



Order Filed on May 13, 2024  
by Clerk  
U.S. Bankruptcy Court  
District of New Jersey

Caption in Compliance with D.N.J. LBR 9004-1(b)

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

In re:

THRASIO HOLDINGS, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-11840 (CMG)

(Jointly Administered)

**ORDER AUTHORIZING THE RETENTION AND  
EMPLOYMENT OF KATTEN MUCHIN ROSENMAN LLP AS COUNSEL TO  
THRASIO HOLDINGS, INC. ON BEHALF OF AND AT THE SOLE DIRECTION  
OF THE DISINTERESTED DIRECTORS EFFECTIVE AS OF THE PETITION DATE**

The relief set forth on the following pages, numbered three (3) through ten (10) is

**ORDERED.**

**DATED: May 13, 2024**

Honorable Christine M. Gravelle  
United States Bankruptcy Judge

<sup>1</sup> The last four digits of Debtor Thrasio Holdings, Inc.'s tax identification number are 8327. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' claims and noticing agent at <https://www.kccllc.net/Thrasio>. The Debtors' service address for purposes of these chapter 11 cases is 85 West Street, 3rd Floor, Walpole, MA 02081.



2411840240513000000000003

**Caption in Compliance with D.N.J. LBR 9004-1(b)**

**KIRKLAND & ELLIS LLP**

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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

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Debtors: THRASIO HOLDINGS, INC., *et al.*

Case No. 24-11840 (CMG)

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Upon the application (the “Application”)<sup>2</sup> of Debtor Thrasio Holdings, Inc. (“Thrasio” and with the above-captioned debtors and debtors in possession, collectively, the “Debtors”) for the entry of an order (this “Order”) (a) authorizing Thrasio to retain and employ Katten Muchin Rosenman LLP (“Katten”) as counsel to Thrasio to render independent legal services on behalf of and at the sole direction of the Disinterested Directors, effective as of the Petition Date, and (b) granting related relief, pursuant to sections 327(e), 328(a), and 1107(b) of title 11 of the United States Code (the “Bankruptcy Code”), rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 2014-1 and 2016-1 of the Local Rules of the United States Bankruptcy Court for the District of New Jersey (the “Local Rules”); and the Court having reviewed the Application, the Declaration of Steven J. Reisman, a partner of Katten Muchin Rosenman LLP (the “Reisman Declaration”), and the declaration of Anthony R. Horton, Disinterested Director of Thrasio (the “Horton Declaration”); and the Court having found that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that the Application is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found based on the representations made in the Application and in the Reisman Declaration that Katten does not hold or represent an interest adverse to the Debtors’ estates with respect to the matters for which Katten is retained by

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Application.

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Thrasio on behalf of and at the sole direction of the Disinterested Directors; and the Court having found that sufficient cause exists for the relief set forth herein; and the Court having found that the Debtors provided adequate and appropriate notice of the Application under the circumstances and that no other or further notice is required; and the Court having reviewed the Application; and the Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and any objections to the relief requested herein having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Application is **GRANTED** to the extent set forth herein.
2. In accordance with sections 327(e), 328(a), and 1107(b) of the Bankruptcy Code, Thrasio is authorized to retain and employ Katten as counsel to render independent legal services on behalf of and at the sole direction of the Disinterested Directors effective as of the Petition Date in accordance with the terms and conditions set forth in the Application and in the Engagement Letter attached hereto as **Exhibit 1**, subject to the modification set forth herein.
3. Retention pursuant to section 327(e) of the Bankruptcy Code is appropriate given the specific scope of the retention and Katten's prepetition representation.
4. Katten is authorized to provide the Disinterested Directors with the professional services as described in the Application and the Engagement Letter.
5. To the extent the Debtors wish to expand the scope of Katten's services beyond those services set forth in the Engagement Letter or this Order, the Debtors shall be required to

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seek further approval from this Court. The Debtors shall file a notice of any proposed additional service (the “Proposed Additional Services”) and any underlying engagement agreement with the Court and serve such notice on the U.S. Trustee, the Committee, and any party requesting notice under Bankruptcy Rule 2002. If no such party files an objection within 21 days of the Debtors filing such notice, the Proposed Additional Services and any underlying agreement may be approved by the Court by further order, without further notice or hearing.

