

2004

# Engagement letters for litigation services; Business valuation and forensic and litigation services section practice aid, 04-1

American Institute of Certified Public Accountants

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**BUSINESS VALUATION AND FORENSIC  
AND LITIGATION SERVICES SECTION  
PRACTICE AID 04-1**

**AICPA**

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

# ***Engagement Letters for Litigation Services***

## NOTICE TO READERS

The American Institute of Certified Public Accountants (AICPA) and its Forensic and Litigation Services Committee (formerly, Litigation and Dispute Resolution Services Subcommittee) designed Business Valuation and Forensic and Litigation Services Section Practice Aid 04-1 as educational and reference material for certified public accountants (CPAs) and others who provide consulting services as defined in the AICPA's Statement on Standards for Consulting Services (SSCS). Practice Aid 04-1 does not establish standards, preferred practices, methods, or approaches. However, there will in some cases be references to authoritative standards due to certain expected performance requirements, such as rules pertaining to independence, ethics, and conflicts of interest. For informational purposes, references will be made to other professional standards so the practitioner can assess their applicability to the specific engagement. Because of the widely varying nature of litigation services as well as specific or unique facts about each client and engagement, other approaches, methodologies, procedures, and presentations may be appropriate.

The principal authors of Practice Aid 04-1 are Charles L. Wilkins, CPA and Jeffrey H. Kinrich, CPA. In addition, this practice aid drew upon and updates AICPA Consulting Services Practice Aid 95-2, *Communicating Understandings in Litigation Services: Engagement Letters* (New York: AICPA, 1995), for which Roger B. Shlonsky, CPA was the principal author.

In addition, members of the 2002-2003 and the 2003-2004 AICPA Forensic and Litigation Services Committee provided information and advice to the authors and AICPA staff for Practice Aid 04-01:

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*Note:* Names used in Appendix B, "Illustrative Engagement Letters for Providing Forensic and Litigation Services," are fictional and are used solely for illustrative purposes.

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AND LITIGATION SERVICES SECTION  
PRACTICE AID 04-1**

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## ENGAGEMENT LETTERS FOR LITIGATION SERVICES

### INTRODUCTION

#### Limitations of This Practice Aid

1. The purpose of this practice aid is to provide nonauthoritative guidance to CPAs and others who provide litigation services. The publication is not intended to provide legal advice. Those who seek expert legal advice should seek the assistance of legal counsel or a risk management adviser.

#### Need for This Practice Aid

2. Over time, attorneys, audit committees, and corporate executives have become more aware of the value of the CPA's services in forensic accounting investigations, litigation services, and alternative dispute resolution (ADR). As a result, the demand for the CPA's services in connection with the overall litigation process has grown. This practice aid is intended to provide guidance to CPAs for drafting engagement letters to attorneys and their clients to provide these services. This practice aid supersedes Consulting Services Practice Aid 95-2, *Communicating Understandings in Litigation Services: Engagement Letters*. In this document, the CPA performing such services is referred to as the "practitioner."

### PURPOSE OF ENGAGEMENT LETTERS

3. The engagement letter is the written contract between the practitioner, the client(s),<sup>1</sup> and possibly others. The practitioner, the attorney, the attorney's client, and possibly other parties use the engagement letter to establish an understanding of the services to be performed and to define the responsibilities of each party. Therefore, the primary purpose of the engagement letter is to document the understanding of the parties with respect to:

- Who has entered into the agreement
- What are the rights and duties of the practitioner
- What are the rights and duties of the attorney
- What are the rights and duties of the attorney's client
- What are the rights and duties of others (such as an insurance company paying the bills on behalf of the attorney's client)<sup>2</sup>

4. Many practitioners who provide forensic accounting and litigation services regularly use engagement letters. Such engagement letters document: (a) the services that the CPA has been hired to perform, (b) limitations in the engagement or pre-conditions or assumptions to be used, and (c) fee and billing agreements. The use of engagement letters, while not required, is recommended to protect the practitioner and to reduce the opportunities for misunderstandings.

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<sup>1</sup> Depending upon the circumstances, the CPA's client may be the attorney, the attorney's client, or another party. In the case of a dispute concerning the engagement, a court or arbitrator will likely look to the terms of the engagement letter to determine the parties' intent.

<sup>2</sup> If an insurance company or similar entity is involved, the practitioner should consider having that entity be a party to the engagement letter and thereby acknowledge its responsibilities.

5. During the course of the engagement, the practitioner and the other parties may agree to amend or supplement the engagement letter. Further, the parties often acknowledge that unforeseen facts or contingencies may occur during the progress of the engagement. By the engagement letter, they may agree how to respond if such contingencies occur.
6. Some attorneys prefer to prepare and send the engagement letter for retention of the practitioner. Even if the attorney drafts the engagement letter, the practitioner should make sure that it includes all provisions important to the practitioner. If key provisions are not included in the attorney's letter, the practitioner should consider amending the attorney's letter or sending a follow-up letter identifying such provisions. The letter will state that the practitioner accepts the terms of the attorney's letter only if the terms of the follow-up letter are also accepted.
7. The practitioner should seek the advice of an independent attorney or risk management adviser if uncertain about the terms of the engagement letter or its drafting.<sup>3</sup> Although the person retaining the practitioner may be an attorney, that attorney represents the litigant, not the practitioner. The practitioner's own attorney will usually be bound by the attorney-client privilege to keep confidential the information which the practitioner provides in seeking such advice.

## ROLES OF THE PRACTITIONER

8. As described in AICPA Consulting Services Special Report 03-1, *Litigation Services and Applicable Professional Standards*, the practitioner may be retained in a number of roles:
  - a. *Expert witness.* A person designated to render an opinion before a trier of fact is an expert witness, sometimes just referred to as an expert. If the practitioner is designated an expert witness, no legal privileges will protect the expert or the expert's work from the discovery process. All of the expert's work performed related to the litigation is likely to be discoverable.
  - b. *Consultant.* A person who is retained by the attorney to advise about the facts, issues, and strategy of the matter but who will not be designated as an expert, and thus will not testify.<sup>4</sup> Because the attorney hires the consultant to assist in case preparation, the consultant's work is generally protected from discovery by the attorney work-product doctrine.<sup>5</sup> The conclusion as to whether the practitioner's work will be protected by the work-product doctrine is a legal conclusion, and as such should be assessed by the attorney who has engaged the practitioner. The practitioner should clarify with the attorney what should or should not be done to maintain the privilege.
  - c. *Other.* This can be a person who is retained in a number of different roles, including a trier of fact, special master, court-appointed expert, referee or neutral, arbitrator, or mediator.

Each of these roles is different. As previously stated, this practice aid uses the term *practitioner* when the CPA may be serving in any of these roles. The terms *expert* (or *expert witness*) and *consultant* are used in some instances to clarify the separate roles of the practitioner.

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<sup>3</sup> A risk management adviser is often associated with the practitioner's malpractice insurance company.

<sup>4</sup> It is possible to start an engagement as a consultant and later to be designated as an expert. In that case, the work done as a consultant may not be protected under any privilege. Essentially, the work done as a consultant may be retroactively converted into work as an expert.

<sup>5</sup> When engaged by a litigant, as opposed to the litigant's counsel, the consultant may want to confirm whether the consultant's work product will be covered by the attorney's privileges.



9. Regardless of their role in the litigation, many practitioners assume that the engagement letter will be subject to discovery at some point during progress of the case. With discovery in mind, some practitioners exclude extraneous information in favor of limited descriptions of necessary factual data concerning the dispute at hand and services expected to be performed.

10. Some practitioners use one engagement letter even if their role changes from a consultant hired to assist the attorney on a confidential basis to an expert witness. However, recognizing the inherent conflict of serving as both a consultant and an expert witness, other practitioners consider the services as two separate engagements and use two separate engagement letters. Although using two letters may not insulate either engagement from discovery, some practitioners prefer the use of two letters to clarify the terms and scope of each engagement.

## REFERENCES TO OTHER PROFESSIONAL STANDARDS

11. Before issuing an engagement letter, the practitioner should consider professional standards to determine their applicability to the proposed engagement. As described in Consulting Services Special Report 03-1, the AICPA Code of Professional Conduct and Bylaws apply to CPAs' performance of litigation services. In addition, litigation services are consulting services provided by CPAs and their employees, and therefore, require adherence to the AICPA Statement on Standards for Consulting Services (SSCS) No. 1, *Consulting Services: Definitions and Standards* (AICPA, *Professional Standards*, vol. 2, CS sec. 100).

12. In certain circumstances, AICPA Statements on Standards for Attestation Engagements (SSAEs) as well as AICPA Statements on Standards for Accounting and Review Services (SSARS) and Statements on Auditing Standards (SASs) may apply to the litigation services engagement. If a litigation services engagement includes an attestation service, as defined by the attestation standards, the engagement letter or an amendment to the engagement letter should document that engagement.<sup>6</sup> Similarly, the consulting services and attestation reports that result from the engagement should be segregated and clearly identified.

### AICPA Special Reports and Practice Aids

13. The AICPA has developed additional educational and reference materials, including nonauthoritative special reports and practice aids, that are intended to provide guidance to the practitioner. Refer to Appendix C, "AICPA Litigation Services Special Reports and Practice Aids," for information about much of this guidance.

14. This practice aid uses terminology and concepts consistent with Consulting Services Special Report 03-1, which describes the general parameters and framework of a forensic and litigation services engagement. Special Report 03-1 defines litigation services as "consulting services that ordinarily involve pending or potential formal legal or regulatory proceedings before a trier of fact in connection with the resolution of a dispute between two or more parties." With respect to engagement letters, Special Report 03-1 briefly discusses "understanding with the client." This practice aid supplements and expands such guidance on the issues and

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<sup>6</sup> See Interpretation No. 3, "Applicability of Attestation Standards to Litigation Services," of Statement on Standards for Attestation Engagements (SSAE) No. 10, *Attestation Standards: Revision and Recodification* (AICPA, *Professional Standards*, vol. 1, AT sec. 9101.34-.42), and Interpretation No. 20, "Applicability of Statements on Standards for Accounting and Review Services to Litigation Services," of Statement on Standards for Accounting and Review Services (SSARS) No. 1, *Compilation and Review of Financial Statements* (AICPA, *Professional Standards*, vol. 2, AR sec. 9100.76-.79).

considerations associated with engagement letters for forensic and litigation services. It is nonauthoritative and is intended to provide practical guidance.

