

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 12-12900 (SCC)

Jointly Administered

**ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF
CURTIS, MALLET-PREVOST, COLT & MOSLE LLP AS CONFLICTS COUNSEL
FOR THE DEBTORS *NUNC PRO TUNC* TO THE PETITION DATE**

Upon the application (the “**Application**”)² of Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”), pursuant to section 327(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a), for authorization to employ and retain Curtis, Mallet-Prevost, Colt & Mosle LLP (“**Curtis**”) as conflicts counsel for the Debtors, pursuant to the terms set forth in the Application; and upon the Declaration of Steven J. Reisman, a member of Curtis, filed in support of the Application, annexed to the Application as **Exhibit B** (the “**Reisman Declaration**”); and the Court being satisfied, based on the representations made in the Application and the Reisman Declaration, that Curtis and its professionals are “disinterested” as such term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and, as required by section 327(a) and referenced by section 328(c) of the Bankruptcy Code, neither hold nor represent any interest adverse to the Debtors and their estates; and upon consideration of the Declaration of Mark N. Schroeder, Patriot Coal Corporation’s

¹ The Debtors are the entities listed on Schedule 1 attached to the Motion. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

² Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Application.

Senior Vice President and Chief Financial Officer, filed in support of the Debtors' first-day pleadings on July 9, 2012 [ECF No. 4]; and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. § 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.) as amended by Standing Order M-431, dated February 1, 2012 (Preska, C.J.); and consideration of the Application and the requested relief being a core proceeding that the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Application having been provided and it appearing that no other or further notice need be provided; and the relief requested in the Application being in the best interests of the Debtors and their estates and creditors; 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 upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Application is approved, to the extent provided herein, *nunc pro tunc* to the Petition Date; and it is further

ORDERED that the Debtors are hereby authorized pursuant to section 327(a) of the Bankruptcy Code to employ and retain Curtis as their conflicts counsel in the Debtors' chapter 11 cases all as contemplated by the Application and on the terms provided in the Application and the Reisman Declaration; and it is further

ORDERED that Curtis is authorized to render the following professional services in connection with matters where Davis Polk has an actual or potential conflict of interest:

- (a) prepare and file on behalf of the Debtors, as debtors in possession, all necessary or appropriate motions, applications, answers, orders, reports and other papers in connection with the administration of the Debtors' estates;
- (b) counsel the Debtors with regard to their rights and obligations as debtors in possession, and their powers and duties in the continued management and operations of their businesses and properties;
- (c) provide advice, representation and preparation of necessary documentation and pleadings and take all necessary or appropriate actions in connection with debt restructuring, statutory bankruptcy issues, postpetition financing, securities laws, real estate, employee benefits, environmental, business and commercial litigation, corporate and tax matters and, as applicable, asset dispositions;
- (d) take all necessary or appropriate actions to protect and preserve the Debtors' estates, including the prosecution of actions on the Debtors' behalf, the defense of any actions commenced against the Debtors, the negotiation of disputes in which the Debtors are involved, and the preparation of objections to claims filed against the Debtors' estates;
- (e) take all necessary or appropriate actions in connection with any chapter 11 plan, all related disclosure statements and all related documents, and such further actions as may be required in connection with the administration of the Debtors' estates; and
- (f) act as conflicts counsel for the Debtors and perform all other necessary or appropriate legal services in connection with these chapter 11 cases;

and it is further

ORDERED that Curtis shall provide timely disclosures identifying any matters where Davis Polk or the Debtors' other counsel determines that an actual or potential conflict of interest exists, and that such matters should appropriately be handled by Curtis. The timeliness of a disclosure pursuant to the foregoing will be assessed based on the facts and circumstances of each particular matter, including whether disclosure would reveal privileged information or hinder or compromise Curtis' ability to discharge its duties and perform its

responsibilities with respect to representing the Debtors in these chapter 11 cases; and it is further