6. Notwithstanding anything in the Application, the Reisman Declaration, the Horton Declaration or the Engagement Letter, Katten shall apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with the Debtors’ Chapter 11 Cases in compliance with sections 330 and 331 of the Bankruptcy Code and applicable provisions of the Bankruptcy Rules, Local Rules, and any other applicable procedures and orders of the Court. Katten also intends to make a reasonable effort to comply with the U.S. Trustee’s requests for information and additional disclosures as set forth in the Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013 (the “UST Guidelines”), both in connection with the Application and the interim and final fee applications to be filed by Katten in these Chapter 11 Cases.

7. Notwithstanding anything to the contrary in the Application, the Engagement Letter, the Reisman Declaration, or the Horton Declaration to the contrary, Katten shall apply any remaining amounts of its prepetition retainer as a credit towards post-petition fees and expenses,

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after such post-petition fees and expenses are approved pursuant to an order of the Court awarding fees and expenses to Katten. Notwithstanding anything to the contrary in the Application, the Engagement Letter, the Reisman Declaration, or the Horton Declaration to the contrary, the retainer balance shall not be replenished. At the conclusion of Katten's engagement by Thrasio, on behalf of and at the sole direction of the Disinterested Directors, if the amount of any advance payment retainer held by Katten is in excess of the amount of Katten's outstanding and estimated fees, expenses, and costs, Katten will pay to Thrasio the amount by which any advance payment retainer exceeds such fees, expenses, and costs, in each case in accordance with the Engagement Letter.

8. Notwithstanding anything to the contrary in the Application, the Engagement Letter, the Reisman Declaration, or the Horton Declaration, the reimbursement provisions allowing the reimbursement of fees and expenses incurred in connection with participating in, preparing for, or responding to any action, claim, suit, or proceeding brought by or against any party that relates to the legal services provided under the Engagement Letter are not approved.

9. Notwithstanding anything in the Application or the Engagement Letter to the contrary, Katten shall (i) to the extent that Katten uses the services of independent contractors, subcontractors, or employees of foreign or domestic affiliates or subsidiaries (collectively, the "Contractors") in these cases, Katten shall pass-through the cost of such Contractors to the Debtors at the same rate that Katten pays the Contractors, (ii) seek reimbursement for actual costs only, (iii) ensure that the Contractors are subject to the same conflict checks as required for Katten,

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(iv) file with the Court such disclosures required by Bankruptcy Rule 2014, and (v) attach any such Contractor invoices to its monthly fee statements, interim fee applications and/or final fee applications filed in these cases.

10. In order to avoid any duplication of effort and provide services to Thrasio in the most efficient and cost-effective manner, Katten shall coordinate with Kirkland, Cole Schotz, and any additional firms the Debtors retain regarding their respective responsibilities in these Chapter 11 Cases. As such, Katten shall use its best efforts to avoid any duplication of services provided by any of the other professionals retained in these Chapter 11 Cases.

11. Katten shall provide ten (10) business days' notice to the Debtors, the U.S. Trustee, and the Unsecured Creditors' Committee before any increases in the rates set forth in the Application, the Reisman Declaration, the Horton Declaration, or the Engagement Letter are implemented and shall file such notice with the Court. The U.S. Trustee retains all rights to object to any rate increase on all grounds, including the reasonableness standard set forth in section 330 of the Bankruptcy Code, and the Court retains the right to review any rate increase pursuant to section 330 of the Bankruptcy Code.

12. Katten shall: (i) only bill 50 percent for non-working travel; (ii) not seek the reimbursement of any fees or costs, including attorney fees and costs, arising from the defense of any objections to any of Katten's fee applications in these cases; (iii) use the billing and expense categories set forth in the UST Guidelines (Exhibit D-1 "Summary of Compensation Requested

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by Project Category”); and (iv) provide any and all monthly fee statements, interim fee applications, and final fee applications in “LEDES” format to the U.S. Trustee.