15. As used in this practice aid, “should” does *not* impose any professional obligations, but identifies an issue for consideration by the practitioner when drafting an engagement letter. Similarly, the word “may” is intended to provide insight or suggestions, and does not imply a limitation on any appropriate alternative.

16. SSCS No. 1 (CS sec. 100.07) offers guidance on *establishing an understanding with the client*: “Establish with the client a written or oral understanding about the responsibilities of the parties and the nature, scope, and limitations of services to be performed, and modify the understanding if circumstances require a significant change during the engagement.” Although the guidelines set forth in SSCS No. 1 do not require a written document, the practitioner may minimize the potential for misunderstandings and disputes by documenting the understanding in an engagement letter.

## CONTENT OF ENGAGEMENT LETTERS<sup>7</sup>

### **Introductory Information: Dating, Addressing, and Case Name**

17. Typically, an engagement letter should bear the date it is prepared, just as with an ordinary letter. For clarity, many practitioners set forth the effective date of the agreement separately in an introductory paragraph. Other practitioners consider the effective date to be when they receive a signed copy of the engagement letter back from the client along with the retainer.<sup>8</sup> In such a case, the engagement letter usually states this condition and the practitioner retains appropriate evidence of receipt. As another alternative, the effective date may be written on the signature page or on the page where the attorney, the attorney’s client, or both acknowledge the engagement letter.

18. Although some practitioners use the addressing of the letter to imply the parties to the agreement, it may be clearer to address the engagement letter to the actual recipient, with due consideration of privileges that apply.<sup>9</sup> Alternately, the practitioner may identify the parties who have affirmatively agreed to the terms of the engagement letter in an introductory paragraph.<sup>10</sup> Even if the attorney’s client is not specifically identified as a party to the engagement, courts may determine that the practitioner owes certain responsibilities to the attorney’s client. This is especially true if the attorney’s client is responsible for payment for the practitioner’s services.

19. Practitioners customarily identify the case name, the case number, or both at the beginning of the engagement letter. Many practitioners use a “reference line” (that is, “Re:”) to identify the case name. Other practitioners identify the case name in the introductory paragraph. The use of “et al.” (abbreviation of the Latin *et alii*, meaning “and others”) is permissible for cases with more than one party as plaintiff or defendant. However, to ensure proper investigation

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<sup>7</sup> Appendix A includes a reminder list of suggested provisions to be included in engagement letters.

<sup>8</sup> A retainer is compensation paid in advance to the practitioner for the services to be performed for a case.

<sup>9</sup> While at times the engagement letter is addressed directly to the attorney’s client, it is more common to address the letter to the attorney or to the attorney’s client in care of the attorney.

<sup>10</sup> If a name will be repeated elsewhere in a formal document such as an engagement letter, drafters customarily use a “defined term” as a shorthand reference. *Example*: “Pursuant to our understanding set forth herein, the law firm of Bass, Cross, Squire & Gump LLP (“Bass Cross”) ...”

of any potential conflicts of interest, the practitioner should obtain a full caption or the names of all parties and law firms to the dispute prior to acceptance of the engagement.

20. The introductory paragraph or similar portion of the engagement letter customarily states that the practitioner has been “engaged,” “hired,” or “retained.”

21. Engagement letters customarily set forth the general purpose or objective of the engagement; that is, the role the practitioner is hired to serve in the litigation or dispute.

*Example:* This letter documents that as of March 10, 200X, the law firm of Perez & Lauren (“Law Firm” or “You”) and its client, Acme Manufacturing (“Client”) have retained Bliss, Davis & Co. (“We” or “Us”) and in particular its partner Alana Silverstone, to serve as an expert witness in the case *Dealer Co. v. Acme Manufacturing*, Case No. 03-012345, pending in the United States District Court for the District of Massachusetts.

### **Independence and Conflicts of Interest<sup>11</sup>**

22. A practitioner may indicate in the engagement letter that (a) involvement in the engagement will not violate any legal prohibitions for publicly held clients (for example, Sarbanes-Oxley) or ethical constraints that preclude the provision of forensic and litigation services to an attest client, and (b) there are no conflicts of interest that would prevent the practitioner from serving as an expert. Discussions with or representations made by the attorney relating to conflicts may be documented in the engagement letter. If any potential conflicts have been identified but the client has waived such conflicts, documenting such waiver in the engagement letter may protect against a subsequent challenge concerning conflicts that are discovered after acceptance of the engagement. Further, the practitioner may wish to indicate the consequences to the engagement if such conflicts are later identified.

*Example:* We have undertaken a reasonable review of our records to determine our professional relationships with the persons or entities you identified. We are not aware of any conflicts of interest or relationships that would, in our sole discretion, preclude us from performing the above work for you or your client. We are not restricted from working on other engagements including unrelated engagements involving the parties in this matter; however, all confidential information gained in this matter will be kept confidential.

23. The practitioner providing litigation services may be serving or may have served the client’s adversary or the attorney for the client’s adversary in another, unrelated matter. This suggests the possibility that another party to the litigation may unfairly use the prior or current relationship to challenge the practitioner’s objectivity and credibility. Some practitioners take

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<sup>11</sup> A more detailed discussion of conflicts of interest in litigation services engagements is provided in Consulting Services Special Report 93-2, *Conflicts of Interest in Litigation Services Engagements* (New York, AICPA, 1993). In addition, Interpretation No. 102-2, “Conflicts of Interest,” under Rule 102, *Integrity and Objectivity* (AICPA, *Professional Standards*, vol. 2, ET sec. 102.03), describes a CPA’s responsibilities in determining whether a conflict exists under the AICPA Code of Professional Conduct. Also, the SEC adopted Title II of the Sarbanes-Oxley Act, which recognizes “expert services” as one of the nine nonaudit services that would impair a CPA firm’s independence. Further, the AICPA Professional Ethics Committee in 2003 issued a revision of Interpretation No. 101-3, “Performance of Other Services,” under Rule 101, *Independence* (ET sec. 101.05), that ensures the standard’s effectiveness in promoting independence when a CPA renders non-attest services to an attest client. Article IV of the AICPA Code of Professional Conduct (AICPA, *Professional Standards*, vol. 2, ET sec. 55), explains that the principles of objectivity impose the obligation to be impartial, intellectually honest, and free of conflicts of interest. Other relevant sections of the AICPA Code of Professional Conduct include ET sections 201, 202, 203, and 301.

steps to avoid such situations by proscribing such challenges in the engagement letter and setting forth the consequences if a client's attorney attempts to do so.

*Example 1:* The value of our firm's services to you and your client is founded, in part, on our reputation for professionalism and integrity. Our firm has been engaged from time to time by a significant number of law firms, both locally and nationally, and it is possible that we are or have been engaged by firms representing clients adverse to your client in this matter. Your engagement of our firm is expressly conditioned on your agreement not to use the fact of our current, previous, or possible future engagement by opposing counsel in other matters as a means of enhancing or diminishing our credibility in conjunction with any appearance before a trier of fact.

*Example 2:* As we have discussed, our firm [*if appropriate, add: "but not any of the individuals who will work on the current engagement for you"*] has previously performed work for ABC, the adverse party in this litigation. We do not believe that this prior work causes a conflict of interest. By engaging us, you agree that this prior work does not result in a conflict of interest.

### **Description of Practitioner Services**

24. Because the scope of the practitioner's services often changes throughout the engagement as facts become available and theories of the case develop, many practitioners avoid specific definition of the engagement's tasks or procedures. Inclusion of such detail may also allow counsel for the client's adversary to use such detail to challenge the practitioner's work and conclusions. If the practitioner does not complete or even begin all the tasks defined in the engagement letter, counsel for the client's adversary may be able to use any of these discoveries to challenge the practitioner's credibility, opinions, and testimony as an expert witness. Additionally, such description may provide a road map to the client's litigation strategy. As a result, many practitioners restrict their definition of services to broad statements. However, any practitioner considering this approach should be cognizant of the risk of subsequent disputes if the services are not carefully delineated.

25. The practitioner may wish to document the parties' understanding of the practitioners' performance of services such as:

- Timeline of services to be performed
- Description of any "deliverables" such as reports, demonstrative evidence, or oral testimony
- Reference to any specific standards that the practitioner will follow
- Reference to the rules of a particular court. The legal forum in which the practitioner will provide testimony may be of significant import. The rules of the venue may impose specific requirements for report content and submissions, testimony protocol, and other issues. The content of the engagement letter may need to address this issue.

*Example 1:* It is our current expectation that we will provide a written report in accordance with Federal Rule of Civil Procedure 26(b).

*Example 2:* You have requested that we assist you with analysis and consultation with regard to the XYZ litigation matter as you may direct.

*Example 3:* We will perform such tasks as may be identified during the course of this engagement.

**26.** Generalized statements of the practitioner's performance often include language that refers to "direction" by the attorney. An attorney may deem such statements inappropriate when the practitioner is hired to serve as an expert witness. Such language may suggest that the expert witness's work and conclusions will be unduly influenced by the attorney's direction and thereby result in the practitioner's diminished credibility. In such cases, the practitioner may still wish to describe broadly the nature of the services, but also state that any opinions offered shall be based solely on the practitioner's judgment. The practitioner may also wish to indicate that fees are not dependent on particular results.

*Example 1:* Although the Services are subject to change as mutually agreed between us, the Services shall include economic and damages analyses. Because we have not completed our analyses, we cannot assure you that our findings will either support or contradict any particular proposition.

*Example 2:* It is the parties' understanding that our fees are in no way contingent on the nature of our finding, or of any analyses, testimony, or the outcome of any proceeding.

**27.** Because litigation services are often impacted by changes in circumstances, the practitioner should consider contingencies that may prevent the performance of his or her obligations and establish alternatives if such conditions occur.

