arrangements, reduced hourly rates with incentive bonuses, value billing, negotiated discounts and blended rates. The State has adopted such alternative fee arrangements in appropriate circumstances and encourages outside counsel to propose them.

Outside counsel should bear in mind that invoices may be disclosed pursuant to the State's open records laws (OPRA) and that courts may not sustain assertions of privilege by HESAA. Although HESAA will endeavor to redact privileged information before releasing bills for public consumption, counsel should,

to the extent practicable and consistent with the need to fully inform HESAA of its activities and to allow HESAA to evaluate the reasonableness of billing narratives, avoid the inclusion of privileged matter in invoices.

E. Acceptable Fees/Charges

Overhead charges may not be billed. HESAA will not reimburse outside counsel for basic support services, which the State deems to be part of outside counsel's overhead and built into its rates. HESAA will not pay for any of the following items under any circumstances:

- Billing inquiries
- Opening and closing files
- Internal filing
- Secretarial services (including overtime charges)
- Word processing or proofreading
- Maintenance of a calendar or tickler system
- Investigating potential conflicts
- Preparing budgets
- Library usage (including book purchases or subscriptions) or library staff time
- Office supplies
- Conference room charges

Basic legal research may not be billed. Outside counsel is expected to be familiar with the basic substantive law at issue in the matter for which the firm was retained, and HESAA should not be charged for this type of research. If legal research benefits other clients, only the proportionate share of that cost should be billed to HESAA. HESAA also expects to benefit from previously prepared briefs and memoranda, and when such briefs or memoranda exist, will pay only for actual time spent updating or tailoring the same. All other anticipated legal research should be addressed in outside counsel's proposed budget. Legal research projects necessary in a particular litigation assignment must be approved in advance by the Designated Employee before the research is commenced.

HESAA will pay only for the actual time spent by outside counsel or other approved timekeeper conducting the research. As explained infra, fees charged by electronic or other research services, including library fees, Westlaw, Lexis and other online services are considered general overhead and are not reimbursable.

Out-of-pocket costs must be itemized and passed through with no markup. HESAA will reimburse outside counsel for reasonable, documented and itemized out-of-pocket disbursements and costs incurred on behalf of HESAA, with the exceptions and limitations set forth in these Guidelines. Outside counsel's invoices to HESAA should reflect the actual cost and should not include any markup. All disbursements must be fully itemized with a description sufficient for review, identifying the number of units, price per unit and total cost. HESAA may refuse to pay for disbursements billed as 'miscellaneous,' billed in a group (e.g., Travel Expenses - \$4,000.00) or disbursements without descriptions.

Prohibited disbursements. HESAA considers certain disbursements to be part of a law firm's overhead and will not pay such charges. These items include:

- Rent (including temporary office space)
- Westlaw, Lexis and other legal database services
- Cost or usage of computers or mobile devices or internet service charges
- Equipment rental
- Storage charges
- Catering for internal meetings
- Meals (except during business travel, and then limited to \$70 per day)
- Mileage for short trips (<30 miles one way)
- Travel costs exceeding discounted, non-refundable coach fares except where excess costs have been approved in advance
- Telephone charges
- Facsimile charges
- Allocated charges from a firm's blanket service agreements with outside vendors

Copying/scanning. Copying charges may be billed to HESAA at the lesser of the most favorable rate applied by your firm or eight cents per page for black and white copies and fifty cents per page for color copies when color copies are reasonably necessary. HESAA will reimburse for document scanning at your firm's regular rate, up to a maximum of eight cents per page, for document productions, but HESAA will not pay time charges associated with scanning, and there should be no charges associated with the scanning and filing of court papers and correspondence. Every effort should be made to minimize scanning expenses by working with documents in electronic format whenever possible.

Couriers and Overnight Mail. HESAA will reimburse for actual charges billed to the firm for deliveries (including overnight express) that are necessary in the interest of speed and reliability. HESAA expects you to use the lowest cost service consistent with need and reliability, and to arrange schedules, whenever practicable, to avoid the need for premium-priced couriers. We expect you to consider using less expensive means, such as email (encrypted, when necessary) or regular mail where it is practical to do so.