13. Notwithstanding anything in the Application, the Reisman Declaration, the Horton Declaration, or the Engagement Letter to the contrary, Katten shall bill in 1/10-hour increments and shall keep detailed time records for submission with any fee requests.

14. Notwithstanding anything in the Application, the Reisman Declaration, the Horton Declaration, or the Engagement Letter to the contrary, including section IX of the Terms of the Engagement titled “Conclusion of Representation,” termination or withdrawal from representation will only be allowed upon entry of an Order by this Court.

15. In the event Katten seeks to use any of its affiliates to perform services, the Debtors shall seek the separate retention of any such affiliate.

16. No agreement or understanding exists between Katten and any other person, other than as permitted by Bankruptcy Code section 504, to share compensation received for services rendered in connection with these cases, nor shall Katten share or agree to share compensation received for services rendered in connection with these cases with any other person other than as permitted by section 504 of the Bankruptcy Code.

17. Notwithstanding anything to the contrary in the Application, Reisman Declaration, the Horton Declaration, or the Engagement Letter to the contrary, section VIII of the Terms of Engagement, titled “Arbitration,” shall not be applicable.



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18. The Debtors and Katten are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

19. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

20. Notice of the Application as provided therein shall be deemed good and sufficient notice of such Application and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

21. To the extent the Application, the Reisman Declaration, the Horton Declaration, or the Engagement Letter is inconsistent with this Order, the terms of this Order shall govern.

22. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

23. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

24. If the Court denies the redaction of certain personally identifiable information included in the Application pursuant to the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) File a Consolidated List of the Debtors' 30 Largest Unsecured Creditors, (B) File a Consolidated List of Creditors in Lieu of Submitting a Separate Mailing Matrix for Each Debtor, and (C) Redact Certain Personally Identifiable Information, (II) Approving the Form and Manner of Notifying Creditors of the Commencement of the Chapter 11 Cases and Other Information, and (III) Waiving the Requirement to File a List of Equity Security*

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*Holders* [Docket No. 14], or such motion, or any such portion of such motion relating to personally identifiable information, is withdrawn or the relief requested is moot, Centerview will, within fourteen (14) days of such denial, withdrawal or other resolution, and through a supplemental declaration, disclose the identities of all parties in interest listed as confidential that were redacted in the Application.

**Exhibit 1**

**Engagement Letter**

# Katten

50 Rockefeller Plaza  
New York, NY 10020-1605  
212.940.8800 tel  
www.katten.com

STEVEN J. REISMAN  
sreisman@katten.com  
212.940.8700 direct

Dated as of December 12, 2023

**VIA EMAIL: [tony.horton48@yahoo.com](mailto:tony.horton48@yahoo.com); [sms@bridgeparkadvisors.com](mailto:sms@bridgeparkadvisors.com);**

Anthony R. Horton and Stefan Selig  
c/o Disinterested Directors of the Board of Directors  
Thrasio Holdings, Inc.  
85 West Street  
Walpole, Massachusetts, 02081

**Re: Engagement Agreement on Behalf of the Disinterested Directors**

Dear Messrs. Horton and Selig:

We are pleased to have the opportunity to represent you, Stefan Selig and Anthony R. Horton (the “Client”), in your capacity as disinterested directors of Thrasio Holdings, Inc. (the “Company”), to provide advice and representation in connection with the Company and such other matters as the Client may request and Katten Muchin Rosenman LLP (the “Firm”) may agree to handle from time to time (collectively, the “Matter”). This letter and the enclosed Terms of Engagement, which contains a provision on conflicts of interest, describe the basis on which Katten Muchin Rosenman LLP (the “Firm”) provides legal services.

The Company has agreed to be responsible to the Firm for all reasonable legal fees and expenses incurred by the Firm in connection with this Matter as described in this engagement agreement, including the retainer described below. This undertaking by the Company is made with the express understanding that the sole professional obligation of myself and the Firm is to the Client. The Firm is not required to disclose any legal strategy, theory, plan of action, or the like to the Company, and the payment of legal fees by the Company to the Firm in no way depends upon such disclosure. In essence, no professional relationship will arise between the Company and the Firm as a result of the rendering of legal services by us to the Client or by the payment of legal fees, expenses, and the retainer by the Company. In addition, the Client shall control any attorney client work product or privilege belonging to the Company in connection with the Firm’s work or privileged communications on the Matter.