*Example:* It is our expectation that we will provide you with a written report by September 28, 200X. If, however, we believe the documentation and information that we deem necessary to achieve the engagement objectives are not made available to us by other parties, we will so inform you, provided, however, that this will not affect, in any manner, the payment of fees and expenses as expressly set forth herein.

### **Acknowledgment and Payment for Services**

**28.** The engagement letter typically sets forth who will be responsible for the payment of fees and expenses. The engagement letter is often addressed to the attorney. The letter usually requests that the attorney acknowledge the terms of the engagement letter by signing and returning a copy. To avoid misunderstandings with the attorney's client, especially if the attorney's client is to be responsible for payment, the practitioner should consider requiring the attorney's client to sign the engagement letter acknowledging the terms of retention, including payment responsibility.

**29.** As discussed earlier, the engagement letter typically states the amount of retainer, if any, paid upon the hiring of the practitioner. Further, the engagement letter typically documents application of the retainer to billable time and when any unused portion of the retainer will be returned (for example, at the end of the engagement).

*Example:* We shall receive a refundable retainer of \$XX,XXX to be applied to our final bill for this engagement. An invoice for the retainer is enclosed. Any excess retainer following the final bill will be returned to you or your client.

**30.** The engagement letter may state the personnel expected to be assigned to the engagement, each professional's title and experience, and such professional's rate per hour to be charged to the engagement. Some clients even require that resumes of all professionals expected to work on the engagement be attached. Alternatively, the engagement letter may more generally document the number of professionals expected to be assigned at each staff level, or merely the fact that additional personnel may be added to the engagement over time.

*Example:* Our work will be conducted on a time and materials basis and will be charged at the following hourly rates: [List names or personnel levels and corresponding hourly rates or ranges.]

**31.** The level of detail to be provided with the bills varies between engagements based, in part, on the preference of the attorney or the attorney's client.<sup>12</sup> Some attorneys prefer very general time and activity descriptions, while others may require more detail. The engagement letter may state the level of detail expected to be provided as well as indicate the amount of supporting detail that will generally be maintained or provided to the client. The practitioner should realize that if detailed billing records exist, they may be discoverable whether they were included as part of the monthly invoice or not. The practitioner is advised to discuss the appropriate level of detail to be provided in the bills as well as the level of detail to be retained in the underlying billing records.

*Example:* Our monthly bills will provide summary descriptions of the work we have performed on this engagement. We will keep records of our professional time and expenses, which we will provide to you upon your request.

**32.** The engagement letter customarily states the frequency of invoicing for unpaid fees and expenses and whether any unpaid fees and expenses are required upon the completion of specific steps in the engagement or as a condition for continuing to provide services. Practitioners frequently require payment of fees before issuing a report or providing deposition or trial testimony. Generally, practitioners who require such payments do so for two purposes: (a) concern that the client may not pay the practitioner's invoices once the matter has been resolved; and (b) to avoid a possible challenge to the practitioner's credibility as an expert witness when large fees are unpaid at the time the practitioner testifies. In the second case, counsel for the client's adversary may suggest that the practitioner's desire to receive the unpaid fees and expenses impairs objectivity, gives rise to a conflict of interest, and thereby creates an issue of bias.

*Example 1:* Invoices will be presented monthly and are due on presentation. Invoices for which payment is not received within 30 days of invoice date shall accrue a late charge of 1.5 percent (or the highest rate allowable by law) compounded monthly. We reserve the right to halt further services until payment is received on past due invoices. If you request that we issue a report or testify, we will be paid in full prior to such issuance or testimony for all work performed to date.

*Example 2:* If you request that we issue a report or provide testimony, we will be paid in full in advance for our total estimated time and expenses for the completion of such report or testimony.

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<sup>12</sup> The level of billing detail required may be influenced by whether the practitioner or the client expects to seek reimbursement of fees from a third party, such as an insurance company or an opposing spouse, whether via court order or otherwise. In those circumstances, the billing detail may have to be sufficiently detailed to satisfy the third party or the court. When in doubt, the practitioner should discuss these issues with the attorney.

**33.** Some practitioners use language to notify the client that the practitioner's hourly rates are subject to change. If the practitioner expects that the engagement will be long-term and that hourly rates will increase, it benefits the practitioner to document such expectation as specifically as possible in the engagement letter so as to avoid being bound to the original rate structure.

*Example:* Our hourly rates are subject to change from time to time due to increased experience of our staff and changing market conditions. We will advise you immediately if rates are being adjusted. You will be responsible for fees at the increased rates.

**34.** To avoid disputes about payment of fees and expenses, the practitioner may set forth in the engagement letter a procedure for the attorney or client to raise such disagreements. Addressing such concerns may be important because the insurance companies who reimburse litigation expenses on behalf of a client may submit counsel and practitioners' invoices to a fee audit.

*Example:* If you disagree with or question any amount due under an invoice, you shall communicate such disagreement to us in writing within thirty (30) days of the invoice date. Any claim not made within that period shall be deemed waived.

**35.** Some practitioners include a clause that requires the attorney or attorney's client to pay the hourly rate and expenses of formal collection procedures. However, under the American system, litigants are generally required to pay their own legal fees, so a court or arbitrator may decide not to uphold this provision.

*Example:* In the event that formal collection procedures are required, you [Attorney] and your client [Company] agree to pay all expenses of collection and all attorneys' fees and costs actually incurred by our firm in connection with such collection, whether or not suit is filed thereon. If litigation is required regarding collection of the account, we will be paid our hourly rates for all time actually expended by our firm in connection with such action.

**36.** The practitioner should be careful about including a "prevailing party" clause in conjunction with an arbitration clause (see paragraph 50), especially when the paying party (often the attorney's client) is an individual or small business. In some states, the law prohibits the conduct of consumer-related arbitrations if the agreement requires that the "consumer" party pay the fees and costs incurred by an opposing party if the consumer does not prevail in the arbitration.<sup>13</sup> Under these circumstances, it may not be possible for the practitioner to waive the clause (and thus compel arbitration) without the consent of the client.

**37.** The engagement letter typically sets forth all expenses, such as copy costs, printing costs, and overnight mail, for which the attorney or attorney's client will be responsible. In addition, the practitioner may wish to set forth the understanding concerning reimbursement for nonproductive travel time.

**38.** As noted, the practitioner may wish to consider the risk of not completing certain engagement objectives due to the occurrence of various contingencies and the expected costs for such impediments, and require additional compensation by the engagement letter if such contingency occurs.

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<sup>13</sup> For example, California.

*Example:* If your independent accountants fail to complete their examination of KFL UK, Ltd.'s financial statements by January 31, 200X, we may incur additional expenses, including the costs of conducting any investigation procedures in the United Kingdom that we believe are required to complete the engagement objectives.

39. If the practitioner determines that additional practitioners or experts in other fields of specialized knowledge will need to be consulted on the engagement, the practitioner may require additional compensation. The engagement letter may allow for such a possibility.

*Example:* During the course of this engagement, we may find that outside expertise in the area of international zinc trade may become necessary to complete the engagement objectives. If such circumstances occur and result in additional fees, we will so notify you.

### **Performance by the Client**

40. The practitioner may encounter a situation where the client fails to disclose relevant information that could materially alter the practitioner's opinion. The practitioner may want to make the client a party to the agreement as set forth in the engagement letter in order to obtain the client's affirmative obligation to provide information, records, and documents necessary to complete the engagement. If so, it may benefit the practitioner to state the consequences of the client's failure to provide the requisite information as specifically as possible:

*Example 1:* The client shall provide all agreed-upon documentation and analyses in accordance with the engagement schedule and shall make available key personnel within a reasonable period of time upon request by [*Practitioner or Firm*]. The failure of [*Client*] to meet these requirements may result in extensions of time and increased costs and may jeopardize key deadlines.

*Example 2:* The husband shall provide all documents and information and make available all personnel as we request in order for us to complete our valuation. The failure of the husband to provide or make available the requested information or personnel shall relieve us from any requirement to deliver our report by the date of the hearing without affecting our rights for fees and reimbursement of expenses.

### **Termination of the Engagement**

41. To retain the ability to withdraw from the engagement if certain contingencies occur, the practitioner should document those contingencies and consequences in the engagement letter. Such clauses may protect the practitioner's fees and expenses if such events occur. Examples of such conditions include, but may not be limited to: (a) the practitioner is asked to reach conclusions even if in disagreement with them; (b) critical information previously unavailable becomes known to the practitioner; (c) it becomes known that information that was expected to be available is unavailable; or (d) a party or parties to the litigation hire alternate counsel, which makes continued involvement in the litigation inappropriate due to conflicts of interest. Whatever the issue, it benefits the practitioner to reserve in writing the right to terminate the engagement, under specified circumstances.



*Example:* It is understood between the parties to this agreement that [*Firm*] may terminate this engagement upon a substitution of Counsel for any reason, or for good cause.

42. The practitioner may wish to consider adding specific language concerning the right to reject any request to perform acts which may be in violation of law, public policy, or professional ethics. Such clause may also state that the practitioner has the right to use judgment as to whether any such request has been made.

*Example:* Our work, to be performed independently by us after your authorization, is to conduct such tasks as may be identified during the course of this engagement. However, we may refuse to perform any act that we deem in violation of law, public policy, or our professional ethical standards without terminating this agreement.

43. Further, the practitioner may wish to consider language in the engagement letter which preserves the right to withdraw if it is discovered that the attorney or the client has provided materially untruthful information.

*Example:* If we believe that you, your spouse, or any officer of the ABC Corporation has provided materially untruthful information, which may affect our conclusions, we may withdraw from the engagement without penalty.

#### **Privacy, Ownership, and Use of Materials**

44. The engagement letter may state that the practitioner will take all reasonable steps to prevent the release of confidential materials. The engagement letter may set forth any agreed-upon designation of documents and other materials as “confidential,” “privileged,” “attorneys’ eyes only,” or “work product.”<sup>14</sup> The engagement letter may also specify who will pay in the event that costs are incurred in responding to subpoenas for the material.