ORDERED that should the Debtors prior to confirmation of a plan of reorganization seek to expand the role of Curtis beyond conflicts matters (for example matters where the Debtors, Davis Polk, or other counsel to the Debtors may determine that the use of Curtis is more cost effective to the Debtors' estates or where the Debtors, Davis Polk or other counsel to the Debtors otherwise specifically ask Curtis to act), Curtis shall file with this Court a notice of expanded role, including a description of such expanded services, and serve such notice and description, on (a) the U.S. Trustee and (b) any official committee(s) appointed in these chapter 11 cases. All parties shall have seven (7) days from the date of such notice to object to such expanded role; and it is further

ORDERED that Curtis shall be compensated for its services and reimbursed for any reasonable and necessary expenses and disbursements in accordance with the rates (as adjusted from time to time) and disbursement policies as set forth in the Application, the Reisman Declaration and in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, the Standing Order Establishing Procedures For Monthly Compensation and Reimbursement of Expenses of Professionals [M-412] (Dec. 21, 2010), the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases [M-389] (Nov. 25, 2009), any order entered in the chapter 11 cases establishing procedures for interim monthly compensation and reimbursement of expenses of professionals, and the U.S. Trustee Guidelines (collectively, the "**Fee Guidelines**") and any applicable orders of this Court; and it is further

ORDERED that Curtis shall apply any amounts of its prepetition retainer remaining, after applying such retainer to any remaining, unpaid prepetition amounts, as a credit toward postpetition fees and expenses, after such postpetition fees and expenses are approved pursuant to the first order of the Court awarding fees and expenses to Curtis; and it is further

ORDERED that Curtis shall file fee applications for interim and final allowance of compensation and reimbursement of expenses pursuant to the Fee Guidelines; and it is further

ORDERED that prior to any increase in Curtis' rates, as set forth in the Application and the Reisman Declaration, Curtis shall file a supplemental affidavit with the Court and provide ten (10) business days' notice to the Debtors, the U.S. Trustee and any official committee appointed in these chapter 11 cases. The supplemental affidavit shall explain the basis for the requested increase in accordance with section 330(a)(3)(F) of the Bankruptcy Code and state whether the Debtors have consented to the rate increase. The U.S. Trustee retains all rights to object to any rate increase on all grounds, including, but not limited to, the reasonableness standard provided for in section 330 of the Bankruptcy Code, and the Court retains all right to review any rate increase pursuant to section 330 of the Bankruptcy Code; and it is further

ORDERED that Curtis shall use its best efforts to avoid any inappropriate duplication of services provided by any of the Debtors' other retained professionals in these chapter 11 cases; and it is further

ORDERED that the relief granted herein shall be binding upon any chapter 11 trustee appointed in any of these chapter 11 cases, or upon any chapter 7 trustee appointed in the event of a subsequent conversion of any of these chapter 11 cases to cases under chapter 7; and it is further

ORDERED that Curtis shall not withdraw as the Debtors' conflicts counsel prior to the effective date of any chapter 11 plan confirmed in these chapter 11 cases without prior approval of this Court in accordance with Local Bankruptcy Rule 2090-1(e); and it is further

ORDERED that to the extent that there may be any inconsistency between the terms of the Application or the Reisman Declaration and this Order, the terms of this Order shall govern; and it is further

ORDERED that the Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order; and it is further

ORDERED that the notice procedures set forth in the Motion are good and sufficient notice and satisfy Bankruptcy Rule 9014 by providing the counterparties with a notice and an opportunity to object and be heard at a hearing; and it is further

ORDERED that this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that this Court retains jurisdiction to hear and determine all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: August 2, 2012
New York, New York

/s/ Shelley C. Chapman
HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Engagement Letter

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP

ALMATY KUWAIT CITY
ASHGABAT LONDON
ASTANA MEXICO CITY
BUENOS AIRES MILAN
DUBAI MUSCAT
FRANKFURT PARIS
HOUSTON WASHINGTON, D.C.
ISTANBUL

ATTORNEYS AND COUNSELLORS AT LAW
101 PARK AVENUE
NEW YORK, NEW YORK 10178-0061

TELEPHONE 212-696-6000
FACSIMILE 212-697-1559
WWW.CURTIS.COM

WRITER'S DIRECT:
TEL.: 212-696-6065
E-MAIL SREISMAN@CURTIS.COM

June 28, 2012

VIA EMAIL: jbean@patriotcoal.com

Patriot Coal Corporation
12312 Olive Boulevard
St. Louis, MO 63141
Attention: Joseph W. Bean, Esq.