On a monthly basis, the Firm will send a detailed invoice to the Client providing a fulsome description for all timekeeper entries and a summary of work performed during the billing period. Following approval by the Client, the Firm will send a summary bill for such billing period to the Company. The bill provided to the Company will include an overview of work performed during

# Katten

Anthony R. Horton and Stefan Selig  
Dated as of December 12, 2023  
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the billing period but, in order to maintain confidentiality and privilege, will not include individual timekeeper entries with detailed descriptions.

Nevertheless, certain confidential communications between the Firm and counsel for the Company may, with your consent, occur. These confidential communications will be subject to any and all applicable privileges, to the extent provided under law and agreed upon by the Firm and counsel for the Company. Once again, however, the payment of legal fees and expenses under this agreement is neither conditioned upon nor dependent upon the Firm's cooperation with counsel for the Company or any other party.

I will be the lawyer at the firm with the primary responsibility for the Matter and understand that it is your expectation, as well as my own intention, that I be involved in managing all aspects of this engagement. I will be assisted by Cindi M. Giglio, Lucy F. Kweskin and such other partners, associates, and other members of the Firm as appropriate. As indicated in the Terms of Engagement, our fees are based upon our hourly rates unless otherwise noted herein.

Please review the Terms of Engagement (which immediately follow the signature page), with the assistance of independent counsel if you wish, and let me know if you have any questions about them. If all the terms are satisfactory, please indicate your consent by signing this letter and returning it to me. However, your continuing instructions in this matter will amount to your acceptance of the terms of this letter, including the Terms of Engagement (collectively, the "Terms"). All parties to this agreement agree that a digital signature shall be effective to prove each party's agreement to the Terms. Furthermore, the parties agree that the Terms may be proven through an electronic copy in digital format, and that no "original" hard-copy document need be retained to prove the Terms.

To retain the services of the Firm for this Matter, the Company, on behalf of the Client, agrees to provide to the Firm an "advance payment retainer" in the amount of \$250,000. In addition, the Company agrees to provide one or more additional advance payment retainers upon request by the Firm so that the amount of any advance payment retainers remains at or above the Firm's estimated fees and expenses. The Firm may apply the advance payment retainers to any outstanding fees as services are rendered and to expenses as they are incurred. The Company understands and acknowledges that any advance payment retainers are earned by the Firm upon receipt, any advance payment retainers become the property of the Firm upon receipt, the Company no longer has a property interest in any advance payment retainers upon the Firm's receipt, any advance payment retainers will be placed in the Firm's general account and will not be held in a client trust account, and the Company will not earn any interest on any advance payment retainers; provided, however, that solely to the extent required under applicable law, at the conclusion of the Engagement, if the amount of any advance payment retainers held by the Firm is in excess of the amount of the Firm's outstanding and estimated fees, expenses, and costs, the Firm will pay to the Company the amount by which any advance payment retainers exceed such fees, expenses, and

# Katten

Anthony R. Horton and Stefan Selig  
Dated as of December 12, 2023  
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costs. The Company further understands and acknowledges that the use of advance payment retainers is an integral condition of the Firm's engagement, and is necessary to ensure that: Client continues to have access to the Firm's services; the Firm is compensated for its representation of Client; the Firm is not a pre-petition creditor of the Company in the event of a bankruptcy case; and that in light of the foregoing, the provision of the advance payment retainers is in Client's and the Company's best interests. The fact that the Company, on behalf of the Client, has provided the Firm with an advance payment retainer does not affect Client's right to terminate the client-lawyer relationship.

