
CHAPTER 1

Representing the Small Business

1.1 What Should You Know About Representing Small Businesses?

Small businesses comprise the majority of the U.S. economy, employing the majority of the total workforce in the United States. In fact, according to the Office of Advocacy of the U.S. Small Business Administration, small businesses account for half of the country's nonfarm real gross domestic product, and small firms lead when the economy is gaining jobs.¹ However, the failure rate among new businesses is estimated to be around 80 percent, which can translate into a high turnover rate among small business clients. Moreover, small business clients often have a difficult time meeting their financial obligations, including paying their legal counsel.

Your most successful small business clients probably won't stay small and may "outgrow" you if you are a sole practitioner or a member of a small firm. Moreover, the most common liquidity event or exit strategy for emerging companies is a merger or acquisition in which the emerging company merges out of existence or is acquired, and counsel for the surviving or acquiring company takes over as your former client's legal counsel.

By now you may be wondering why anyone would choose to specialize in the representation of small businesses; more likely, though, you're already working with one or more small businesses and you understand both the pains and the pleasures of a small business practice firsthand. One of the most important reasons many of us enjoy small business practice is that we get to work with entrepreneurs who have the spark of invention and inspiration in their spirits and the eternal optimism to pursue their dreams. We enjoy seeing cutting-edge technologies, learning about new products and new markets, and participating in the same at a strategic level.

1. See Office of Advocacy of the U.S. Small Business Administration, *The SMALL BUSINESS ECONOMY* (2010), http://www.sba.gov/sites/default/files/sb_econ2010.pdf.

When engaging a new small business client, it is important to get a retainer. If you consistently demand retainers at the beginning of an engagement, you'll set the right tone for the relationship and discover that some prospective clients have an aversion to writing checks (better to learn this before you've done any work, as they likely won't be any better at writing checks down the line). Set the retainer amount higher or lower depending on the estimated cost of the initial services to be performed, what you feel comfortable with for security on payment in full, and what the market will bear. The reasons for getting a retainer are many, such as establishing yourself as a professional whose time is valuable, testing whether this is a client that will have trouble paying your invoices, and getting at least a portion of your work paid for if the client turns out to be unreliable or the project is terminated.

Giving prospective clients the option of paying retainers and ongoing legal bills by credit card can result in more new business and more timely payment of invoices. You shouldn't be expected to finance your client's organizational costs; let the banks do it.

As your clients grow, you should encourage them to consider you as their outside general counsel and to use you as their first stop when seeking any kind of legal assistance. Encourage clients to allow you to help them determine what legal services are required, and either do the work yourself or place it with appropriate counsel. You may also want to be in a position to supervise other counsel, reviewing their work product and invoices, to help your client manage its consumption of legal services and to help ensure quality and consistency.

Small business lawyers should be prepared to deal with the entire life cycle of the business, from inception to exit (or demise). This guide, while not exhaustive, will assist you in advising the small business throughout its life cycle.

1.2 Who Is Your Client, and How Can You Avoid Conflicts of Interest?

Typically, when you are working for a small business, the company is the client. This should be clear from the very beginning and should be specifically spelled out in your written engagement letter. Your client may ask you to prepare documentation or provide counsel along the way that does not appear to relate strictly to the business of the company. In these instances it is wise to decline the request; or, if it is not against the company's interests, comply—but with a written disclaimer to the client and any other parties involved that the counsel is provided at the company's request by counsel for the company and that any individual parties should seek the advice of their own counsel. The American Bar Association, in conjunction with the Bureau of National Affairs, Inc., publishes an extensive treatise on professional conduct that is a vital resource for the resolution of questions in this area.²

2. See The Bureau of National Affairs, ABA/BNA Lawyers' Manual on Professional Conduct, now an online service at <http://www.bna.com/products/lit/mopc.htm>.