*Example:* We understand that all communications between us and your firm, either oral or written, as well as any materials or information developed or received by us during this engagement, are protected by applicable legal privileges and, therefore, will be treated by us as confidential. Accordingly, we agree, subject to applicable law or court order, not to disclose any of our communications, or any of the information we receive or develop in the course of our work for you, to any person or entity apart from your office, or such other persons or entities as your office may designate.

If access to any of the materials in our possession relating to this engagement is sought by a third party, we will promptly notify you of such action, tender to you our defense responding to such request and cooperate with you concerning our response thereto. In the event that we are subpoenaed as the result of any work performed for you in connection with this engagement, [*Client*] will compensate us for our time involved in responding to such subpoena(s).

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<sup>14</sup> See “Indicating Document Status” and “Maintaining Confidentiality of Documents” sections from AICPA Consulting Services Practice Aid 96-3, *Communicating in Litigation Services: Reports* (New York: AICPA, 1996).

45. In recent years, legislatures and regulators have closely examined privacy law out of concern about the use and dissemination of personal information.<sup>15</sup> The practitioner may document an understanding concerning restrictions on the use of personal information contained in documents that may be obtained during the litigation.

*Example:* During the course of our engagement we may collect nonpublic personal information about you [*or client name*] that is provided to us by you [*or client name*] or obtained by us with your [*or client name*] authorization. We do not disclose any nonpublic personal information about current and former clients obtained in the course of our practice except as required or permitted by law. Permitted disclosures include, for instance, providing information to our employees, and in limited situations, to unrelated third parties who need to know that information to assist us in providing services to you.

46. Practitioners may use the engagement letter to restrict the use of their work without authorization outside the case for which it was intended. For example, it may be inappropriate to use a practitioner's valuation report from a divorce case as support for a bank loan. The engagement letter may permit or restrict how any party may use deliverables under the engagement in the future.

*Example:* Any written reports or other documents which I (we) prepare are to be used only for the purpose of this litigation and may not be published or used for any other purpose without my (our) express written consent.

47. Similarly, the engagement letter may set forth ownership rights for materials created specifically for the litigation, such as spreadsheets or charts used at trial. In many engagements, the practitioner is acknowledged as the owner of the work product. Such clauses may preserve the practitioner's rights to use methods, approaches, or documentation freely in future engagements. On occasion, the client wants ownership of the work product. In such cases, the practitioner should consider allowing the client to take ownership only after all fees have been paid, while keeping file copies of the work product. The practitioner, however, may want to restrict the client's ability to use the work product in other matters and retain the right to use the documentation (excluding any client-confidential material) in future cases.

*Example 1:* Upon request, all original documents provided by you will be returned to you at the conclusion of the engagement. Documents and work product prepared by [*Practitioner*] are the property of [*Practitioner*]. However, copies will be provided to you upon request.

*Example 2:* Upon full and final payment of all outstanding invoices, ownership of the workpapers and related documentation passes to Client. Client agrees not to use our work product in connection with any other litigated matter, nor to share our work product with any third party without our express written consent. We may maintain copies of all our work product and related materials for our files. If we choose not to retain copies, Client will provide access to the workpapers upon reasonable notice.

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<sup>15</sup> Financial Services Modernization Act of 1999, Title V – Privacy (commonly known as the Gramm-Leach-Bliley Act), which applies primarily to financial institutions.

48. Although many practitioners make it a practice not to retain obsolete, superseded, or unneeded documents, courts continue to address the retention or destruction of documents by lawyers' consultants and expert witnesses. The practitioner can use the engagement letter to communicate a standard document retention policy and ask for guidance or approval if necessary.

*Example:* Please note that it is not our practice to retain workpapers, e-mails, notes, or data files that have been updated or superseded, unless shared with you or a third party working with you. However, we will retain copies of e-mails, analyses, draft reports, or other materials provided by you or any third party, or provided by us to you or any third party. If you wish us to follow a retention practice that differs from those described in this paragraph, please indicate your specific request(s) in writing when returning a copy of this engagement letter.

*Caveat:* Because documents in a litigation services engagement are part of a legal proceeding, a court may permit a negative inference from missing documents. Moreover, sanctions may result from destruction of evidence. Therefore, it may be beneficial for the practitioner to seek advice of counsel if unsure of document retention requirements throughout an engagement.

49. The engagement letter should set forth the parties' understanding concerning the retention or destruction of any copies of materials used in the engagement. The documents accumulated in an engagement may be subject to *confidentiality agreements* or *protective orders*, or otherwise contain confidential information that the practitioner believes should be returned to the attorney on completion of the engagement. These documents may include handwritten notes, memoranda and preliminary report drafts. In some instances, the nature of the arrangements between plaintiff and defendant or orders of the court may require that all workpapers or other documents be delivered to and retained by counsel or the court. In any event, the practitioner may wish to document such understanding in the engagement letter.<sup>16</sup>

*Example 1:* All workpapers or other documents used by us during the course of this engagement will be maintained in segregated files. At the completion of our engagement, the originals and all copies thereof will be returned to you.

*Example 2:* At the end of the engagement, you will have several options related to the documents or copies of documents that we do not need to retain in our files: (a) have us return all such documents to you, (b) authorize us to destroy them, or (c) direct us to store all or selected workpapers or documents, and [Client] will pay for storage. At the end of the engagement, please contact us regarding your desired disposition of documents. We reserve the right to destroy the documents if there are no instructions from you within ninety (90) days of the completion of our assignment.

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<sup>16</sup> AICPA Code of Professional Conduct Rule 301, *Confidential Client Information* (AICPA, *Professional Standards*, vol. 2, ET sec. 301), and Interpretation 501-1, "Retention of Client Records," under Rule 501, *Acts Discreditable* (ET sec. 501.02), describe the pertinent obligations of CPAs to their clients.

### Dispute Resolution Provisions

50. The practitioner may wish to include a forum selection clause, which requires adjudication of any dispute between the practitioner and any other party to the agreement in a particular forum. The parties may agree, via the engagement letter, to submit disputes to a specific jurisdiction or to a specific alternate dispute resolution (ADR) forum. Practitioners frequently include such “arbitration” clauses. A forum selection clause, particularly one which demands an ADR procedure, should be drafted with care and after consideration of whether the practitioner wishes to waive or preserve the right to seek determination of any future dispute concerning the engagement in court.<sup>17</sup> If desired, the practitioner may structure the engagement letter to require use of arbitration for fee disputes while preserving the ability to go to court for other disputes.

*Example:* In the event of a dispute over fees for our engagement, we mutually agree to try in good faith to resolve the dispute through mediation by selecting a third party to help us reach an agreement. If we are unable to resolve the fee dispute through mediation, [Attorney], on behalf of [Attorney’s Client], and [Practitioner] agree to submit to resolution by arbitration in accordance with the rules of the American Arbitration Association. Such arbitration shall be binding and final. In agreeing to arbitration over fees, we both acknowledge that in the event of a dispute over fees, but for no other issues, each of us is giving up the right to have the dispute decided in a court of law before a judge or jury and, instead, is accepting the use of arbitration for resolution.

51. The practitioner may wish to include a choice-of-law provision, which sets forth the substantive law that the parties agree to apply to any dispute that may arise concerning the engagement. This may be particularly applicable in complex engagements which require assistance from practice offices in different jurisdictions, performance of services in several locations, or a matter that consists of several related cases in different venues.

52. The practitioner may wish to seek the advice of counsel with respect to forum selection or choice-of-law provisions.

### Limitations on Liability and Damages

53. Some practitioners providing forensic and litigation services attempt to avoid liability or damages by the inclusion of a “hold harmless” provision in the engagement letter. Such provisions may attempt to (a) limit liability, (b) limit damages, or (c) provide for indemnification by the other parties. Practitioners will benefit from careful consideration of these differences. Some clients may be willing to accept some limitations on the practitioner’s liability while rejecting others. The practitioner should consult with legal counsel or a risk management adviser about which of these clauses are negotiable and which are not for any particular engagement. With respect to limitations on liability, the practitioner should be aware that a court or arbitrator might hold that such clauses do not provide any protection from claims that allege malpractice or other torts.

54. A hold-harmless provision may provide some protection from breach of the engagement agreement and limit certain types of damages such as consequential, incidental, or punitive

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<sup>17</sup> See *Drafting Dispute Resolution Clauses for Professional Accounting and Related Services* (New York: American Arbitration Association, 1994) for more details concerning arbitration provisions.

damages. Generally this provision is valid between the parties to the engagement letter. It may not limit damages for liability to third parties who justifiably relied on the practitioner's work.

**55.** The practitioner's attempt to seek indemnity or contribution for any liability may depend upon the circumstances, the wording of the provision, and the law.<sup>18</sup> The practitioner may want to seek the advice of counsel to determine the potential validity of any such provision.

*Example 1:* In no event will our firm be liable for incidental or consequential damages, even if we have been advised of the possibility of such damages.

*Example 2:* You and your client agree to hold our firm, its partners, and employees harmless from any and all liabilities, costs, and expenses relating to this engagement, and expenses (and those of our legal counsel) incurred by reason of any action taken or committed at your direction and taken by us in good faith; and you agree to indemnify us for any such action taken at your direction.

**56.** Whether or not the engagement letter sets forth a limitation on liability, it may still set forth a limitation on damages. Many practitioners limit possible damage awards that can be assessed against them to the fees they have been paid or to some multiple of the fees. Generally this provision is valid between the parties to the engagement letter. It may not limit damages for liability to third parties who justifiably relied on the practitioner's work.

*Example:* Our aggregate liability to [Attorney] or [Attorney's client], whether in contract, tort, or otherwise, will be limited to the amount paid to us by [Attorney] or [Attorney's client] for the services under this engagement letter.

**57.** In light of *Daubert*, *Kumho Tire* and their progeny,<sup>19</sup> a practitioner hired as an expert witness may consider attaching a curriculum vitae (CV) as an exhibit to the engagement letter. Such action may provide some protection if a court later rejects the expert. The practitioner may still assert rights under the agreement to receive appropriate compensation. If the client is concerned about the qualifications of supporting professionals, their CVs could be attached as well.

