# Sample Engagement Agreement Letter for Litigation Consulting

# and Potential Expert Testimony

This example engagement letter is intended for litigation assignments for which the appraiser is being retained as a consulting expert with the possibility that the appraiser may later be designated as a testifying expert witness.

For a more complete understanding, please see Chapter 15 “Expert Witness Services” in *Risk Management for Real Estate Appraisers and Appraisal Firms* (Appraisal Institute 2019) (available on my website for my students or in the Appraisal Institute’s bookstore).

– Peter Christensen, Christensen Law Firm [www.valuationlegal.com](http://www.valuationlegal.com/)

[Appraiser Firm Name or Letterhead]

[Appraiser Firm Address or Letterhead]

[Date]

[Attorney Name]

[Law Firm]

[Address]

Re: [Name of matter or case]

Dear [Attorney]:

I/We are pleased to be retained by you as consulting expert(s) in connection with your representation of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the above matter. I/We also understand that I/we may be asked to provide expert witness services and testimony in the matter should it become necessary.

This engagement letter sets forth the terms of my/our services. If these arrangements are acceptable, please sign the enclosed copy of this letter, have your client sign it as well, and return it to me/us at your earliest opportunity along with the $\_\_\_\_\_\_ retainer mentioned below.

**Independent Nature of Services.** Our/my services will be delivered in a manner that is independent, impartial and objective. I/We do not warrant the outcome of this matter, and neither the amount nor payment of my/our fees is not contingent on any result.

**Fees and Expenses.** My/Our fees will be based on the actual hours expended at my/our standard rates, plus out-of-pocket expenses.

Current hourly rates are:

[Name(s)] – $xxx per hour

[Other Personnel] – $xx to $ xxx per hour

My/Our rates are subject to change periodically. When balances are owed, I/we will provide invoices on a monthly basis to you. My/Our invoices will include my/our out-of-pocket expenses such as research costs, delivery services, postage, telephone, travel, and photocopying. Invoiced amounts are due and payable upon receipt of the invoice. Any invoices which are past due x days or more are subject to a service charge of x percent (x%) per annum.

***[“Responsibility for Payment” provisions:***

***Three options are presented below with respect to who is responsible for paying the appraiser. The appraiser should choose one or modify one to fit the circumstances, depending on whether the attorney or client will be responsible for paying the appraiser.]***

***Payment Example No. 1: Both party and attorney/law firm are responsible for payment.***

**Responsibility for Payment.** I/we understand you are retaining my/our services in connection with the representation of your client. While we will be issuing our invoices directly to you for delivery to your client, your client shall be responsible for payment in accordance with the terms stated in this letter and has acknowledged that responsibility by signing below. However, in the event that your client fails to pay for our fees and expenses on a timely basis, your firm agrees to pay the balance owed.

***Payment Example No. 2: Only party represented by attorney responsible for payment.***

**Responsibility for Payment.** I/we understand you are retaining my/our services in connection with the representation of your client. While we will be issuing our invoices directly to you for delivery to your client, your client shall be responsible for payment in accordance with the terms stated in this letter and has acknowledged that responsibility by signing below.

***Payment Example No. 3: Attorney/law firm is responsible for payment.***

**Responsibility for Payment.** Payment of the fees and expenses that I/we bill on this matter will be the responsibility of your firm.

***[Sample “Retainer” provisions: When an expert has a trusted relationship with the attorney or with the party represented by the attorney, the expert might not require an upfront retainer. In many circumstances, however, it is common for an expert to require a retainer before commencement of work to assure payment. The example provisions below provide alternatives for retainers, including how/when they are applied to balances owed and whether they are refundable or non-refundable.]***

**Retainer Example No. 1: refundable retainer required, retainer applied to final invoice, unused amount refunded.**

**Retainer.** It is my/our policy to collect a retainer and receive the fully executed engagement letter before I/we begin providing services. The retainer for this matter shall be $\_\_\_\_\_\_\_. This retainer will be applied to my/our final invoice for time and expenses, with any unused amount refunded to the party who paid the retainer unless that party directs, in writing, that the refund be paid to a different party.