Re: Engagement Agreement

Dear Mr. Bean:

We are pleased that Patriot Coal Corporation, and its subsidiaries (collectively, the "Client") have requested Curtis, Mallet-Prevost, Colt & Mosle LLP (the "Firm") to act as conflicts counsel in connection with the Client's restructuring and, to the extent necessary, any related Chapter 11 case or cases concerning the Client (collectively, the "Chapter 11 Cases") in the United States Bankruptcy Court (the "Bankruptcy Court").

This engagement letter confirms the Firm's understanding concerning the Client's engagement of this Firm and the basis upon which the Firm will represent the Client in its restructuring, in the Chapter 11 Cases and such other matters as are assigned to the Firm in the future and that the Firm agrees to undertake (the "Engagement"). This engagement letter sets forth the terms of the Firm's arrangements for all matters (whether pending or prospective), including staffing, fees and waivers, the scope of its engagement, the basis on which the Firm will present its bills for fees, services, related charges and disbursements, and certain limitations on the Firm's services arising from potential conflicts of interests. As usual, our Engagement is to represent the Client and not its individual directors, officers, employees or shareholders. However, the Firm anticipates that in the course of that Engagement, it may provide information or advice to directors, officers or employees in their corporate capacities or as otherwise consented to by the Firm including as described below.

I will be the principal member of the Firm who will be responsible for representing the Client in the Engagement. I will be assisted by my partner, Michael Cohen, and such other partner(s), associate(s) and other members of the Firm as appropriate.

We understand that the Client has retained Davis Polk & Wardwell LLP ("Davis Polk") as its lead restructuring counsel. The Firm will represent the Client as conflicts counsel in its efforts to work out its present financial circumstances, which may include restructuring its financial affairs and capital structure and providing legal advice to the Client with respect to proposals from one or more third-party investors or potential purchasers. The services to be provided by the Firm in connection with this Engagement will encompass all services normally and reasonably associated with this type of engagement which the Firm is requested and is able to provide and which are consistent with its ethical obligations.

As legal counsel, the Firm is not in a position to, and the Client has not retained the Firm to, provide financial advice. With respect to this Engagement, we will closely coordinate with the Client and Davis Polk as to the nature of the services to be rendered by the Firm and the scope of its Engagement.

This Engagement may involve advice as to corporate transactions and corporate governance, negotiations, out-of-court agreements with creditors, equity holders, prospective acquirers and investors, review of documents, preparation of agreements, review and preparation of pleadings, court appearances and such other activities that are deemed necessary and desirable. While the Client is pursuing diverse corporate strategies to address its current financial concerns, the Firm agrees that this Engagement also will include advice to, and representation of, the Client as debtors and debtors-in-possession, should the Client seek relief pursuant to the provisions of the Bankruptcy Code, subject to approval of the Firm's retention by the Bankruptcy Court.

If the Client determines that the filing of reorganization case(s) under Chapter 11 of the Bankruptcy Code is appropriate, the Firm, in conjunction with Davis Polk, will prepare for the filing of the Chapter 11 petition, including to the extent necessary, review and preparation of the applicable documents. During the Chapter 11 Cases and subject to the Firm's ethical obligations discussed below, the Firm, in conjunction with Davis Polk, will advise and consult on the conduct of the cases, including all of the legal and administrative requirements of operating in Chapter 11; prepare such administrative and procedural applications as may be required for the sound conduct of the Chapter 11 Cases; consult with the Client and Davis Polk concerning and participate in the formulation, negotiation, preparation and filing of a plan or plans of reorganization or liquidation and disclosure statement or statements to accompany the plan or plans; review and object to claims; analyze, recommend, prepare and bring any causes of action created under the Bankruptcy Code; take all steps necessary and appropriate to bring the Chapter 11 Cases to a conclusion; and perform the full range of services normally associated with matters such as this which the Firm is in a position to provide. Specifically, the Firm, as conflicts counsel, will perform services on the matters which Davis Polk cannot handle as a result of an actual or potential conflict of interest and other discrete duties as are assigned by Davis Polk to the Firm. Subject to ethical constraints regarding conflicts of interest, and such