*Example:* As an Exhibit to this engagement letter, I have attached my CV. If a Court later determines that I am not qualified to offer testimony, such determination will not be deemed a breach of this agreement and you will still be liable for the payment of fees and expenses as set forth herein.

### Other Provisions

**58.** The practitioner should consider the responsibilities under SSCS No. 1 that require the communication of significant concerns and findings to the client. In a litigation engagement, it is common that the practitioner's communications are to the attorney and not the attorney's client. In most situations, the attorney is the most knowledgeable about the case and is directly involved in working with the practitioner. The attorney's client, on the other hand, may have less direct contact with the practitioner. Thus, communications with the attorney, and not directly with the attorney's client, may be typical and appropriate. The practitioner can use the engagement letter

<sup>18</sup> *Indemnity* is the act of making someone "whole" (to compensate for loss or damage already suffered), or insuring (or providing security) against future loss or damage. *Contribution* is the payment of a share of an amount for which a party is liable, or the shared payment (or pro rata apportionment of loss or damage) by parties jointly responsible for compensating the loss or injury of another party.

<sup>19</sup> *Daubert v. Merrill-Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).

to address any possible uncertainties involving responsibilities to communicate to the attorney or the attorney's client.

*Example:* The American Institute of Certified Public Accountants has determined that the above-described services are subject to Statement on Standards for Consulting Services (SSCS) No. 1. This statement requires that we inform our client of significant reservations concerning the scope or benefits of the engagement, as well as significant engagement findings or events. By signing this letter, Counsel and the Company agree that our communications to Counsel will discharge our client communication responsibilities as described in SSCS No. 1.

### **The CPA as Arbitrator or Other Neutral**

**59.** In addition to retention by either party to a dispute, the practitioner may serve in a "neutral" role in a dispute. The neutral role may be as a trier of fact, such as arbitrator or mediator. The practitioner may also serve as a court-appointed expert to assist the court with determination of various elements of economic damages, such as partners' share of income from a project or the existence and division of profits on a particular entity or venture. Several of the national associations that provide structured arbitration or mediation services, such as the American Arbitration Association, provide guidance on the proper conduct of an ADR engagement. In such cases, the practitioner drafts the language of the engagement letter to state the terms of such engagement and the practitioner's own responsibilities concerning the dispute at issue.

**60.** As a court-appointed expert, the practitioner is often hired pursuant to a court order. The order will define the scope and terms of the engagement, including the assignment, the timing of the delivery of the expert's opinions, and the parties responsible for paying the practitioner. When a court order is issued retaining the expert on behalf of the court, the practitioner may not believe that an engagement letter is also necessary due to the weight carried by an order of the court. However, whether or not the court issues an order hiring the expert, the practitioner may want to consider an engagement letter with both parties, stating the terms of retention, just as if the practitioner had been hired by one of the parties to the dispute.

*Example:* This will confirm that [*Practitioner or Firm name*] will serve as the Independent Arbitrator pursuant to [*insert agreement or other authority relevant to naming of an Arbitrator*] who is mutually acceptable to [*Claimant*] and [*Respondent*] to resolve the disputed [*insert details as to the issues to be addressed in the arbitration*], in accordance with the dispute resolution procedures described in [*insert the document controlling the arbitration*] by and between the parties, subject to your agreement with the matters described below.

### **Expiration of the Engagement Letter**

**61.** To avoid misunderstandings and delays, the engagement letter may place a time limit on acceptance, after which the practitioner is no longer bound to the proposed terms.

*Example:* The terms of this letter are subject to change if not executed by the Client and returned to us within sixty (60) days of the date of this letter.

**CONCLUSION**

**62.** An engagement letter for forensic and litigation services engagements can be of great benefit to all parties: the attorney, the attorney's client, and the practitioner. An engagement letter clarifies the rights and responsibilities of all parties to the engagement and provides for the various necessary administrative aspects of the work. The practitioner must be sensitive to the possibility of misunderstandings between parties to a litigation. A clearly-written engagement letter communicates the expectations of all parties and helps reduce the likelihood of disagreements and future litigation over the practitioner's services.

APPENDIX A

REMINDER LIST—ENGAGEMENT LETTERS FOR LITIGATION SERVICES

This checklist may be a useful tool for practitioners when they tailor engagement letters for each specific litigation services engagement.

Considerations	Considered	General Comments
<b>Engagement Roles/Responsibilities:</b> Attorney-client privilege and determination of practitioners' role in the litigation		
<b>Dating:</b> Identifies the "effective date" of the engagement		
<b>Identification of the Parties:</b> Practitioner Attorney Litigant/client Identification of the case name, number, court/ADR venue		
<b>Recognized Engagement Agreement Language:</b> Statement confirming the practitioner is "hired," "engaged," or "retained"		
<b>Conflicts of Interest:</b> Representations defining conflicts Documentation of conflict waivers		
<b>Practitioner Credibility:</b> Proscription against challenges to practitioner's credibility		
<b>Description of Practitioner's Services:</b> General description Specific description of engagement parameters		
Language re: directions from the attorney		
Contingencies and changes in performance Identification of personnel/engagement staffing Description of time/expense recordkeeping		
<b>Compensation/Fees/Expenses:</b> Identify person(s) responsible for payment Agreed-upon retainer Return of unused retainer Payment schedule Frequency of invoicing Provision for collection costs Other client-related expenses (for example, travel) Additional contingent compensation		

(continued)



<p><b>Other Fee-Related Issues:</b>          Payment policy          Changes in billing rates          Procedure for billing disagreements          Payment requirement for delivery of reports,          pre-trial, and trial testimony</p>		
<p><b>Engagement Termination:</b>          Client's role and responsibilities          Identify circumstances for termination          Practitioner's judgment and policy</p>		
<p><b>Workpaper Ownership:</b>          Identification of document status          Privacy statutes/prohibitions on use of          engagement information and data          Restriction on use of practitioner's work product          Ownership rights for materials generated during          course of litigation engagement          Policies on document retention and destruction</p>		
<p><b>Engagement Letter Administration:</b>          Checked for spelling and grammar          Authorized signatures          Legal review</p>		

**APPENDIX B****ILLUSTRATIVE ENGAGEMENT LETTERS FOR PROVIDING  
FORENSIC AND LITIGATION SERVICES**

Exhibits B-1 through B-5 are engagement letters for illustrative purposes only. Users of this practice aid should exercise care in adapting the letters for their own purposes. Many of these letters include examples of special clauses relevant to litigation services, but not all of the special clauses as described in the text of this practice aid appear in each of the illustrative engagement letters. Although the letters are identified by type of engagement (for example, forensic accounting investigation, economic damages, and court-appointed neutral expert), many of the clauses in any particular sample letter may be applicable to other types and can be adapted as necessary.

Exhibit B-1

**Sample Engagement Letter  
Corporate Forensic Accounting Investigation**

**Olivia & Gardner, LLC, CPAs**

**PRIVILEGED AND CONFIDENTIAL  
ATTORNEY WORK PRODUCT**

December 20, 20XX

Leslie R. Cross, Esq.  
Bass, Cross, Squire & Gump LLP  
Attorneys at Law  
1200 Avenue of the Americas  
New York, NY 00000

Re: *Public Investor v. XYZ Corporation, Jesse Lawrence and Fran Barosin*, Case No. 05-0000 as pending in the United States District Court for the Eastern District of New York

Dear Ms. Cross:

This letter will confirm the engagement of our firm, Olivia & Gardner, LLC, CPAs (“Olivia & Gardner”) by Bass, Cross, Squire & Gump LLP (“Bass Cross”) and its client XYZ Corporation (“XYZ”), through the audit committee of its Board of Directors (“Audit Committee”) as of December 15, 20XX. It is understood that we are engaged to assist Bass Cross in its representation of its client XYZ in the above matter. It is further understood that we will report to Bass Cross, directly, and that we will submit all reports, communications, and work product to counsel. We understand that it may be necessary for you to share with us your theories of the case, strategy considerations, mental impressions, conclusions, and other thought processes that relate to your preparation of this matter for trial. It may also be necessary for you to relate to us communications between you and your client. Consequently, we understand that the work performed by us will be confidential, constituting a portion of your work product, and is to be regarded by us as being covered by attorney-client privileges. We further understand that if we are asked to testify, many such privileges may no longer apply.

All workpapers and documentation or other documents used by us during the course of this engagement will be maintained in segregated files. At the completion of our engagement, the originals and all copies thereof will be returned to you.

Our fees in this matter are based on an hourly rate plus expenses incurred and are not contingent on the outcome of the case. We will bill you at standard rates, which currently range from \$XXX to \$XXX per hour, depending on the personnel assigned. At this time, it is our expectation that this engagement will be staffed as follows:

Steven Gardner, Partner  
Harold L. Charles, Manager  
4 - 6 Staff Personnel  
1 Paraprofessional

As performance of our responsibilities for this engagement may occur over several years, you agree to payment of any increases in our standard billing rates as of August 1 of each year, not to exceed 3 percent

per year. Unless otherwise agreed, we will submit our billings on a monthly basis with the understanding that they will be paid in full in 30 days. All past due invoices will be subject to a late charge of 1 percent per month. We reserve the right to defer rendering further services until payment on past due invoices is received. If the circumstances of this case require testimony by any member or employee of Olivia & Gardner, we require payment in full for all work performed to date prior to our testimony. The obligation to pay our fees is the direct responsibility of XYZ. We agree that you and your law firm are not liable for our fees on this engagement unless you receive payment of any part thereof from XYZ. You agree that you will make every effort to assist us in collecting our fees from your client. In order to begin work, we require a retainer of \$XX,XXX to be applied to our final billing in this matter. This retainer is not intended to be an estimate for the total cost of work performed, nor have we provided an estimate.

The client company, XYZ, as represented by its Audit Committee, agrees to provide us all documentation and information pursuant to our requests which we believe necessary to complete the engagement objectives as you may outline to us. We will notify you within a reasonable time of the client company's failure to meet such requests. If we believe that XYZ's failure to make reasonably requested information available prohibits us from making conclusions in accordance with engagement objectives, we will so notify you. In such event, you will not hold us responsible and all fees and expenses will be paid to us in accordance with the terms of the engagement.