You agree that the Firm in the future may represent any existing or future client in any matter (including transactions and counseling, as well as litigation or other dispute resolutions) that is directly adverse to you, provided, that (1) during the course of the Matter, the Firm will not represent another client adverse to you in a matter that is substantially related to this Matter, and (2) the Firm will continue to maintain the confidentiality of the confidential information you provide to us in the course of the Firm's engagement by you, and will not use such information for any purpose except for the benefit of, and on behalf of, you without your written consent. The waivers provided for in this paragraph include, without limitation, representing a debtor, creditor or other client in restructurings, recapitalizations, reorganizations or liquidations in- and out-of-court, including, without limitation, in a judicial proceeding under the Bankruptcy Code or similar laws, including in any matter that is adverse to you during the course of the Matter. You also confirm that your agreement to this prospective waiver is voluntary and that you intend for it to be effective and enforceable and for the Firm to rely upon it.

A schedule of the Firm's standard hourly rates is attached as Exhibit A. The Firm's disbursements that are billed on a per-unit basis are attached as Exhibit B. The Firm's wiring instructions are attached as Exhibit C, and the Firm's W-9 Taxpayer Certification is attached as Exhibit D.

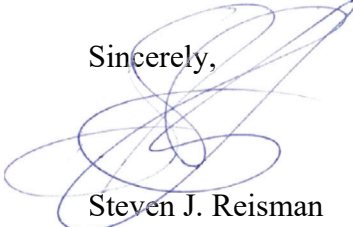
Thank you for allowing us the privilege of this representation. We value and appreciate the trust and confidence you have placed in us and we assure you we will do our best to see that your expectations are satisfied.

# Katten

Anthony R. Horton and Stefan Selig  
Dated as of December 12, 2023  
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My best.

Sincerely,



Steven J. Reisman

w/attachments

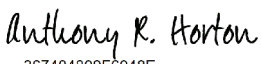
cc: Anup Sathy, P.C. (w/attachments, via email: [anup.sathy@kirkland.com](mailto:anup.sathy@kirkland.com))  
Matthew Fagen (w/attachments, via email: [matthew.fagen@kirkland.com](mailto:matthew.fagen@kirkland.com))  
Francis Petrie (w/attachments, via email: [francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com))  
(Kirkland & Ellis LLP)  
Cindi M. Giglio, Esq. (w/attachments, via email: [cgiglio@katten.com](mailto:cgiglio@katten.com))  
Lucy F. Kweskin, Esq. (w/attachments, via email: [lucy.kweskin@katten.com](mailto:lucy.kweskin@katten.com))  
(Katten Muchin Rosenman LLP)

# Katten

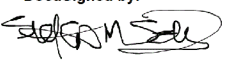
Anthony R. Horton and Stefan Selig  
Dated as of December 12, 2023  
Page 5

This letter and the Terms of Engagement are agreed to:

**ANTHONY R. HORTON,  
DISINTERESTED DIRECTOR OF THRASIO HOLDINGS, INC.**

DocuSigned by:  
By:   
367404809F6048E...  
Name: Anthony R. Horton, solely in his capacity as Disinterested Director of Thrasio Holdings, Inc.  
Title: Disinterested Director  
Dated as of December 12, 2023

**STEFAN SELIG,  
DISINTERESTED DIRECTOR OF THRASIO HOLDINGS, INC.**

DocuSigned by:  
By:   
5965B12CA45C4DB...  
Name: Stefan Selig, solely in his capacity as Disinterested Director of Thrasio Holdings, Inc.  
Title: Disinterested Director  
Dated as of December 12, 2023

Acknowledged and agreed to with respect to payment of fees, expenses, and the retainer on behalf of Client:

**THRASIO HOLDINGS, INC.**

By: \_\_\_\_\_  
Name: Michael Fahey, Esq.  
Title: General Counsel  
Dated as of December 12, 2023



# Katten

Anthony R. Horton and Stefan Selig  
Dated as of December 12, 2023  
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This letter and the Terms of Engagement are agreed to:

**ANTHONY R. HORTON,**  
**DISINTERESTED DIRECTOR OF THRASIO HOLDINGS, INC.**

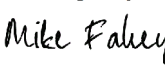
By: \_\_\_\_\_  
Name: Anthony R. Horton, solely in his capacity as Disinterested Director of Thrasio Holdings, Inc.  
Title: Disinterested Director  
Dated as of December 12, 2023