Bankruptcy Court approvals as may be necessary, the Firm believes that it will be available to represent the Client in any litigation which may arise in the Chapter 11 Cases. In order to avoid duplication of effort, the Firm will work closely with both Davis Polk and the Client to arrive at an appropriate division of labor with respect to the legal tasks involved with particular attentiveness to efficiency and cost savings. In addition, the Client and the Firm understand that the United States Trustee retains all rights to object to the Firm's fee applications (including expense reimbursement) in connection with the Chapter 11 Cases on all grounds, including, but not limited to, the reasonableness standard provided for in Section 330 of the Bankruptcy Code.

The Client and the Firm understand that to the extent this engagement letter is inconsistent with the terms of any order entered by the Bankruptcy Court in any Chapter 11 Cases regarding the Client's retention of the Firm for the Engagement, the terms of such order shall govern.

The enclosed Terms of Engagement contain the Firm's practices and policies on fees, billing, collection, conflicts and other material terms of our Engagement. Although it is not the Firm's intention to be unduly formal in its dealings with the Client, the rules covering the Firm's professional obligations require that the Firm establish a common understanding as to the terms and conditions of its engagement. Please let me know if you have any questions concerning these matters.

If the contents of this letter and the attached Terms of Engagement meet with your approval and accurately reflect your understanding of your agreement with the Firm, please sign one copy of this agreement and return it to my attention by fax at (212) 697-1559 or by e-mail in PDF format at sreisman@curtis.com with an original signature to follow by mail. By signing on behalf of the Client in the space provided below, you hereby represent that you are duly authorized to enter into this engagement agreement on behalf of the Client.

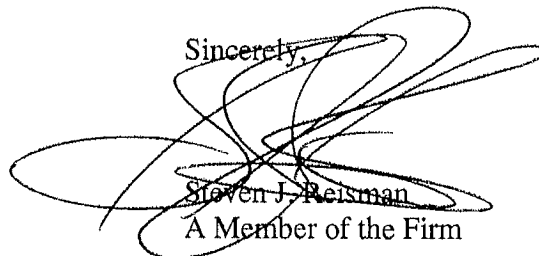
CURTIS, MALLET-PREVOST, COLT & MOSLE LLP
ATTORNEYS AND COUNSELLORS AT LAW

Page 4

Joseph W. Bean, Esq.
June 28, 2012

We look forward to working with you on this matter.

Sincerely,



Steven J. Reisman
A Member of the Firm

Attachment

AGREED AND ACKNOWLEDGED
this 28th day of June 2012:

Patriot Coal Corporation and its subsidiaries

By:  _____

Name: Joseph W. Bean, Esq.

Title: Senior Vice President, General Counsel and Assistant Secretary

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP

TERMS OF ENGAGEMENT

We appreciate your decision to retain Curtis, Mallet-Prevost, Colt & Mosle LLP (the "Firm") as your legal counsel. This document explains the policies and practices that apply to our Engagement. In addition to our professional obligation, experience has shown that an understanding of these matters will contribute to a better relationship between us, which in turn will make our efforts more productive.

1. *Scope of Engagement*

You understand that the Firm is not your general counsel, and that our representation is limited to the matter identified as the "Engagement" in the accompanying letter. We would be pleased to consider representing you in other matters designated by you. For any new matters, however, we must first confirm that we will be able to expand the scope of the Engagement as you request, and then provide you with written confirmation as to our agreement. Unless otherwise agreed in writing, the terms set forth in these Terms of Engagement and the accompanying letter shall apply to the new matter.

In all matters in which we represent you, we will provide services of a strictly legal nature. You will not rely on us for business, investment or accounting decisions, nor to assess the character or creditworthiness of persons with whom you may deal. You will provide us with the factual information and materials we require to perform the services identified in the letter.