Any controversy, claim, or counterclaim arising out of or relating to this contract, the breach thereof, or the services performed by Olivia & Gardner shall be settled by binding arbitration before a single arbitrator in accordance with the rules and procedures of the American Arbitration Association (AAA), and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be initiated at the AAA offices in New York City, New York and all hearings shall be conducted at said offices or at another location within New York County as determined by the arbitrator. All disputes in connection with the terms of this engagement letter shall be determined by the application of New York State law. In the event an arbitration or litigation (including but not limited to any proceeding to compel arbitration) is initiated to resolve or settle any dispute or claim between the parties, the prevailing party shall be entitled to recover from the nonprevailing party or parties its reasonable costs, including but not limited to reasonable attorney's fees and fees of Olivia & Gardner incurred in connection with the arbitration or litigation.

You or your law firm will advise us, with sufficient notice, of the work to be performed by us and the requirement for appearance in court. If information becomes known that would make our continued involvement in this engagement inappropriate, or if the attorneys or parties involved in this litigation change, we reserve the right to withdraw from this engagement.

Our work, to be performed under your direction, is to perform such tasks as may be identified during the course of this engagement. However, we may refuse to perform any act that we deem a violation of law, public policy, or our professional ethical standards, and in such event we may withdraw from the engagement without penalty.

In no event will our firm be liable for incidental or consequential damages even if we have been advised of the possibility of such damages. Our liability to you or XYZ, whether in tort, contract, or otherwise, is limited to the amount of fees paid to us for our services on this engagement.

By acknowledging acceptance of the terms of this engagement, Bass Cross represents and warrants that it has the authority from XYZ to employ Olivia & Gardner on the terms and conditions set forth herein, including but not limited to the provisions above with respect to arbitration of disputes and claims.

If this is in accordance with your understanding and meets with your approval, please sign and date one copy of this letter in the space provided. We request that your client also sign an acknowledgment copy of this letter. One copy should be retained for your files.

Very truly yours,

Steven Gardner, Partner  
Olivia & Gardner, LLC, CPAs

The services described in this letter are in accordance with our requirements and are acceptable to my client and me.

\_\_\_\_\_  
Leslie R. Cross, Esq.  
Bass, Cross, Squire & Gump LLP

\_\_\_\_\_  
Date

\_\_\_\_\_  
XYZ Corporation, by its duly authorized member of the  
Audit Committee of the Board of Directors

\_\_\_\_\_  
Date

Exhibit B-2

**Sample Engagement Letter  
Economic Damages: Expert Witness  
(With Attached Dispute Resolution Procedures)**

**Evans Daniel & Company, CPAs**

January 1, 20XX

Jerome Marcus, Esq.  
Marcus, Raymond & Duane LLP  
Attorneys at Law  
9999 Market Street  
San Francisco, CA 90000

Re: *Arcady Sound, Inc. v. Collins Network Partners, Inc.* (Case No. 29-4747)

Dear Mr. Marcus:

This letter confirms the scope and terms of my retention by Marcus, Raymond & Duane LLP (“MR&D”) and its client, Collins Network Partners, Inc. (“Collins Networks” or “Company”). The scope of this engagement will be to review the facts in this matter and provide you with our opinion on the range of reasonable damages in the above-referenced matter. Our procedures may include reviewing books and records, gathering and analyzing available documents, interviewing personnel, and performing financial and other analyses. If necessary, we will be in a position to provide a written report of our procedures and findings. We agree to supply expert testimony at deposition, trial, or other hearings if requested. If counsel desires our report, opinion, or testimony on a matter, we will conduct those procedures that we consider necessary to express a professional conclusion.

We will bill you on a summary level, generally on a monthly basis, based on the fees and expenses incurred. You agree to pay a blended rate of \$XXX per hour for all professionals on the engagement. You will also reimburse us for out-of-pocket expenses that we incur on your behalf, including but not limited to travel costs, lodging, outside research, copy costs, telephone, and messengers. Payment is due upon invoicing without regard to the current status or outcome of this matter, and a late payment fee of 1½ percent per month may be charged for any indebtedness. We require full payment of any indebtedness prior to the expression of any opinion, or issuance of any report or testimony. We may stop work at any time in the event of any unpaid balance. We may resign from this engagement at our sole discretion at any time.

In the event we are requested or authorized by MR&D or Collins Networks, or are required by government regulation, subpoena, or other legal process to produce our documents or our personnel as witnesses with respect to this engagement, you will reimburse us for our professional time and expenses, as well as the fees and expenses of our counsel incurred in responding to such requests.

We agree to abide by any court orders provided to us in writing and signed by us regarding confidentiality. We will, at your request, transmit information to you by facsimile, e-mail, or over the Internet. If any confidentiality breaches occur because of data transmission over the Internet pursuant to your request, you agree that this will not constitute a breach of any obligation of confidentiality. If you wish to limit such transmission to information that is not highly confidential, or seek more secure means of communication for highly confidential information, you will need to inform us.

The scope of this engagement does not constitute the provision by Evans Daniel & Co., its partners, or staff of any legal advice. Moreover, because our engagement is limited in nature and scope, it cannot be relied upon to discover all documents and other information or provide all analyses which may have importance to this matter. This engagement does not anticipate the compilation, review, or audit of financial records or financial statements.

I have attached my curriculum vitae to this letter. If a court determines that I am not qualified to testify in this matter, such determination will not be deemed a breach of this agreement; and you and Collins Networks will remain liable for payment of fees and expenses as set forth herein.

We have undertaken a limited inquiry of our records to determine conflicts with this engagement that have been communicated to you and you have advised us that these relationships do not preclude our retention. However, the very nature, diversity, magnitude, and volume of Evans Daniel & Co., and its past and present clients and professional relationships, does not allow us to be certain that each and every possible relationship or potential conflict has come to our attention. In the event that additional relationships or potential conflicts come to our attention, we will promptly notify you.

Neither Collins Networks, MR&D, nor any other party acting on their behalf shall hold Evans Daniel & Co. or any of its affiliates or representatives legally responsible for any loss or liability that may result from the nondiscovery of facts or information that could otherwise have influenced the outcome or interpretation of our findings and/or testimony. Furthermore, Collins Networks agrees to indemnify and hold harmless, including legal defense costs, Evans Daniel & Co. and its representatives from any claim brought by a third party asserting that Evans Daniel & Co. or any of its representatives were negligent or acted in bad faith in providing the services covered by this letter.

Any controversy or claim arising out of or relating to this letter or the services provided by Evans Daniel & Co. pursuant hereto (including any such matter involving any parent, subsidiary, affiliate, successor in interest, or agent of the Company or of Evans Daniel & Co.) shall be submitted first to voluntary mediation, and if mediation is not successful, then to binding arbitration, in accordance with the dispute resolution procedures set forth in Attachment A to this letter. Judgment on any arbitration award may be entered in any court having proper jurisdiction.

If any portion of this letter is held to be void, or otherwise unenforceable, in whole or part, the remaining portions of this letter shall remain in effect.

We appreciate the opportunity to assist you in this matter. If this letter meets with your approval and your client's approval, please sign below, have your client sign as well, and return the signed letter to John Jones at our firm address by February 1, 20XX, retaining a copy for yourself and your client.

Very truly yours,

Roger Evans, CPA  
Partner  
Evans Daniel & Company

Attachment A

Dispute Resolution Procedures

Accepted by:

\_\_\_\_\_  
Jerome Marcus, Esq.  
Marcus, Raymond & Duane LLP

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

Accepted by:

\_\_\_\_\_  
General Counsel or Authorized Designee,  
Collins Network Partners, Inc.

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



### **Dispute Resolution Procedures**

The following procedures shall be used to resolve any controversy or claim (“dispute”) as provided in our engagement letter of January 1, 20XX. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

#### **Mediation**

A dispute shall be submitted to mediation by written notice to the other party or parties. The mediator shall be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by the CPR Institute for Dispute Resolution at the request of a party. Any mediator so designated must be acceptable to all parties.

The mediation shall be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with facilitation by the mediator, to reach an amicable resolution of the dispute. The mediation shall be treated as a settlement discussion and therefore shall be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings. Each party shall bear its own costs in the mediation. The parties shall share the fees and expenses of the mediator equally.

#### **Arbitration**

If a dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute shall be settled by arbitration. The arbitration will be conducted in accordance with the procedures in this document and the Rules for Non-Administered Arbitration of the CPR Institute for Dispute Resolution (“Rules”) as in effect on the date of the engagement letter, or such other rules and procedures as the parties may designate by mutual agreement. In the event of a conflict, the provisions of this document will control.

The result of the arbitration will be binding on the parties, and judgment on the arbitration award may be entered in any court having jurisdiction.

The arbitration will be conducted before a panel of three arbitrators, two of whom are to be designated by the parties from the CPR Panels of Distinguished Neutrals using the screened selection process provided in the Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the Federal Arbitration Act and resolved by the arbitrators. No potential arbitrator shall be appointed unless he or she has agreed in writing to abide and be bound by these procedures.

The arbitration panel shall have no power to award nonmonetary or equitable relief of any sort. It shall also have no power to award (a) damages inconsistent with any applicable agreement between the parties or (b) punitive damages or any other damages not measured by the prevailing party’s actual damages; and the parties expressly waive their right to obtain such damages in arbitration or in any other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitration panel have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. In no event shall the arbitration panel have power to

award or impose damages in excess of actual fees paid to Evans Daniel & Co. in connection with this engagement. Discovery shall be permitted in connection with the arbitration only to the extent, if any, expressly authorized by the arbitration panel upon a showing of substantial need by the party seeking discovery.

All aspects of the arbitration shall be treated as confidential. The parties and the arbitration panel may disclose the existence, content, or results of the arbitration only as provided in the Rules. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests.