Travel Expenses Must Be Reasonable. All air and rail travel must be first approved by the Designated Employee, ideally as part of the case budget. HESAA expects its outside counsel to use good judgment in selecting hotels and restaurants and incurring expenses for which the taxpayers are to be charged. Alternatives to travel such as conference calls or videoconferences are strongly encouraged and should be used by outside counsel whenever practicable. If the travel involves another client, HESAA expects to be billed only for its proportionate share of both time and related expenses. **Except for driving time in some cases as specified below, non-working travel time is not billable without the Designated Employee's prior approval.**

Automobile Expenses/Billing for Driving Time. HESAA will reimburse outside counsel at a rate not exceeding the prevailing IRS-allowed mileage rate for business travel of 30 miles or longer each way (unless a lesser rate is negotiated), and the driver may bill the associated travel time at 50% of that counsel's agreed rate. The Designated Employee, in appropriate cases, may lower the 30-mile threshold. HESAA will reimburse the actual costs of taxicab, train or bus travel, or tolls and parking charges for a personal car, if necessitated by HESAA business and not part of outside counsel's commuting cost. If a rental car is the most economical option, HESAA will reimburse up to intermediate/mid-size class unless three or more lawyers are traveling together, in which case a full-size car would be appropriate.

Reimbursement of Meals for Overnight Travel. HESAA will reimburse for meals consumed while traveling overnight on HESAA business, but limited (absent prior approval) to no more than seventy dollars (\$70) per person, per day. Under no circumstances will the State reimburse costs for alcoholic beverages.

Maintenance of Expense Records. To ensure compliance with the HESAA's reimbursement policies, all firms shall require itemization of out-of-pocket expenses such as airline tickets, meals and hotel bills before making reimbursement to any attorney, employee or third party, and maintain original receipts. Travel and meal expenses and receipts may be audited and shall be retained by outside counsel in accordance with applicable IRS guidelines. Unless requested to do so by HESAA, outside counsel should not forward copies of travel and meal expense receipts to HESAA with the firm's invoices.

Personal Expenses Not Reimbursable. Please take care to distinguish between personal expenses and properly chargeable business expenses. HESAA will not reimburse for, among other things, recreation fees, salon or spa charges, pay-per-view movies or other personal entertainment charges, airline baggage charges, travel agency expenses, shoe shines, toiletries, dry cleaning or laundry (except in the unlikely event travel of more than seven days' duration is required), or luggage.

Be Mindful of State Ethical Guidelines. When hosting or traveling with HESAA or other State personnel, please bear in mind that State employees are bound by strict ethical guidelines and cannot accept gifts of any kind—including meals—from outside counsel. We urge you not to place HESAA colleagues in the uncomfortable position of, for example, having to pay out-of-pocket because the outside lawyer has chosen an expensive restaurant in which to hold a discussion about the matter.

Vendor discounts must be passed through. If your firm receives a discount or rebate from a vendor based on your aggregate level of business with that vendor, HESAA expects such discount to be disclosed and to receive the benefit on a proportionate basis. This does not include frequent-flyer miles or similar perquisites allocated to individual travelers.

Filing fees. As a State Authority, HESAA is exempt from paying any filing fees in the Superior Court of New Jersey (including the trial court level and Appellate Division) and the Supreme Court of New Jersey. Consequently, any such fees mistakenly paid by outside counsel will not be reimbursed. HESAA will reimburse the actual cost of any approved court filings in any jurisdiction where the State is not exempt from paying applicable filing fees.