1.3 How Can You Provide Value to Your Clients?

The days when clients came to lawyers for access to information and forms are far behind us. The Internet provides a wealth of information, samples, and forms, and a lot can be accomplished online that used to require paper. However, not all of the available information is accurate or applicable, and not all samples and forms reflect best practices. Moreover, there are a number of circumstances in which clients may not realize they need something until it's too late (e.g., premarital agreements, buy-sell provisions, and Section 83(b) elections, all discussed elsewhere in this publication), so the role of counsel as trusted advisor is as important as ever. That being said, here are some specific tips for being viewed as a valuable member of your client's team.

1. Be Responsive.

One problem that many small businesses encounter when using larger law firms is slow response times (perhaps because small businesses are not a significant source of fees). In the rapidly changing environment in which so many small businesses operate, responsive legal counsel can be vital to the company's success.

2. Spot the Issues.

One of the pleasures and challenges of working for a small business is the opportunity to deal with a wide range of legal issues. Many of these issues will be ones you can handle yourself; but some will require the expertise of another lawyer specializing in a specific area such as federal taxation, patent law, international trade, litigation, and so forth. In either case, it is important to be able to identify those issues while there is ample time to deal with them, and to determine whether another lawyer's expertise is needed to help make sure they are handled appropriately. Helping clients identify issues and, where needed, assisting with the consultation and efficient use of counsel with the necessary expertise, can be of great value to a client.

3. Stay Current.

Staying current on the law in your area of practice is expected; but staying current on trends in financing terms, licensing arrangements, commercial real estate leasing rates, and other matters that your clients will deal with at one time or another will help make you an invaluable advisor at strategic times in the client's development. Some of this information will come from your experience with other clients, but it is also wise to cultivate this knowledge from other sources, such as business and financial periodicals and participation in conferences, seminars, and networking groups.

4. Help Clients Avoid Common Mistakes.

When you improve your client's chances of success, you improve your own chances of having a long-standing, mutually beneficial relationship with your client. Help

make them financially stronger, by avoiding costly litigation or helping to close a financing transaction, and you will gain their loyalty and trust. One way to do this is to help clients avoid common mistakes that can cost them dearly in lost time, money, or key personnel. As lawyers, we are privy to the trials and tribulations of our own clients and of many others, through the shared experiences of our colleagues. We also have access to countless case summaries read in law school, case law reporters, and annotated codes. Being able to identify situations in which clients may be headed for trouble, helping them avoid it by relaying the experience of another company (that need not be named if attorney-client privilege is an issue), and suggesting a way to avert the problem are invaluable services. For example, when reviewing “boilerplate” with clients, relaying a war story or two is often the best way to get them to focus on a provision and choose language that works best for their circumstances.

Another way to help clients avoid common mistakes is to give them an idea of what they should expect in the way of deal terms and what should be negotiated when they embark on a new venture or relationship.

As discussed in more detail in Chapter 4, one common mistake you can help your clients avoid is the tendency of many clients to ignore the general provisions in an agreement as “boilerplate,” which they somehow equate with “unimportant” or so standard as not to warrant their time and consideration. Help your clients develop a set of standard agreements for their business with a set of boilerplate provisions that actually reflect their preferences and best suit their circumstances.

5. Encourage Clients to Plan.

Developing a good business plan requires an understanding of the company’s customer, market, and competition, among others. No matter how well a client may know its business, there will be things it didn’t know—things that, when they are revealed, require a new look at the plan and potential evolution. Many companies fail to adequately understand their current problems and capabilities and either fail to evolve or jump into aggressive organizational changes, particularly in a difficult economy. In their refusal or zeal to move quickly, some clients forget—or learn the hard way—that diagnosis and understanding should precede change if any change is to be deliberate and effective.

Encourage your clients to gain an understanding of how their organization operates, what works and doesn’t work, what their organization’s strengths and weaknesses are, how the pieces fit together, and how to bring these elements into alignment with their strategy. Clients should periodically evaluate products, services, and core competencies; establish measures for success and set short-term and long-term goals; and revisit their business plan regularly. This process can be built into regular meetings of boards of directors, advisors, or managers, where counsel often plays a role in determining the agenda and facilitating the discussions; however, clients should also include input from those in marketing, sales, product development, customer service, and so on. Companies that stay on top of their game are more likely to succeed and remain good clients for the long run.