**Sample Engagement Letter  
Family Law: Court-Appointed Neutral Expert**

**Bradley & Gould, CPAs**

January 1, 20XX

Tanya Handelman, Esq.  
Counsel for Mr. Harry A. Klarr  
1000 Fox Street  
Englewood, CO 00000

Adam Bliss, Esq.  
Counsel for Ms. Betty Klarr  
123 Pine Street  
Colorado Springs, CO 00000

Re: *Klarr v. Klarr*, Case No. 06-0000-000 (District Court of Colorado, \_\_\_ District) (DRS)

Dear Counsel:

This letter confirms our understanding and agreement among our firm, Bradley & Gould, CPAs (“Bradley & Gould”) and Harry A. Klarr (“Husband”) and Betty Klarr (“Wife”), through their respective Counsel, as set forth in the Initial Stipulation and Order Appointing Neutral Expert, Case No. 06-0000-000 (Able, J.) (December 27, 20XX) (“Initial Order”).

UNDERSTANDING OF OUR ROLE

Our work, to be performed under the direction of Judge Able (the “Court”), is a valuation of the Husband’s and Wife’s respective interests in corporations in which they hold a majority of the outstanding equity and serve as sole Directors. It is our understanding that Husband holds such interest in three (3) commercial beverage routes, each incorporated under the laws of the State of Colorado: Klarr Services, Inc., Klarr Beverage Services, Inc., and Klarr’s Snack Fulfillment, Inc. It is our further understanding that Wife holds a similar interest in Health Management Solutions, Inc., incorporated under the laws of the State of Nevada. We will perform such other tasks as necessary to complete the engagement objectives. All professional conclusions will be those of Richard Bradley, as partner of Bradley & Gould.

PARTIES’ PRODUCTION OF DOCUMENTS AND INFORMATION

The respective parties shall provide all documents and information and make available all personnel as we request in order for us to complete our valuation. We shall report to the Court the failure of the parties to provide or make available the requested information or personnel. Any such failure will not affect our rights for fees and reimbursement of expenses.

CONFLICTS

Bradley & Gould has performed an internal search for potential client conflicts based upon the names of the parties that Counsel has provided. No client conflicts were found with respect to any of these parties.

ENGAGEMENT STAFFING AND FEES

I, Richard Bradley, will participate as Engagement Partner, maintaining overall administrative responsibility for the engagement, including billing and client relations. My work, as well as the work of professionals and assistants of my firm who participate in this engagement, will be billed at established hourly rates applied to productive hours engaged in providing service. We will also bill you for out-of-pocket expenses. Hourly rates are based upon the experience and skills of the personnel involved.

The current established hourly rates by professional level are as follows:

Partner	\$xxx
Senior Manager	\$xxx
Manager	\$xxx
Senior	\$xxx
Staff	\$xxx

Our fees and expenses are not contingent upon the final results, nor do we guarantee any result or resolution in the above referenced matter. I will meet with Counsel regularly to discuss my ongoing work and associated fees, and we will rely on Counsel to communicate these items to the respective parties.

As set forth in the Court's Initial Order, monthly invoices will be presented directly to Counsel for Husband, and are due upon presentation. As further set forth in the Court's Initial Order, Husband shall be solely responsible for paying our firm's fees in connection with this engagement. A copy of all invoices will be forwarded to Counsel for both the Husband and Wife for review. Husband agrees to pay Bradley & Gould in full for all work performed to date prior to issuance of a report, deposition testimony, and/or trial testimony, and we shall notify the Court if any fees remain unpaid prior to such dates. Husband agrees to compensate Bradley & Gould for any time and expenses (including fees and expenses of legal counsel) that may be incurred in considering or responding to discovery requests or other requests for documents or information; or in participating as a witness or otherwise in any legal, regulatory, or other proceedings, as a result of performance of these services.

Bradley & Gould herewith requests an initial retainer of \$\_\_\_\_\_. The retainer will be held against the final invoice for the engagement. Any unused retainer will be refunded.

The parties agree that any dispute or controversy that arises from or relating to this agreement that cannot be resolved by the parties shall be submitted to arbitration in Colorado, in accordance with the applicable rules, regulations, policies, and procedures of the State of Colorado. The decision of the arbitrators shall be final and binding.

USE OF REPORTS AND EXHIBITS

Any written reports or other documents which we prepare are to be used only for the purpose of this litigation and may not be published or used for any other purpose without our express, written consent.

PRIVACY

It is our understanding that the documents provided by Health Management Solutions, Inc. may contain information covered by federal or state privacy statutes. We will not disclose any nonpublic personal information obtained in connection with our practice except as required or permitted by law. Permitted disclosures include, for instance, providing information to our employees, and in limited situations, to unrelated third parties who need to know that information to assist us in providing services to you.

OTHER

Bradley & Gould understands that the work product and files from this engagement will be maintained as confidential. It is agreed that those materials and all other workpapers and other documents prepared pursuant to this engagement will not be disclosed to third parties without Counsel's consent, except as may be required by law, regulation, or judicial or administrative process. We agree to notify Counsel promptly of any of the following events: (a) a request by anyone to examine, inspect, or copy such documents or records; or (b) any attempt to serve, or the actual service of, any court order, subpoena, or summons upon us that requires the production of such documents or records. It is further understood that if we are not requested by the Court to provide expert testimony in connection with this matter, all opinions and work product which has been shared with Counsel or the parties shall be maintained as confidential and shall not be shared with any other person or entity.

TERMINATION

Bradley & Gould reserves the right to resign from this engagement at any time if conflicts arise or become known to us that, in our judgment, would impair our ability to perform objectively.

LIMITATION ON LIABILITY AND INDEMNIFICATION

As a neutral expert on behalf of the Court, neither Bradley & Gould nor I shall have any liability to Counsel, the parties, or to any other person or entity for any action taken or omitted to be taken by my firm and myself with respect of this engagement, except for matters that are finally judicially determined to be caused by Bradley & Gould's own bad faith or willful misconduct.

The parties agree to indemnify and hold Bradley & Gould, its partners, or staff harmless from any and all liabilities, costs, and expenses (including, without limitation, attorney's fees and expenses) incurred or suffered by reason of or in any way relating to this engagement, other than as judicially determined to be caused by bad faith or willful misconduct by Bradley & Gould.

The parties acknowledge their respective agreement with the terms stated herein as evidenced by their signatures below. Please have your respective clients sign the engagement letter and return the signed copy of this letter to me. I will not be able to begin work until my firm has received an engagement letter properly executed by both the parties.

Very truly yours,

BRADLEY & GOULD, CPAs

---

Richard Bradley, Partner, for the Firm

The above letter confirms my understanding of the services which Richard Bradley and Bradley & Gould will perform relating to the above-referenced matter and the fee arrangement. Any professional responsibility requiring communication of information to me as a client will be discharged by communicating such information to my designated counsel. Also, I agree to accept responsibility for payment of your fees, and to the arbitration provision, as described above.

---

Harry A. Klarr

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

The above letter confirms my understanding of the services which Richard Bradley and Bradley & Gould will perform relating to the above-referenced matter and the fee arrangement. Any professional responsibility requiring communication of information to me as a client will be discharged by communicating such information to my designated counsel. Also, I agree to the arbitration provision, as described above.

---

Betty Klarr

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

**Sample Engagement Letter  
Corporate Fidelity Claim: Investigation and Proof of Loss**

**Keene & Co., CPAs**

**PRIVILEGED AND CONFIDENTIAL  
ATTORNEY WORK PRODUCT**

January 1, 20XX

Ms. Angela Garcia  
President and Chief Executive Officer  
Ortiz Holiday Corporation  
Phoenix, AZ 00000

Re: Investigation re: Alleged Misappropriation of Travel Documents

Dear Ms. Garcia:

This letter will serve to confirm our understanding and agreement whereby Ortiz Holiday Corporation ("Ortiz Travel") has retained Keene & Co., CPAs to perform accounting services in connection with losses due to the alleged misappropriation and forgery of travel documents by your former employee, William Smith. Your attorney, Nathaniel Gray, Esq., will determine the scope of work to be performed and requirements for any appearance in court or deposition. Work product prepared by us for this engagement will be submitted directly to your attorney. Our services will include investigatory accounting services and assistance with the preparation of any proof of loss to be filed with your fidelity insurance carrier.

We will not conduct an audit as defined by the American Institute of Certified Public Accountants. In conducting our research or reaching our conclusions, we may rely on representations by you, your attorney, or your employees.

Our services will be furnished and billed on an hourly basis. Hourly rates vary depending on the individual billing rates of firm members and are subject to possible increases during the course of this engagement. Our current hourly rates are available on request. If our presence is required at court deposition proceedings, our time will be billed in four increments for each half-day session at the usual billing rate of the firm member. Our billing rates do not include any out-of-pocket expenses, which are additional charges.

Attached hereto is a statement for a retainer of \$XX,XXX against which time will be applied. This retainer is not intended to be an estimate of the total cost of the work to be performed, nor has an estimate been given. If the retainer exceeds total fees and costs incurred, we will refund the excess.

The obligation for payment of our fees is your direct responsibility. Our fee is not contingent on the results obtained as we do not warrant or predict results or the final outcome of this matter.

Statements will be rendered to you and your attorney periodically. Payment is due on presentation. We reserve the right to withdraw from this engagement if your account balance is not paid in full when due or if you change attorneys.

If your account balance is not paid in full within 60 days of completion of our primary assignment, interest will be charged at the annual rate of 10 percent on the unpaid balance until paid.

Any controversy or claim over our fees, but no other matter, will be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Judgments on the award rendered by the arbitrator may be entered in any court having jurisdiction. In this regard, it is further agreed that the place for performance of this agreement is Phoenix, Arizona. Any other dispute between the parties will be subject to the jurisdiction of the Arizona state courts in Phoenix. In any dispute brought to court, both parties agree to waive a jury trial.

You or your firm will advise us, with sufficient notice, of the work we are to provide and the requirement for our appearance in court. If information becomes known that would make our continued involvement in this engagement inappropriate, or if the attorneys or parties involved in this litigation change, we reserve the right to withdraw from this engagement.

If, after discussing this agreement with your attorney, you agree that the above accurately sets forth the terms of our engagement, please indicate so by signing below and returning this agreement.

This offer to provide services will remain open for 30 days from the date of this letter.

Very truly yours,

Alison Keene  
Partner  
Keene & Co., CPAs

The services described in this letter are in accordance with my requirements and are acceptable to me.