F. Discovery

You must discuss discovery planning with the Designated Employee at the outset of the matter and throughout the life of the case. Ordinarily, in each case where significant discovery is anticipated, HESAA will expect you to prepare a written process memo. The process memo should set forth your plan for discovery, including electronic discovery, the tasks that must be completed, the allocation of responsibility for each task and a budget. When a process memo is required, HESAA will not be responsible for any charges incurred where the work is not contemplated by the memo or exceeds the stated budget, absent prior agreement. HESAA will insist on processes that mitigate risk and are cost-effective, while meeting all discovery obligations imposed by applicable rules, practices, and orders. Document review processes should be discussed and agreed upon in advance with the Designated Employee. In cases requiring significant document review, the State prefers Technology Assisted Review ("TAR") to manual review when TAR is an appropriate substitute for manual review. Where manual review must be undertaken, the State generally prefers first-pass review to be conducted by non-associate in-house reviewers or contract

reviewers, closely supervised by outside counsel. Only in matters of significant complexity or sensitivity will it be appropriate to use associates for first-pass relevance reviews. We also ask that particular care be given to ensure that internal firm consultation and reporting about reviews is done cost-effectively. In the event outside counsel engages contract attorneys, the associated charges should be passed through as disbursements, with no cost markup.

G. Settlement

Outside counsel have no settlement authority unless and until such authority is explicitly conferred on them by the Designated Employee. If you believe that settlement should be pursued, you must seek instructions in this regard from the Designated Employee, and not pursue formal or informal settlement discussions without the Designated Employee's approval. Outside counsel should immediately inform the Designated Employee of any settlement proposal or overture, formal or informal, by the opposing party or counsel.

PLEASE NOTE THAT UNDER NO CIRCUMSTANCES CAN HESAA AGREE TO DESIGNATE A SETTLEMENT AGREEMENT AS CONFIDENTIAL. ALL STATE SETTLEMENT RECORDS ARE, BY DEFINITION, PUBLIC DOCUMENTS.

H. Exceptions to Guidelines

It is outside counsel's responsibility to discuss with the Designated Employee all questions concerning the application of these Guidelines before proceeding on a course of action not specifically authorized by the Guidelines. The Designated Employee has authority to modify or waive Guidelines impacting the conduct of a matter, but not to modify or waive Guidelines related to billing except as explicitly specified herein. If an exception to other billing aspects of any Guidelines is deemed necessary by outside counsel, a request must be submitted and approval must be obtained from the Executive Director of HESAA or his/her designee. If the Executive Director has authorized the Designated Employee to make a billing-related exception beyond the Designated Employee's normal authority, the Designated Employee shall affirm that authorization in a writing to the Relationship Attorney, copied to the Executive Director. HESAA will not reimburse outside counsel for any fees or expenses incurred in violation of these Guidelines or any exception properly granted in writing. Only the Executive Director of HESAA may orally grant exceptions from these guidelines, and in the event of such oral exception, either the Executive Director or outside counsel should promptly confirm the exception in an email message or other writing.

I. Media Relations/Law Firm Advertising

THE STATE DOES NOT AUTHORIZE OUTSIDE COUNSEL OR VENDORS TO COMMENT PUBLICLY IN ANY MANNER ON ANY ASPECT OF THE STATE'S LEGAL MATTERS. All media inquiries relating to HESSAA should be referred promptly to the Designated Employee and discussed with the Designated Employee before responding to the media contact in any manner. This includes even "no comment" or other non-substantive responses. If time is of the essence and you cannot reach the Designated Attorney, please contact the Executive Director of HESAA or the Director of Communications. HESAA does not permit outside counsel to advertise or promote their relationship with HESAA, other than by listing HESAA as a representative client.

J. Engagement of Secondary Law Firm

Outside counsel may not retain local counsel without HESAA's specific prior approval. During the course of a matter, if it becomes necessary to retain a secondary law firm and/or local counsel, outside counsel will consult with the Designated Employee and provide recommendations for hiring a firm. Once retention has been approved, the Designated Employee will determine if the secondary firm should: (1) be managed by, and invoices passed through, outside counsel; or (2) invoice HESAA directly. Local counsel must agree to have their fees and expenses governed by these Guidelines, and HESAA will not reimburse local counsel fees and expenses that are inconsistent with these Guidelines. HESAA may request local counsel's full invoices to ensure compliance.