6. Provide Templates and Samples.

Many small business owners are intent on preparing legal documents themselves to save money—and with the availability of forms and examples on the Internet, more and more of them believe they are equipped to do so. However, many of these business owners don't understand or appreciate the significance of the language in these documents. Because they don't identify what is missing or recognize what they should leave out, they often end up with inapplicable, inappropriate, or disadvantageous language in their documents, while significant terms remain missing. So, it may be advisable to approach such clients with an offer to provide appropriate templates for the types of agreements and documentation they will use repeatedly in their business (examples are a Nondisclosure Agreement or form offer letter and a Confidentiality and Invention Assignment Agreement for new employees). Chapter 4, *Contracts for Small Businesses*, discusses these documents in more detail.

1.4 How Can You Attract and Retain Small Business Clients?

Important factors for a small business seeking legal counsel are experience, personal service and responsiveness, cost, and ability to provide networking experience, among others. Providing value to clients once you have them, as discussed earlier, will help you retain them. Finding new clients in the first place can be a greater challenge.

1. Let People Know What You Do.

Among your greatest sources of business referrals are your friends and colleagues. Still, before they can recognize a business opportunity they could refer to you, they need to have at least a general understanding of the type of work you do. There are many ways to go about doing this, some more obnoxious than others, but it is important to do something. For example, when you send emails to colleagues seeking a resource or referral for a client, take the opportunity to briefly describe the work you do for the client. For example:

Dear partners and associates,

I am providing outside general counsel for a small biotech company in the San Francisco Bay Area that is in need of an international tax lawyer to assist with the structuring of an asset sale to a company in Switzerland. Please let me know if you have any recommendations.

The foregoing example does a lot more to help its recipients understand what you do than does the type of correspondence we usually see: “Hey—Does anybody know a good international tax lawyer?”

Firm announcements, newsletters, and other publications can also help establish an understanding of what you do among your friends and colleagues. But, as in the preceding email example, the opportunity can be missed if certain details or

proper attribution are missing (e.g., in client alerts and other educational materials). The use of sites like Facebook (www.facebook.com), YouTube (www.youtube.com), LinkedIn (www.Linkedin.com), and Twitter (www.twitter.com) should be incorporated into every modern business plan, whether it's yours or your client's.

2. Go Where Entrepreneurs Go.

As lawyers, we often spend our client development time going to events with other lawyers. It's important to separate your professional development time from client development time and recognize that, although there are crossovers in each category, you have to approach each of them differently. For example, you are more likely to generate immediate business for your small business practice with speaking engagements in which your audience is comprised of entrepreneurs and business owners than with those in which your audience is comprised of other lawyers (i.e., your competitors). Speaking engagements for chambers of commerce, industry associations, business networking events, and other business-oriented organizations are a good choice for client development. Presentations and panel discussions at bar association meetings are great for establishing expertise (i.e., professional development), but are typically only an indirect route to new business (e.g., through referrals from other attorneys).

3. Remind People You're Out There.

When the opportunity comes up for someone to refer you business, or when someone needs your services, you want to be at the forefront of that person's mind. Besides letting people know what you do, as discussed in section 1.4.2, correspondence, announcements, newsletters, and other publications remind people that you're there. There is a saying that there is no such thing as bad publicity, which means that the important thing is to be known. Of course, *how* you're known is also important, so care should be taken to ensure that the messages people receive about you convey the desired information and image. The ABA publishes an excellent guide in this regard.³ Being more social, both in person and on the Internet on sites like Facebook (www.facebook.com), can be great for business; just remember to present yourself the way you want to be seen.

4. Get the Deal Done.

Businesspeople often view lawyers as naysayers and deal-killers. This is because lawyers are often more focused on why their clients can't or shouldn't do something than on helping them figure out how to achieve their objectives in an appropriate and advantageous manner.

3. Corinne Cooper, *HOW TO BUILD A LAW FIRM BRAND* (ABA 2005).

If you are successful in gaining your clients' trust, and they perceive that you are providing value by saving them money, helping them avoid crucial mistakes, and helping them close the deal, they are likely to consider you a vital part of their team.