**STEFAN SELIG,**  
**DISINTERESTED DIRECTOR OF THRASIO HOLDINGS, INC.**

By: \_\_\_\_\_  
Name: Stefan Selig, solely in his capacity as Disinterested Director of Thrasio Holdings, Inc.  
Title: Disinterested Director  
Dated as of December 12, 2023

Acknowledged and agreed to with respect to payment of fees, expenses, and the retainer on behalf of Client:

**THRASIO HOLDINGS, INC.**

DocuSigned by:  
  
By: \_\_\_\_\_  
Name: Michael Fahey, Esq.  
Title: General Counsel  
Dated as of December 12, 2023

**KATTEN MUCHIN ROSENMAN LLP**  
**TERMS OF ENGAGEMENT**

The information below describes the terms that apply to the legal services provided for you by Katten Muchin Rosenman LLP (the “Firm”). We encourage you to discuss any of these Terms with us at any time. If modifications to the Terms are needed, you should discuss that with us so that agreement on changes can be reached and reduced to writing. All references to “you” or “your” means only the client or clients identified in our engagement letter. **Individuals or entities that are related to or affiliated with you, such as partners, officers, directors, stockholders, parent companies, related companies, or family members, are not clients, unless we otherwise agree in writing.**

**I. Scope of Representation.** The scope of the work we will do for you is limited to the description stated in our engagement letter. Any changes or additions to the scope of our work, which we would be pleased to consider, must be agreed to and memorialized by letter or email. Unless that description states otherwise, **our engagement does not include responsibility for:** (1) review of your insurance policies to determine the possibility of coverage for our fees and costs or for the claim asserted against you, (2) notification of your insurance carriers about a matter, (3) advice to you about your disclosure obligations concerning a matter under the federal securities laws or any other applicable law, or (4) advice to you about tax issues that relate to a matter. If we agree to represent you in additional matters, we will do so in writing by letter or email, and the Terms of our engagement will remain the same for these additional matters unless changed by agreement in writing.

Additionally, if in response to your request or by requirement of lawful process we: testify; gather and/or produce documents; respond to document hold or production requests; or respond to any other requests in connection with possible, threatened or actual proceedings commenced by third parties that relate to our representation of you, you agree to pay us our reasonable fees and costs incurred.

**II. Staffing.** Steven J. Reisman will have the primary responsibility for our relationship. We assign additional lawyers and other personnel when needed based upon the type of work and the appropriate experience level required.

**III. Client Responsibilities.** You agree to provide us with all information that we believe is necessary or appropriate to fulfill our professional responsibilities in this matter and to cooperate with us in matters such as fact investigation, preparation of pleadings, discovery responses, settlement conferences, etc. You will designate one or more persons to give us instructions and authority to receive our requests and inquiries. You further agree that without our express written consent, you will not use our name or the fact of your engagement of us in any form of advertising or solicitation of business.

**IV. Financial Arrangements.**

**A. Fees and Expenses.** Our fees are based primarily upon the hourly rates of our lawyers and other personnel in effect when the services are performed. These rates change periodically based upon economic factors and the experience level of our personnel. We

are affiliated with Katten Muchin Rosenman UK LLP of London, England, and if we obtain advice or services on your behalf from that firm, we will include their time and expenses on our bill.

Expenses include items such as consultants, experts, filing fees, court reporting fees, travel costs, overnight or other special mail services, messenger services, photocopies, long distance telephone, outgoing faxes, research service charges (e.g., LEXIS), secretarial and other staff overtime charges (when required to meet the needs of the matter), and other special services such as document imaging. Certain of these charges are adjusted to include administrative and overhead expenses incurred by the Firm to provide the billed service. With respect to costs incurred and payable to third parties, such as court reporters or experts, it is our usual policy to forward those bills to you for payment directly to the third party, and you agree to pay those fees directly to the provider. As an accommodation to you, however, we may advance those costs on your behalf and include them in our monthly bills. Some large disbursements may be forwarded to you for direct payment. Some charges may not be in the system at the time of monthly billing and will appear on a later bill.