\_\_\_\_\_  
Angela Garcia, Authorized Representative of Ortiz  
Holiday Corporation

\_\_\_\_\_  
Date



**Sample Engagement Letter  
Arbitration Engagement**

**Christie & Doyle, CPAs**

January 1, 20XX

Alexander Weiss, Esq.  
General Counsel  
Organic Franchisors, Inc.  
1234 Main Way  
Lancaster, PA 00000

and

Allison N. O'Donnell, Esq.  
O'Donnell, Max & Max, LLC  
0000 South Broad Street  
Philadelphia, PA 00000  
*Counsel for Organic Foods of PA, Inc.*

Re: *Organic Franchisors, Inc. v. Organic Foods of PA, Inc.*, Matter No. 00000-06 in the Commercial Dispute Division of the Philadelphia Office of the American Arbitrators Organization

Dear Counsel:

The purpose of this letter is to outline our understanding of the services that Christie & Doyle, CPAs will provide as arbitrator to resolve the differences between Organic Franchisors, Inc. and Organic Foods of PA, Inc. The agreement to submit differences to arbitration is referred to and provided for in paragraph 1.4.4 of Article I of the Franchise Agreement dated January XX, 20XX ("Franchise Agreement") between Organic Franchisors, Inc. ("Franchisor") and Organic Foods of PA, Inc. ("Franchisee").

As we understand the matter, in February 20XX, Franchisor entered into a Franchise Agreement whereby Franchisee leased substantially all of the assets and business under the terms as described in Subsection 5 of the Franchise Agreement. Representatives of both Franchisor and Franchisee have explained to us that differences have arisen about sales, inventories, and net profits as well as other accounting and financial matters.

A *Schedule of Procedures to Be Used in Conducting the Arbitration* (Schedule) has been drawn up and agreed to by the parties. We understand that you have agreed that, together with the aforementioned paragraph 1.4.4 of the Franchise Agreement, the Schedule will govern the process and timing of the proceedings, and actions of the arbitrator. A copy of the Schedule is enclosed as part of this letter of engagement.

We will issue a written report addressed to both parties that will state the dollar amount to be awarded with respect to each disputed item and will include brief explanations of my decisions regarding each issue identified by the parties.

The report will be delivered simultaneously to both parties via facsimile or e-mail transmission at a specific date and time, which will have been announced to both parties at least 10 business days in advance of such date. Signed copies of the report will be sent to each party immediately after the facsimile or e-mail transmission is completed.

I will be the arbitrator in this engagement. My partner Steven Doyle will assist me when appropriate. Mr. Doyle and I are certified public accountants. I may also be assisted by our other professionals, as necessary, to effectively and efficiently complete this arbitration.

Our fees are based on the time expended on an engagement at the standard hourly rates for the individuals involved. The current hourly rates for our firm's professionals are as follows:

Partners — \$XXX  
Senior Managers and Managers — \$XXX to \$XXX  
Senior Accountants and Senior Consultants — \$XXX to \$XXX  
Staff Accountants and Consultants — \$XXX to \$XXX

We will bill travel time at one-half our standard rates. In addition to our professional fees, we are to be reimbursed at cost for any travel and out-of-pocket expenses.

The arbitration process is expected to require several months. We understand that, according to the Schedule, most of our work in this engagement will take place during the last half of the process. For that reason, you have asked that we render the bills for our services at the completion of the engagement and that we discuss arranging for earlier, partial billing if the arbitration takes longer or proceeds differently than anticipated. At the completion of the arbitration process, we will provide a summary bill allocating all costs of our services, including our fees, travel, and out-of-pocket expenses, in accordance with the related provision in paragraph 1.7.2 of the Franchise Agreement.

Under the circumstances, we are certain you recognize that it is difficult to estimate the amount of time this engagement may require. The time required depends, in part, on the extent and nature of the positions taken by the parties and the related documents that will be provided as referred to in procedures described in the Schedule. It may also be affected by the cooperation of the parties. These considerations notwithstanding, we have estimated that the total fees for this engagement should range from \$XX,XXX to \$XXX,XXX. Throughout this engagement, we will monitor the time spent and notify you if our total fees may exceed that range. Before beginning work on this engagement, we require a retainer of \$X,XXX from each of you, which will be applied to the final billings of this engagement. Any retainer in excess of actual billings will be refunded.

With the acceptance of this letter and our engagement to act as the neutral person, Franchisor and Franchisee also agree that Christie & Doyle, CPAs and I shall have no liability whatsoever to the parties for any action taken or omitted by us in this engagement, except for matters that may be judicially determined to be due to our own bad faith, willful misconduct, or gross negligence.

If the arrangements described in this letter are acceptable to you, and the services outlined are in accordance with your requirements, please have this letter signed by a duly authorized corporate representative and return the signed copy of this letter to us. We look forward to working with you in this matter. If we can provide you with any additional information, please call me at (555) 123-4567.

Very truly yours,

Kathryn Christie  
Partner  
Christie & Doyle, CPAs

The services described in this letter are in accordance with our requirements and are acceptable to us.

\_\_\_\_\_  
Organic Franchisors Inc. – Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Organic Foods of PA, Inc. – Authorized Representative

\_\_\_\_\_  
Date

**APPENDIX C****AICPA LITIGATION SERVICES SPECIAL REPORTS AND PRACTICE AIDS**

Consulting Services Special Report 03-1, *Litigation Services and Applicable Professional Standards*

Consulting Services Practice Aid 02-1, *Business Valuation in Bankruptcy*

Consulting Services Practice Aid 99-2, *Valuing Intellectual Property and Calculating Infringement Damages*

Consulting Services Practice Aid 99-1, *Alternative Dispute Resolution Services*

Consulting Services Practice Aid 98-2, *Calculation of Damages From Personal Injury, Wrongful Death, and Employment Discrimination*

Consulting Services Practice Aid 98-1, *Providing Bankruptcy and Reorganization Services*

Consulting Services Practice Aid 97-1, *Fraud Investigations in Litigation and Dispute Resolution Services*

Consulting Services Practice Aid 96-3, *Communicating in Litigation Services: Reports*

Consulting Services Practice Aid 93-4, *Providing Litigation Services*

Consulting Services Special Report 93-3, *Comparing Attest and Consulting Services: A Guide for the Practitioner*

Consulting Services Special Report 93-2, *Conflicts of Interest in Litigation Services Engagements*

## APPENDIX D

WEB SITES FOR ADDITIONAL INFORMATION ON  
ALTERNATIVE DISPUTE RESOLUTION

**www.arbitration-forum.com/** — **National Arbitration Forum.** Since 1986, an international network of former judges, senior attorneys, and law professors who share the Forum principle that legal disputes should be decided according to established legal principles.

**www.cpradr.org/** — **CPR Institute for Dispute Resolution.** Since 1979, its mission has been to spearhead innovation and promote excellence in public and private dispute resolution; and to serve as a primary multinational resource for avoidance, management, and resolution of business-related and other disputes. To fulfill its mission, CPR is engaged in an integrated agenda of research and development, education, advocacy, and dispute resolution. (Formerly known as the Center for Public Resources.)

**www.adr.org/** — **American Arbitration Association.** Current information about all forms of dispute prevention and resolution including mediation, arbitration, fact-finding, partnering, dispute review boards, and other related alternative dispute resolution processes. The Association's resources include panels, rules, administration, and education and training services that provide cost-effective and tangible value to counsel, businesses, and industry professionals and their employees, customers, and business partners.

**www.acrnet.org/** — **Association for Conflict Resolution** (resulting from a merger of the Society of Professionals in Dispute Resolution, Academy of Family Mediators, and Conflict Resolution Education Network). The Association for Conflict Resolution (ACR) is a professional organization dedicated to enhancing the practice and public understanding of conflict resolution. ACR represents and serves a diverse national and international audience that includes more than 6,000 mediators, arbitrators, facilitators, educators, and others involved in the field of conflict resolution and collaborative decision-making.

**www.promediation.com/** — **The Professional Mediation Association** advocates, facilitates, encourages, and provides coordination for the development of programs incorporating alternative dispute resolution (ADR) and mediation as the preferred means of dispute resolution. The Professional Mediation Association encourages the development of standards in training and certification in all areas of ADR while providing industry, agencies, and individuals with expedited referrals to qualified neutrals from the ranks of its professional membership.

## CONSULTING SERVICES PUBLICATIONS

### Special Reports and Practice Aids of Interest to Business Valuation and Forensic and Litigation Services Section Members

<i>Title</i>	<i>Series Number</i>	<i>Product Number</i>
<b>Special Reports</b>		
Litigation Services and Applicable Professional Standards	03-1	055297
Comparing Attest and Consulting Services: A Guide for the Practitioner	93-3	048564
Conflicts of Interest in Litigation Services Engagements	93-2	048563
<b>Practice Aids</b>		
Business Valuation in Bankruptcy	02-1	055296
Valuing Intellectual Property and Calculating Infringement Damages	99-2	055295
Alternative Dispute Resolution Services	99-1	055294
Calculation of Damages From Personal Injury, Wrongful Death, and Employment Discrimination	98-2	055293
Providing Bankruptcy and Reorganization Services	98-1	055162
Fraud Investigations in Litigation and Dispute Resolution Services, A Nonauthoritative Guide	97-1	055001
Communicating in Litigation Services: Reports, A Nonauthoritative Guide	96-3	055000
Analyzing Financial Ratios	94-4	055155
Providing Litigation Services	93-4	055145
<b>Other Consulting Practice Aids</b>		
Assisting a Financially Troubled Business	92-8	055140
Preparing Financial Models	92-6	055137
<b>Other Publications</b>		
A CPA's Guide to Valuing a Closely Held Business		056601
<b>Software (running on Word)</b>		
Small Business Consulting Tool: Diagnostic Review Checklist for Maximizing Profits		055010
Consulting Engagement Letters and Checklists		055011

To obtain any of these publications, call the AICPA Order Department at 1-888-777-7077, order via fax at 800-376-5066, or on-line at <http://www.cpa2biz.com/store>.

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