5. Alternative Fee Arrangements; Investing in Clients.

Start-ups are often stuck in a chicken-and-egg dilemma, in that they need to put certain legal structures in place in order to raise funds to build a company, but don't have sufficient resources available for legal services. Taking on a client under these circumstances should be approached from the perspective of an investor. Specifically, if you undertake legal work without a sufficient retainer, knowing that the client needs to raise funds, you may end up investing a lot of time and perhaps even advancing costs that you will never recover if your client is unsuccessful. But when prospective clients are honest about their financial circumstances (which, unfortunately, they sometimes are not), and the entrepreneur and business idea are especially promising, a small business lawyer can win new business and client loyalty with flexible and alternative fee arrangements, or even investing in clients.

Much has been written about flat fee arrangements, and there seem to be a lot of firms pursuing new business by offering low flat rates on services such as incorporation (which many online services now offer, all but eliminating a former staple of the business lawyer's practice), and entity conversions, just to get the client in the door. Other approaches include agreements that give companies more predictability for legal expenses, such as monthly retainer arrangements with a floor and a ceiling, where the attorney is assured a minimum monthly retainer and hours billed in excess of the ceiling carry over into the next month.

Even more aggressive approaches are complete fee deferrals, where payment is dependent upon the client raising funds, and/or taking equity in a client. When investing in a client, counsel should be mindful of the applicable rules of professional conduct regarding taking an interest adverse to a client, in addition to careful consideration of the decision as whether the investment is worth the risk (including whether the attorney can afford to lose the time and money). Rules of conduct applicable to an attorney taking an interest adverse to a client, such as taking equity in a client, typically require that: (1) the transaction is fair and reasonable and the terms are fully disclosed to the client in writing; (2) the client is advised in writing to seek independent counsel in connection with the proposed transaction; and (3) the client consents in writing. See, for example, California Rules of Professional Conduct Rule 3-300. Also, be mindful of the fact that some professional liability carriers exclude coverage when the law firm has an ownership interest in a client. The best practice is to do your investing separately from your law practice.

1.5 Sample Documents and Checklists

This section includes the following forms:

- Cover Letter and Terms and Conditions for Fee Agreements (Form 1 A)
- Credit Card Acceptance Language (Form 1 B)
- Letter to Client Considering Other Counsel (Form 1 C)
- Sample Fee Deferral and Investment Provision for Fee Agreement (Form 1 D)
- Sample Contract Provision to Acknowledge the Company as the Client (Form 1 E)
- Sample Disclosure for Taking an Interest in a Client (Form 1 F)

Form 1 A: Terms and Conditions for Fee Agreements

Note: For a friendly presentation of your fee agreement, you may wish to use a cover letter with terms and conditions in an attachment. This can be referred to as a "Fee Agreement," "Contract for Legal Services," or "Engagement Letter" (my favorite). The cover letter can be fairly brief, with space at the bottom for the client to acknowledge and agree to the terms of the engagement, as described in the attachment. The following is a sample cover letter with terms and conditions.

[Attorney Letterhead]

Dear _____,

This will confirm that _____ (the "Company") has asked that the firm assist it in connection with _____ [describe the initial purpose of the engagement, e.g., the formation of a new entity (the "Company") for the conduct of your business]. We will be happy to assist the Company with these matters and such other matters as we may agree. The firm will perform the services described herein with reasonable professional skill and reasonable dispatch, subject in all material respects to the Company's direction.

Please review this letter, including the attached terms and conditions, particularly with regard to conflicts, and if it meets with your approval, sign below to signify your agreement. This letter shall be a contract for legal services between the Company and the Firm, as discussed more fully below. If you accept the terms set forth in this letter, please sign and return it to the undersigned with a check, wire, or credit card payment in the amount of \$_____ for your retainer.