B. Retainer. The amount of any retainer required in this engagement is set forth in the engagement letter, which is not an estimate of the total costs of the representation, nor is it a maximum fee. This retainer may be used to pay our fees and expenses when they come due to the extent not timely paid. We may pay our monthly invoices using the retainer when earned, unless you already have paid the invoice or dispute the amount of our invoice before that time. You agree that you will maintain the retainer balance at the amount agreed in the engagement letter. Accordingly, while we will pay our invoices from the retainer as set forth above, you agree to maintain the agreed balance by either paying each invoice within 20 days of mailing or by replenishing the retainer in a like amount. In the event our fees and expenses exceed the retainer deposited with us, we will bill you for the excess. We may also request, and you agree to provide, additional fee advances from time to time based on our estimates of future work to be undertaken. If you fail to maintain the balance of the retainer when requested or to pay promptly any additional fees requested, we reserve the right to cease performing further work and withdraw from the representation.

C. Billing and Payment. We generally forward our statements monthly; however, we may request payment more frequently, such as on a weekly or bi-weekly basis. The statements will include a brief description of the work performed, the date the work was performed, the time required to do the work, and the expenses incurred. Payment is due within 20 days of mailing of our invoice. We reserve the right to terminate our representation of clients who do not pay promptly. We do not and cannot guarantee the outcome of any matter, and payment of our fees and disbursements is not conditioned on any particular outcome.

V. Electronic Communication. The use of email can be an efficient means of communication, and we use it often in communicating with clients. Some clients also use instant messaging as a means of communication. However, these electronic communications can be delayed or blocked (for example, by anti-spam software) or otherwise not transmitted. You must

not assume that an email or instant message sent to us was actually opened and read by us unless you receive a non-automated reply message indicating that we have read your message.

**VI. Responses to Auditors' Inquiries.** We are frequently asked to provide information to auditing firms regarding client legal matters and we respond to those inquiries with the same level of care and professionalism used to handle the client's other legal work. We will accordingly charge for those services at the same rates. When you make a written request that we provide information to an auditing firm, we will deem your request to be your consent for us to disclose the requested information on your behalf. Additionally, when an auditing firm makes a written request for information on your behalf, that request will be deemed to be your consent for us to disclose that information to the auditing firm.

**VII. Conflicts of Interest Issues.** As you know, we are a large general services law firm with many clients and with offices located in Charlotte, North Carolina; Chicago, Illinois; Dallas, Texas; Los Angeles, California (Century City and Downtown); New York, New York; Orange County, California; Washington D.C.; and Shanghai, China, and we have an affiliate in London, England. It is possible that, during the course of our engagement, an existing or future client may seek to hire the Firm in connection with an actual or potential transaction or pending or potential litigation or other dispute resolution proceeding in which such other client's interests are or potentially may become adverse to your interests.

Because the duty of loyalty would otherwise prevent the Firm from being adverse to a current client, rules of professional conduct prevent the Firm from accepting such engagements during the Firm's representation of you absent informed consent by you and the waiver of the duty of loyalty. Notwithstanding any affirmative consent and waiver, the Firm will not undertake any such representation unless we first reasonably determine that we will be able to provide competent and diligent representation to both of the affected clients. We also will continue to maintain the confidentiality of the confidential information you provide to us in the course of the Firm's engagement by you, and will not use such information for any purpose except for the benefit of, and on behalf of, you without your written consent.

Potential adverse consequences may result from the Firm's representing parties that are adverse to you. These may include a perception that the Firm's loyalty and independence of judgment with respect to you are impaired. Also, the Firm's representation of parties adverse to you may come at a time when it would harm your interests to terminate the services of the Firm, or after expenditures of fees and costs to the Firm that might need to be replicated by new counsel. The Firm encourages you to have this conflicts waiver reviewed by independent counsel acting on your behalf before agreeing to these Terms of Engagement.