K. Engagement of E-Discovery and Other Vendors, Including Experts

Before engaging any vendor the costs of which may exceed two thousand dollars (\$2,000), including court reporting services, electronic discovery firms and experts, lobbyists or other consultants (in each case, a "vendor"), outside counsel must pre-clear that engagement with the Designated Employee, unless the Designated Employee has explicitly granted exceptions to this preclearance requirement. **HESAA WILL NOT BE RESPONSIBLE FOR MORE THAN \$2,000 IN VENDOR FEES OR COSTS UNLESS THAT VENDOR'S ENGAGEMENT WAS PRE-APPROVED BY HESAA.** HESAA may require outside counsel to engage vendors with which the State has master contracts or preferred pricing arrangements, and always will insist on engagement of the lowest-cost vendor qualified to handle a task (understanding that complex tasks may require vendors with specialized expertise).

Outside counsel and the Designated Employee shall discuss and agree as to whether particular vendor costs should be included on outside counsel's invoices or billed directly to HESAA. Outside counsel has the responsibility to ensure that there are no conflicts between any vendor and the State. In addition, all vendors must execute the confidentiality agreement attached as Appendix B. The fee and disbursement policies as outlined in these Guidelines shall be made available to, and followed by vendors. It is outside counsel's responsibility to confirm that all third party billings comply with these Guidelines.

Vendor payment arrangements should be discussed in advance with the Designated Employee. In general, HESAA expects outside counsel to contract with vendors themselves and to pay the third party invoices directly, incorporating those invoices into their own bills to HESAA and including appropriate detail for reasonable review by HESAA personnel. HESAA may request outside counsel to provide full copies of vendor invoices; outside counsel therefore should retain those invoices in accordance with IRS guidelines. The Designated Employee may approve other payment arrangements, including (in rare cases) direct contracting with and payment by HESAA.

When engaging court reporting services, outside counsel should request only one transcript (electronic or hard copy). HESAA will not reimburse charges for additional transcripts. Please note that the State has discount contracts with certain reporting services.

L. Adherence to Ethical Standards

HESAA conducts itself in accordance with the highest ethical standards and expects the same of its outside counsel. No State employee ever has authority to instruct outside counsel to act in an unethical manner. If outside counsel believes that a State employee has engaged or will engage in illegal or unethical activity, the Relationship Attorney must immediately advise the Designated Employee or, if the alleged breach involves the Designated Employee, advise his/or her supervisor or the Executive Director of HESAA. HESAA

will terminate its relationship with any outside counsel who, in HESAA's sole discretion, fails to adhere to the foregoing ethical standards.

M. Malpractice Insurance

Outside counsel representing HESAA is expected to maintain legal malpractice insurance coverage that is reasonable and prudent in relation to the types and sizes of matters handled. Outside counsel shall, upon request, promptly provide the Designated Employee with copies of any applicable policies required under this section and/or a certificate of insurance. Each policy provided must be certified by the agent or underwriter to be a true copy. If outside counsel does not have coverage or if coverage is cancelled and not immediately replaced with comparable coverage, outside counsel must immediately report this to the Designated Employee.

N. File Retention

For Litigated Matters: Outside counsel shall retain pleadings, correspondence, discovery materials, deposition transcripts and similar documents and work product for a period of no less than seven (7) years from the date the matter is concluded or for the time period specified by rule or law in the jurisdiction in which the matter was pending, whichever is longer. Beyond this period, outside counsel shall notify HESAA in writing no less than sixty (60) days prior to destroying any file. Along with the written notification, outside counsel shall submit an inventory of any original HESAA documents contained in the file to be destroyed and a representation that any electronic version of the file will also be destroyed or deleted.

For Bond and Other Transactions, and Advice Matters: Documents shall be retained in accordance with the same policies applicable to litigated matters unless applicable law mandates any longer retention schedule. However, bond counsel and transactional/advice counsel shall retain all transcripts of transactions and memoranda of advice indefinitely unless otherwise directed by the Designated Employee.