2. *Fees for Legal Services*

Our fees for professional services are based on hourly rates for the attorneys or paralegals who render services. In determining a reasonable fee for the time and effort required for a particular matter, we consider the ability, experience and reputation of the lawyer or lawyers in our Firm who perform the services. To facilitate this determination, we internally assign to each lawyer an hourly rate based on these factors. Our internal hourly rates are adjusted periodically, usually September 1 of each year for associates, to account for increases in our cost of delivering legal service, other economic factors, and the augmentation of a particular lawyer's ability, experience, and reputation. Attached as Exhibit A is a schedule of our current billing rates. If we provide any estimate of fees and expenses, it will be based on our best professional judgment, but it is always subject to the clear understanding that it is not a maximum or fixed fee quotation.

3. *Chargeable Costs and Disbursements*

We are committed to serving you with the most effective and cost efficient support systems and to this end we allocate charges for such systems in accordance with the extent of use by individual clients. Consequently, in addition to our fees for legal services, we will separately charge you for certain services reasonably required for the performance of legal services on your behalf. A description of some of these disbursements and internal charges

can be found on Exhibit A. When required to do so by applicable law, the Firm will also charge applicable value and similar taxes. All payments will be made free and clear of any withholding tax or deduction of any nature (and you will indemnify and reimburse the Firm in respect thereof).

4. *Outside Experts*

In the course of this engagement it may be appropriate to retain persons of special training or expertise to assist in our provision of legal services. Because there are privileges that may apply to services that an attorney requests from a third party, it may be advisable for the Firm to assume responsibility for hiring such experts, with your prior consent. You will be obligated to pay the invoices for the fees and expenses of such experts, whether they are retained by the Firm or by you directly.

5. *Billing*

We want our clients to be satisfied with both the quality of our services and the reasonableness of our invoices and we invite questions or comments you may have about any of our fees and disbursement or the format of our invoices. Our practice is to bill every two weeks for the fees and chargeable costs and disbursements incurred in the two week period. Please notify us promptly as to any amount in such invoices that you question. Our invoices are due upon receipt. The Client agrees to promptly remit the amount due to the Firm within five (5) days of receipt of our statement.

In connection with our engagement, we are requesting a retainer in the amount of \$100,000.

6. *Confidentiality*

For our relationship with you to succeed, it is essential for you to provide us with all factual information reasonably relevant and material to the subject matter of our engagement. A lawyer has an ethical obligation to preserve the confidences and secrets of a client. That duty is one we regard with the utmost seriousness. In instances in which we represent a corporation, partnership, or other legal entity, our relationship is with, and hence this duty of confidentiality is owed to, the entity and not to the entity's parent or subsidiary corporations, or its shareholders, members, officers, directors or partners.

7. *Conflicts of Interest*

We wish to avoid any circumstances in which you would regard our representation of another client to be inconsistent with our duties to you. Because we represent a large number of clients in a wide variety of legal matters around the world, it is possible that, while you are a client, we will be asked to represent an existing or prospective client whose interests are actually or potentially adverse to your interests, including in negotiations, workouts and litigation. In addition, our practice includes representing debtors, official and unofficial committees of creditors and equity holders, as well as affiliates of the foregoing parties in interest (collectively, "Bankruptcy Parties"), in bankruptcy cases and foreign insolvency proceedings that are pending now, or that may be filed in the future, in the

United States or foreign jurisdictions. In connection with such cases and proceedings, it is possible that we may be called upon to represent one or more Bankruptcy Parties in connection with matters that are, or become, adverse to your interests, including litigated matters.