Very truly yours,
Firm
By: Attorney

Accepted and agreed this ____ day of _____, 20__:

By: _____
Client

Terms and Conditions

Company as Client. [Once formed,] [T]he Company is the client. To the extent any officers, directors, shareholders, [or managers or members,] or employees of the Company desire legal advice regarding their individual interests with respect to any transactions of the Company, they understand they must seek independent counsel.

Fees. Our fees will be determined by the number of hours worked, the reasonable value of legal services provided, and the billing rate of the individual performing services. At present, our hourly rates for attorneys range from \$___ to \$___. Legal assistant rates are \$___ per hour. We reserve the right to modify our hourly rates from time to time. Our minimum incremental billing is 1/10 of an hour (6 minutes). Our fees are not contingent upon the completion or success of the proposed matter.

Costs. Costs in excess of _____ dollars (\$ ___) may be passed on to the Company for direct payment, or may be required to be advanced by the Company in the firm's discretion.

Invoices and Payment. You will receive periodic invoices for services rendered and costs incurred on your behalf. Invoices are generally sent in the beginning of the month following the month in which services are rendered and costs are incurred and are payable upon receipt. A late charge of one percent (1%) per month on all balances outstanding for more than thirty (30) days will be added to the balance due. Timely payment in full is a condition of our continuing legal representation. This policy is conscientiously followed.

Retainer. A retainer in the amount of _____ dollars (\$ _____), payable to the firm, is requested. The retainer will be deposited in our client trust account, and we will draw against those funds to satisfy our invoices in this matter. Once the retainer has been exhausted, payments will be required as set forth below.

Estimates and Outcomes. You understand that any estimate of fees and costs associated with our engagement is only an estimate, not a fixed fee or an agreed limit. The actual fees and costs incurred will depend on a variety of factors, some of which are beyond our control. At the same time, we understand that you may wish to establish a budget for your legal expenses and will work with you to establish such budgets on request. We will also work with you to help make the most efficient use of our time as practicable. You understand that, although we will perform our professional services to the best of our ability, we cannot guarantee and we have not guaranteed any outcome.

Board Membership. In the event a member of the firm joins the Company's Board of Directors or Board of Advisors, it is understood that such member's participation on the board is as an individual, not on behalf of the firm, and shall not constitute legal services.

Conflicts. The Company agrees that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for the Company even if the interests of such clients in those other matters are directly adverse to the Company. We agree, however, that the Company's prospective consent to conflicting representation shall not apply in any instance where, as a result of our representation of the Company, we have obtained proprietary or other confidential information of a non-public nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage.

Confidentiality. The terms of this agreement shall be kept confidential.

Identification of Client. The Company agrees that the firm may identify the Company as a client of the firm for marketing or other purposes.

Termination. The Company may terminate this Agreement at any time for any reason. Similarly, we reserve the right to terminate our representation of the Company for any reason upon reasonable notice. Following termination, we will submit a final invoice for services rendered and costs incurred, which will be due and payable upon receipt.

[Optional: Prior Representation of ****. Please be advised that this firm [or one or more members of this firm through previous employment] have provided legal services to Mr. ****, a _____ [e.g., shareholder] of the Company in connection with _____ [e.g., various business and personal matters unrelated to the business of the Company]. While we do not anticipate that such prior representation will influence our judgment in providing legal counsel to the Company, we believe it is important to advise each significant shareholder of the Company of this prior relationship. Therefore, we request that a copy of this letter be given to each shareholder of the Company who holds more than five percent (5%) of its equity securities. The firm anticipates it will continue to represent Mr. ***** in various business and personal matters unrelated to the business of the Company.

Client Files and Attorney Work Product. Upon our retention as counsel, a client file will be established regarding matters related to our representation of the Company. This file may become the repository for important legal documents as well as documents prepared by attorneys reflecting the attorneys' thoughts, conclusions, and impressions. The law recognizes a privilege with respect to attorney notes, known as the attorney work-product privilege. Should the Company request the removal of the files from our offices, we reserve the right to retain all attorney work-product documents generated by our professional staff. Absent written instructions regarding disposition of client files, we reserve the right to store or destroy such files upon expiration of six (6) months following the conclusion of the representation.