Further, in the course of our representation of you, it may be necessary for our lawyers to analyze or address their professional duties or responsibilities or those of the Firm, and to consult with the Firm's General Counsel, Deputy General Counsel, Conflicts Counsel, or other lawyers in doing so. To the extent we are addressing our duties, obligations or responsibilities to you in those consultations, it is possible that a conflict of interest might be deemed to exist as between our Firm and you. As a condition of this engagement, you waive any conflict of interest that might be deemed to arise out of any such consultations. You further agree that these consultations are protected from disclosure by the Firm's attorney-client privilege. Nothing in the foregoing shall

diminish or otherwise affect our obligation to keep you informed of material developments in your representation, including any conclusions arising out of such consultations to the extent that they affect your interests.

**VIII. Arbitration of Disputes.** You acknowledge having reviewed a copy of Part 137 of the Rules of the Chief Administrator of the Courts of New York (available at <http://www.courts.state.ny.us/admin/feedispute/137.pdf> or upon request from us) which provides a mechanism for resolution of fee disputes between us using a particular arbitration procedure and forum; you have a right to select this mechanism for the resolution of fee disputes between us under this letter agreement unless you waive that right. You hereby waive that right, and you and we instead agree upon the following: If any dispute, controversy or claim directly or indirectly relating to or arising out of this agreement, work we perform for you or the fees charged by us or your failure to pay such fees you agree that such dispute shall be submitted to binding arbitration with JAMS in New York, New York under the JAMS Comprehensive Arbitration Rules and Procedures. The arbitrator shall have no authority to award punitive damages or to treble or otherwise multiply actual damages. The award in the arbitration shall be final and binding and judgment thereon may be entered and enforced in any court of competent jurisdiction. The costs and expenses (including reasonable attorney's fees of the prevailing party) shall be borne and paid by the party that the arbitrator, or arbitrators, determine is the non-prevailing party. You agree and consent to personal jurisdiction, service of process and venue in any federal or state court within the State of New York in connection with any action brought to enforce an award in arbitration. You further agree that service of process may be made upon you by Katten Muchin Rosenman LLP by causing process to be delivered to you at the above address (or such other address of which you hereafter shall advise us in writing) by registered or certified mail, return receipt requested.

**IX. Conclusion of Representation.** Our representation of you will terminate when we send you our final statement for services rendered in this matter. We may also terminate our representation for any reason consistent with rules of professional responsibility, including conflicts of interest or your failure to pay our fees and expenses. Our representation may also be terminated upon your request. Following termination, any nonpublic information you have supplied to us which is retained by us will be kept confidential in accordance with applicable rules of professional responsibility. Once our representation is concluded, we will not be obligated to take any steps such as keeping track of deadlines, filing papers, pursuing appeals, or monitoring or advising you about changes in the law or circumstances that might bear upon the concluded matter.

**X. Disposition of Client Files.** Upon conclusion of your representation, we may return to you your original papers, documents and/or other property that you provided to the Firm during our engagement. You agree to accept the return of such documents and/or property. If you so request, we will also provide to you, at your expense, copies or originals of your complete file. We reserve the right to make, at our expense, copies of all documents generated or received by us in the course of our representation of you. The Firm will not provide copies or originals of the Firm Administrative or Matter Administration files pertaining to the matter, which will be retained by the Firm. All such documents retained by the Firm, including client files (including any original documents and/or property that we attempted unsuccessfully to return to you) and Firm Administrative or Matter Administration files, will be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of

unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any documents or other materials retained by us within a reasonable time, but not less than seven (7) years after the matter is closed. We will not destroy, discard or otherwise dispose of any such documents without first providing you with thirty (30) days' prior written notice.

**EXHIBIT A****RATES**

<b><u>PROFESSIONALS</u></b>	<b><u>STANDARD RANGE</u></b>
Partner	\$1,050 - \$2,170
Of Counsel	\$1,015 - \$1,750
Counsel and Special Staff	\$555 - \$1,475
Associate	\$650 - \$1,070
Paralegal	\$210 - \$785

**EXHIBIT B****PER UNIT EXPENSES**

<b>Description</b>	<b>Cost per page</b>
Fax	\$1.60
Photocopy Costs	\$ .10
Photocopy – Wide Format	\$1.00
Color Printing / Copies	\$ .25