The Firm has acted and/or continues to act as counsel to Lehman Brothers Holdings Inc. and its affiliated debtors and debtors-in-possession, as well as non-debtor subsidiaries and affiliates ("Lehman"), FGIC Corporation and its affiliated debtors and debtors-in-possession, as well as non-debtor subsidiaries and affiliates ("FGIC"), General Maritime Corporation and its affiliated debtors and debtors-in-possession, as well as non-debtor subsidiaries and affiliates ("GenMar"), Sbarro Inc. and its affiliated debtors and debtors-in-possession, as well as non-debtor subsidiaries and affiliates ("Sbarro"), Hawker Beechcraft, Inc. and its affiliated debtors and debtors-in-possession ("Hawker"), and Residential Capital, LLC and its subsidiaries ("ResCap") as conflicts counsel for various matters in their respective Chapter 11 bankruptcy cases, which were each filed in the United States Bankruptcy Court for the Southern District of New York. The Firm has also acted and/or continues to act as counsel to Caribe Media Inc. and its affiliated debtors and debtors-in-possession, as well as non-debtor subsidiaries and affiliates ("Caribe", and together with Lehman, FGIC, GenMar, Sbarro, Hawker and ResCap the "Debtors") as conflicts counsel for various matters in Caribe's respective Chapter 11 bankruptcy case, which was filed in the United States Bankruptcy Court for the District of Delaware. In addition, the Firm also has acted and/or continues to act as counsel to the Official Committee of Unsecured Creditors of DBSD North America, Inc. ("DBSD"), and as conflicts counsel to the Official Committee of Unsecured Creditors of Hostess Brands Inc. ("Hostess") in their respective bankruptcy cases pending in the Bankruptcy Court for the Southern District of New York. The Firm also has acted and/or continues to act as counsel to the Official Committee of Equity Security Holders for North American Petroleum Corporation USA ("NAPCUS", and collectively with DBSD, and Hostess, the "Committees") in a bankruptcy case pending in the Bankruptcy Court for the District of Delaware (collectively, with the respective Chapter 11 bankruptcy cases of the Debtors and DBSD, the "Chapter 11 Cases"). The Firm's representation of the Debtors and the Committees in the Chapter 11 Cases may be adverse to your interests.

We understand that, by entering into this engagement letter, you are waiving any conflict of interest arising by reason of the Firm's representation of the Debtors or the Committees and agreeing not to make any motion or take any other action to disqualify the Firm as counsel to the Debtors or the Committees in the Chapter 11 Cases or any other litigation unrelated to the Engagement.

In addition, the Firm, from time to time, represents other debtors and debtors-in-possession in Chapter 11 cases or in out of court restructurings that are not affiliated with the Debtors as well as formal or informal creditor committees (collectively, the "Other Entities") which also may have interests that are adverse to your interests.

The foregoing waiver is subject to the continuing obligation of the Firm, in connection with its representation of the Debtors and the Other Entities, not to disclose to such parties any confidential information to which it is privy concerning your business or

affairs, or to utilize any such information in any matter or proceeding involving the Debtors or the Other Entities without your prior consent.

We wish to be able to consider the representation of the Other Entities, as well as other persons who may have interests that are potentially adverse to you, but only with respect to matters that are not substantially related to our representation of you in this Engagement. The ethics that govern us permit us to accept such multiple representations, assuming certain requirements are met. During the term of this engagement, we agree that we will not accept representation of another client to pursue interests that, to our knowledge, are directly adverse to your interests unless the following criteria are met: (i) there is no substantial relationship between this Engagement and the matter for the other client; (ii) any confidential information that we have received from you will not be utilized by the lawyers and other Firm personnel involved in the representation of the other client; (iii) our effective representation of you and the discharge of our professional responsibilities to you will not be prejudiced by our representation of the other client; and (iv) the other client has also consented in writing to our undertaking the two representations.

If the foregoing conditions are satisfied, you agree to consider, in good faith, any request that the Firm may make for consent to representation of Other Entities or other clients, and for waiver of any associated conflicts.

8. *Retention of Records*

We are required by certain laws or regulations to retain records of our Engagement for minimum periods of time. Barring a legal duty or other obligation to retain records associated with an Engagement for a longer period, the Firm currently expects to discard those records (whether in paper or electronic form) when ten years have lapsed since the termination of the Engagement. However, we retain the discretion to shorten this period upon notice to you, and we will discuss alternative record retention arrangements with you if your own policies dictate longer retention periods. If we are required to maintain paper records in an offsite facility, we retain the right to charge you for the Firm's cost of continued storage and handling of those records.

We will retain the "work product" accumulated during the course of the Engagement, which will be owned by the Firm. "Work product" includes documents intended for internal law office review or otherwise reflecting preliminary or tentative conclusions of an attorney, and Firm administrative records such as client screening documents.

9. *No Representations*

You should know that we cannot make any promises or guarantees to you concerning the outcome of the matter for which you have retained us and nothing in the cover letter or terms of engagement will be construed as such a promise or guarantee. If the matter does not go forward or reach a successful conclusion for any reason, you are still directly responsible for all fees and disbursements charged by the Firm in the Engagement. Additionally, your obligation to pay our fees and disbursements will not be affected by any

agreement that you may have with another party to pay your legal fees and costs or any failure by that party to comply with such agreement.