Entire Agreement. The terms set forth in this letter constitute our entire agreement. Any modification of the agreement must be made in writing. This agreement is binding on the Company, the firm, and the respective legal representatives and successors of each.

Alternative Dispute Resolution Provisions. [Note: alternative dispute resolutions may be added, if desired, and the choices are the same as those you may provide in client contracts, except to the extent state or local laws may impose different rules in disputes between attorney and client, such as in California where the client has the right to have fee disputes determined by arbitration under California Business and Professions Code sections 6200-6206.]

Form 1 B: Credit Card Acceptance Language

For an Engagement Letter

"If you accept the terms set forth in this letter, please sign and return it to me with a check for \$_____ for your retainer. Alternatively, you can return the signed engagement and retainer via fax using a credit card for payment."

For an Invoice Cover Letter

"If you would like to make your payment by credit card, please complete the information below and fax a copy to (###) ###-####."

For Engagement Letter Terms and Conditions and/or Invoice Cover Letter

TO MAKE YOUR PAYMENT BY CREDIT CARD, PLEASE COMPLETE THE FOLLOWING INFORMATION AND FAX TO (###) ###-####:

Type of Card (circle one): VISA / MasterCard / American Express / Discover

Name on Card: _____

Card Number: _____

CID: _____ [last 3 digits on back of card, or 4 digits above card number for AmEx]

Expiration Date (MM/YY): _____

Amount of Payment: \$ _____

Billing Address and Zip Code: _____

Form 1 C: Letter to Client Considering Other Counsel

Sometimes a small business lawyer loses a client to success, such as when the client is acquired by a large company with an in-house legal department, and sometimes clients attract investors who only trust counsel they already know and condition investment on a change of counsel. The following is some suggested language that may influence your client's decision, or at least help ensure that they give the move careful consideration and feel welcome to come back to you in the future. For more sample letters, see *Letters for Small Business Lawyers* (ABA 2011), by this author.

[Attorney Letterhead]

Dear _____,

Thank you for your call this morning. As I said on the phone, I'd really like to keep your business. I understand your desire to give your prospective investors what they want, but I think it makes sense for them to at least consider letting you continue using us as the company's counsel. Specifically:

1. If there is any corporate clean-up to be done in connection with the transaction, it will be more efficient if we do it, as we are already familiar with the corporate history, and the company's documents and templates are already on our system.
2. Your prospective investors may take comfort in the fact that [give highlights of counsel's qualifications, e.g., [a]s former partners at an Am Law 100 Firm, we have big firm training and experience, but since forming a smaller firm, we are able to keep our hourly rates much lower].
3. You should also assure them that [give highlights of counsel's experience; e.g., [w]e are very experienced in angel and venture capital financing transactions, and have many Delaware corporation clients with VC backing].
4. Please share the enclosed list of our recent articles, publications, and presentations on topics relevant to our representation of the company.
5. We would be willing to do the proposed transaction on a fixed fee basis or with a cap on fees. Assuming your investors have done a few similar deals, they should have an idea of what they expect the company to spend and I'm sure we could come up with an arrangement they would feel good about.
6. Last but not least, we have worked together off and on for more than ___ years and we have a level of trust and understanding that comes with time. I understand that is probably why your prospective investors want you to use their counsel (i.e., counsel with whom they have established a level of trust and understanding), but perhaps they should use counsel they trust as their own counsel and let the company use counsel it trusts as its counsel.

If there are other considerations of which I may not be aware, please let me know what they are, so I can address them, if possible. As I said, I would really like to keep your business. In any case, I wish you and the company every success. If the company does engage new counsel, I will help make the transition a smooth one, and would welcome you and/or the company back anytime, should there be occasion for us to work together again in the future.

Thank you for your consideration.

Best,

[Counsel]

Form 1 D: Sample Fee Deferral and Investment Provision for Fee Agreement

Appendix A

Deferral Fee

This Appendix supplements the foregoing Terms and Conditions for the engagement of the Firm by ****, Inc., a California [state] corporation to be formed (the “**Company**”) by setting forth the terms and conditions for the Firm’s waiver of its usual retainer requirement and deferral of up to \$_____ in legal fees until the Company has received seed financing, in exchange for equity participation in the Company in addition to payment of accrued legal fees upon funding of the Company.