V. CONFIDENTIALITY

In the course of representing HESAA, outside attorneys frequently gain access to nonpublic and confidential information. HESAA requires outside counsel to maintain the confidentiality of such information both during and after the course of the firm's representation of HESAA. Outside counsel must have in place appropriate procedures to ensure the protection of all such information. In the event the representation requires outside counsel to become privy to protected personally-identifiable information about any person, such as health or financial records, Social Security numbers or other such information, then this information must be handled with the utmost care both within facilities in outside counsel's control, and when that information is being transported. Under no circumstances should such confidential information be transported outside of counsel's offices--either physically or over the public internet--unless the information is appropriately encrypted. In the event information is compromised or potentially compromised, outside counsel must notify HESAA immediately.

Outside counsel must follow all statutory, regulatory, and ethical provisions relating to privacy, confidentiality and nondisclosure of all privileged, proprietary and confidential information. Outside counsel must take appropriate measures to ensure that all legal and non-legal personnel are familiar with this requirement and are effectively supervised in this regard.

Vendors to whom outside counsel give access to confidential or proprietary material of HESAA (including work product) must sign the confidentiality agreement attached as Appendix B, as noted above. It is the responsibility of outside counsel to obtain a signed confidentiality agreement from each vendor and to retain those agreements.

VI. INVOICING POLICY

For litigation, advice, and non-bond transactional matters, outside counsel generally are expected to submit monthly invoices within thirty days of the conclusion of the billing period, absent HESAA's prior consent to a longer delay. All charges must reflect the work performed within the billing period or a reasonable time before the billing period. Absent good cause, as defined by HESAA, HESAA will not pay for services or expenses incurred more than 90 days prior to the date the invoice is submitted. For bond matters, outside counsel are expected to submit their invoice within thirty days of the conclusion of the transaction.

Absent a specific agreement to an alternative fee arrangement, outside counsel fees shall be computed by applying the negotiated hourly rate to the time for the services expended. Hours shown must accurately reflect the time spent on the described activity and must either be the exact amount of time or the exact time rounded down to the nearest one-tenth of an hour. Block billing—grouping multiple activities under a single time charge—will not be accepted, and HESAA will not pay for any time recorded in a block fashion unless this requirement is waived by the Executive Director of HESAA or his or her designee.

Every bill from outside counsel is deemed to be a certification by the firm and billing partner that all legal services and disbursements reflected on the bill are reasonable for the legal matter involved and necessary for the proper provision of legal services to the State. Every invoice will be reviewed by the Designated Employee and in most cases by the Director of Legal & Governmental Affairs. These reviewers may apply additional deductions for charges they deem to be inconsistent with these Guidelines or otherwise inappropriate. The process of appealing from these deductions is discussed below in Section VI.B.

HESAA reserves the right to audit all fee and disbursement details that outside counsel submit, as well as the corresponding legal file. HESAA may perform this audit. HESAA will promptly terminate the services of any outside counsel whose billing practices raise questions about the outside counsel's integrity, honesty or compliance with the applicable rules of professional conduct or these Guidelines.

A. Invoice Format

Each invoice will include the following minimum requirements:

- Unique invoice number
- Invoice date
- Matter name
- HESAA's matter number
- Outside counsel's matter number
- Date(s) services were performed
- Timekeeper name or ID

- Timekeeper title or level
- A narrative description of the service provided or task performed for each specific task. The description should clearly state the nature of the task performed sufficient to allow HESAA to determine why it was necessary. Incomplete or vague charge descriptions are unacceptable. Examples of incomplete or vague charges include, but are not limited to: 'analysis', 'review file', 'conference', 'attention to matter', 'worked on discovery', 'work on file', 'prepare for meeting', 'miscellaneous', and 'other'.
- Time entry to the nearest tenth (.10) of an hour
- Timekeeper rate
- Charge total
- Detail of reimbursable expenses and disbursements at actual cost

The detailed billing report from your computerized billing system will provide this information. If your firm provides services on more than one matter during a billing period, a separate invoice for each matter is required.