10. *Termination*

We hope and trust that our relationship with you will be mutually satisfactory. Nevertheless, you are free to terminate our Engagement at any time, unless judicial approval is required for us to withdraw, in which event we agree not to oppose such withdrawal. Subject always to any applicable rule of court, we may terminate our Engagement to represent you if you fail to honor the terms of our Engagement or if, in our professional judgment, we are unable to continue the representation consistent with our ethical obligations. Notwithstanding any such termination, you will remain liable to pay all of our fees and charges incurred up to the date of termination.

Our attorney-client relationship will be terminated upon our completion of the specific services that you have retained us to perform. If you later retain us to perform further or additional services, our attorney-client relationship will be revived, subject to these and any supplemental terms of the new Engagement. The fact that we may inform you from time to time of developments which may be of interest to you, by newsletter or otherwise, should not be understood to be a renewal of an attorney-client relationship. Moreover, we have no obligation to inform you of such developments in the law unless we are specifically engaged in writing to do so.

11. *Renewal Notices of Security Interests and Liens*

If this or any subsequent Engagement involves the taking of a security interest or lien on the property of another, you are advised that applicable law may provide that public filings giving notice of security interests or liens must be preserved by further public filing prior to expiration of a prescribed period of time (e.g., five years in the case of renewal notices of security interests granted under the New York Commercial Code). Failure to make timely renewal filings could result in the loss of the security interest or lien. We do not undertake to schedule or make renewal filings in your behalf. However, if you need assistance in making renewal filings in the future, we will be pleased to assist you at that time.

12. *Applicable Law; Dispute Resolution*

This Engagement agreement, and any disputes arising out of or relating to the Engagement, will be governed by and construed in accordance with the laws of the State of New York. In the event there are any disputes regarding our invoices, you may be entitled to require arbitration under a procedure established in New York State for resolution of certain fee disputes pursuant to Part 137 of the Rules of the Chief Administrator, New York Unified Court System. We will provide copies of those rules to you at your request. Except to the extent required by such Rules, any dispute or claim arising out of or in any way relating to the Firm's representation of you in connection with this Engagement or otherwise (including, without limitation, any claim of malpractice or breach of contract) will be finally settled by arbitration administered by the American Arbitration Association under its Commercial

Arbitration Rules, and judgment on the award may be entered in any court having jurisdiction thereof. The place of arbitration will be New York City, New York. Submission of any dispute or claim to arbitration will not deprive either party of its right to seek a remedy or damages from the arbitration tribunal that would be available in a New York court.

The consent to arbitration before the American Arbitration Association in the above paragraph is included because the Firm believes that arbitration is a superior method of dispute resolution. However, there are material differences between arbitration and litigation in a New York court which you should understand in evaluating whether you wish to enter into this agreement. Chief among these differences is that an agreement to arbitrate amounts to a waiver of the right to a jury trial, which is not available in arbitration. Other differences may include, but may not be limited to, the extent of discovery rights, the right to compel production of witnesses and documents, the application of the rules of evidence, the access of the general public and the press to the hearings, the availability of relief, the availability of appellate review on the merits, the fees and costs payable to the arbitrator, the availability of a public forum, and the discretion of the arbitrator to award reasonable attorneys' fees to the prevailing party. Arbitration may be faster and less expensive, a factor that may benefit you in some respects yet also have adverse consequences for your freedom of choice in pursuit of any claim against the Firm. In addition, there is some dispute under New York law as to whether an arbitrator may award punitive damages whereas a New York court does have such power in appropriate cases. For that reason, the Firm agrees that the submission of any dispute to arbitration will not deprive a party of its right to seek a remedy or damages from the arbitration tribunal that would be available in a New York court.

13. *Consultation with Independent Counsel and Disclosures*

This Engagement agreement includes a waiver of possible future conflicts, which is set forth in paragraph 7, and a consent to arbitration set forth in paragraph 12. These are complex matters as to which you may wish to consult with independent counsel.