The Firm hereby agrees to waive its normal requirement of a retainer and to defer payment on up to _____ dollars (\$_____) of legal fees in exchange for a convertible note in an amount equal to the maximum fee deferral (the “**Deferral Fee**”). The convertible note for the Deferral Fee shall be convertible into equity on the same terms as the convertible notes in the Company’s Seed Round of Financing, except that the Firm’s conversion price shall be set at a twenty-five percent (25%) discount to the Seed Round investors’ conversion price. No late fees shall be charged on the deferred legal fees during the term of the deferral.

For purposes of this agreement, the Company’s “**Seed Round of Financing**” shall mean the first funds raised by the Company following the issuance of stock to the Company’s founders. It is currently anticipated that stock will be issued to founders upon filing of the Company’s Articles of Incorporation and that the Seed Round of Financing will consist of _____ dollars (\$_____) in the form of convertible notes issued by the Company. Variations between the actual terms and the anticipated terms of the Seed Round of Financing shall not void this agreement.

Upon closing the Seed Round of Financing, the Company shall promptly issue securities to the Firm in satisfaction of the Deferral Fee and remit payment for all fees for legal services rendered by the Firm to the date of closing. Thereafter, fees shall be invoiced and paid in accordance with the Firm’s general Terms and Conditions set forth above.

Form 1 E: Sample Contract Provision to Acknowledge the Company as the Client

By signing this agreement, each of the signatories acknowledges that the Firm will draft the **** documentation on behalf of the Company and each:

- a. has been advised that his or her interests in such documentation may conflict with those of the Company and the other signatories;
- b. has been advised that such documentation may have tax consequences to them individually; and
- c. has been advised to seek independent counsel should they desire legal advice regarding their individual interests with respect to the **** documentation or any other transactions of the Company.

Form 1 F: Sample Disclosure for Taking an Interest in a Client

Dear Client,

The purpose of this email is to respond to Client's proposal for a member of the Firm to serve on Client's Board of Directors or Board of Advisors in exchange for stock options in Client, in an effort to further incentivize the Firm and align the Firm's interests with those of Client's stakeholders.

As you are probably aware, a Board of Advisors plays a less formal role with a company than a Board of Directors does (i.e., a Board of Advisors has no actual authority over the company), and as a result Advisory Board members do not have the same exposure from a liability standpoint as members of the Board of Directors do, which is why many investors prefer to serve as Advisors rather than as Directors. It is also why most malpractice carriers, including the Firm's, will not cover attorneys serving on Boards of Directors, and why, if one of our attorneys were to serve on the Board of Advisors, it would be pursuant to an arrangement separate from the Firm's legal representation of the company.

Based on the foregoing, the Firm proposes to have one of its attorneys serve on the Client Board of Advisors in exchange for stock options exercisable for a three percent (3%) stake in the company to be held by the Firm's investment entity. When Client recruits other members of the Board of Advisors, they will likely expect stock options as well, so this sets the right precedent for the Board of Advisors moving forward. The vesting and exercise price for the options will be the same as in recent stock option grants to key employees.

If approved, the Firm will prepare a set of Bylaws to govern the Board of Advisors and a form of Advisor Agreement, which will govern each Advisor's role as an Advisor, including the member of the Firm that will serve on the Board of Advisors.

The California Rules of Professional Conduct that govern an attorney's relationship with a client, specifically Rule 3-300, require that before an attorney may enter into any business transaction with a client, the following must be satisfied:

- a. The transaction and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and
- b. The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and
- c. The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition.

The Firm believes the proposal is fair and reasonable to all involved, but we need Client to agree that is the case, as well as acknowledge having been advised in writing that it may seek independent counsel in connection with the proposed transaction(s), and having had the opportunity to seek that advice, before consenting in writing.

We look forward to your comments and questions with regard to the above.

Best,

Firm