B. Appealing from Deductions

If HESAA applies deductions after reviewing an invoice, the invoice will be returned to outside counsel for their review of these deductions. If outside counsel wishes to discuss and potentially to ask HESAA to reconsider deductions, they may do so within 30 calendar days from the date on which the invoice is returned to them by contacting the Designated Employee. On the 31st day after a reduced invoice is returned to outside counsel, HESAA will consider the deductions final. Where HESAA and outside counsel discuss deductions, outside counsel will be asked, once the discussion has concluded, to resubmit a new invoice reflecting the agreed amounts. Although HESAA will discuss deductions with outside counsel and give due consideration to outside counsel's views, HESAA's determinations with respect to deductions are final and HESAA reserves the right to modify previously submitted Payment Vouchers to reflect the reduced amount if outside counsel do not appeal deductions or do not timely submit a new Payment Voucher reflecting them.

VII. GRATUITIES

State officers and employees are prohibited from accepting any gift, favor, service or other thing of value related in any way to the State official's public duties. In addition, Executive Order No. 189 (Kean) prohibits a vendor to the State from offering a gift or other thing of value to a State officer or employee or special State officer in an agency with which the vendor transacts business or offers to transact business. This Executive Order also prohibits any State employee from soliciting a gift or thing of value from a State vendor. This includes charitable donations made in the name of a State employee.

APPENDIX A

**ACCEPTANCE OF THE HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY'S
OUTSIDE COUNSEL GUIDELINES**

I have reviewed the Higher Education Student Assistance Authority's Outside Counsel Guidelines and acknowledge acceptance of the terms. I am authorized to sign on behalf of my firm. A copy of these Guidelines will be provided to all staff including our billing department to ensure compliance. I understand that I am also responsible for ensuring that any vendors engaged on behalf of the Higher Education Student Assistance Authority will comply with these Guidelines.

Firm _____

By _____

Title _____

Date _____

APPENDIX B

Confidentiality Agreement

_____ (Subcontractor), as a contractor of the law firm retained by the State of New Jersey, hereby acknowledges and agrees as follows:

1. All documents and data, including but not limited to financial, statistical, personnel, customer and/or technical documents, owned or supplied by the State to the Subcontractor shall be treated as confidential (Documents and Data). The Subcontractor shall take all necessary and reasonable precautions to ensure that the State's Documents and Data are safeguarded. Use of the Documents and Data is strictly limited to that use necessary to complete the scope of work agreed upon, which may include disclosure to employees, officers or agents of any subcontractor assisting with the scope of work. Any other use, and any sale or offering of the Documents and Data in any form by the Subcontractor, or any individual or entity in the Subcontractor's charge or employ, will be considered a violation of this Confidentiality Agreement and may result in termination of the contract agreement between Subcontractor and the law firm retained by the State, and the Subcontractor's suspension or debarment from State contracting. In addition, such conduct may be reported to the State Attorney General for possible criminal prosecution.
2. Subcontractor shall be responsible to ensure that all agents and individuals or entities in the Subcontractor's charge or employ adhere to this Confidentiality Agreement. A breach of confidentiality by any individual or entity in the Subcontractor's charge or employ will be considered a violation of this Confidentiality Agreement by the Subcontractor.
3. In the event that Subcontractor, its agent, or any individual or entity in the Subcontractor's charge or employ receives a subpoena, demand, or other request for any of the State's documents or data, Subcontractor shall promptly notify the State and shall not turn over any of the State's documents or data.
4. The Subcontractor shall comply with all applicable State and Federal laws that require the notification of individuals in the event of unauthorized release of personally-identifiable information or other event requiring notification. In the event of a breach of any of the Subcontractor's confidentiality obligations or other event requiring notification under applicable law ("Notification Event"), the Subcontractor agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the State of New Jersey and its trustees, officers, and employees from and against any claims, damages, or other harm related to such Notification Event.
5. Upon termination of this Confidentiality Agreement the Subcontractor shall return or erase, destroy, and render unreadable all Subcontractor copies of State Documents and Data, both physical and electronic, and certify in writing that these actions have been complete within 30 days of the termination of this Confidentiality Agreement or within 14 days of the request of an agent of the State, whichever shall come first.
6. This Confidentiality Agreement shall terminate upon the Subcontractor's termination of the contract between the law firm retained by the State and Subcontractor or upon completion of the scope of work related to the State.

Firm _____

By _____

Title _____

Date _____