**Retainer Example No. 2 – refundable retainer required, retainer applied to initial invoices.** Comment: this retainer provision is “friendlier” to a client in that it applies the retainer amount to initial billings, rather than holding it for payment against the last invoice.

**Retainer.** It is my/our policy to collect a retainer and receive the fully executed engagement letter before I/we begin providing services. The retainer for this matter shall be $\_\_\_\_\_\_\_. This retainer will be applied to my/our initial invoices for time and expenses until the retainer is exhausted. If the retainer has not been exhausted at the conclusion of my/our services on this matter, any unused amount will be refunded to the party who paid the retainer unless that party directs, in writing, that the refund be paid to a different party.

***Retainer Example No. 3 – non-refundable retainer required, retainer applied to final invoice.*** *Comment: a “non-refundable” provisions such as the following would be used by an expert where the expert is wary that a litigant or attorney in a case may just “tie up” the expert by retaining him or her and then not actually use any of the expert’s services. This would prevent the expert from working for the other side in the case and deprive the expert of that opportunity. Accordingly, the retainer here is not refundable and constitutes a minimum fee just for being retained.*

**Retainer.** It is my/our policy to collect a retainer and receive the fully executed engagement letter before I/we begin providing services. The retainer for this matter shall be $\_\_\_\_\_\_\_. This retainer shall be a non-refundable minimum charge for my/our availability to provide services. The amount of the retainer will be applied to my/our final invoice. If the actual total charges for the time that I/we bill on this matter are less than the amount of the retainer, the excess will not be refunded.

***Retainer Example No. 4 – retainer required, partly non-refundable, remainder applied to final invoice.*** *Comment: this retainer provision is “friendlier” to the client version of the fully non-refundable retainer in example no. 3. Under this version, only part of the retainer is not refundable.*

**Retainer.** It is my/our policy to collect a retainer and receive the fully executed engagement letter before I/we begin providing services. The retainer for this matter shall be $\_\_\_\_\_\_\_, of which $\_\_\_\_\_\_\_ shall be a non-refundable minimum charge for my/our availability to provide services in connection with this matter. The retainer will be applied to my/our final invoice, with any unused amount refunded to the party who paid the retainer unless that party directs, in writing, that the refund be paid to a different party. However, if the actual total charges for the time that I/we bill on this matter are less than the non-refundable portion of the retainer, the excess of the non-refundable portion over the charges for time billed will not be refunded.

**Right to Withhold Services and/or Withdraw.** Without liability on my/our part and without regard to the stage of litigation, I/we shall have the right to withhold providing services (including delivering any report or providing testimony) or withdraw completely, at my/our sole option, if any of my/our invoices are not timely paid or if I/we determine that an irreconcilable conflict has arisen.

**Reliance on Expert Reports:** In the event that I/we prepare any expert reports as part of this engagement, the use of any such expert reports shall be limited to litigation of the above referenced matter. The expert reports may not be used or relied on, in whole or in part, for any other purposes.

**Valuation Dates:** If the development of any appraisal opinions are needed in this engagement, your firm shall have responsibility for determining and advising me/us of the date(s) of value that are legally pertinent to the matter.

**Confidentiality and Recordkeeping.** I/We will maintain the confidentiality of all information and documentation received during my/our work and will abide by all court orders and applicable professional appraisal standards regarding the disclosure of information relating to this matter.

**Other Clients and Matters.** The value of my/our services to you and your client is based, in part, on my/our reputation for independent professionalism and integrity. It is possible that I/we may be engaged by other law firms representing parties adverse to you or your client in other matters in the future. Your engagement of my/our services is expressly conditioned on your agreement not to use the fact of my/our current or previous engagement by other counsel in other matters as a means to enhance or diminish the credibility of my/our opinions or testimony in this matter or in any other matter.

**Subpoenas and Testimony.** In the event that my/our firm or any of its owners, appraisers or employees is required by subpoena or other legal process to provide testimony or produce documents relating to my/our services or work product in connection with this engagement, whether as an expert or percipient witness, and whether in court, deposition, arbitration or in any other proceeding, and regardless of the identity of the party requiring such testimony or production of documents, your client agrees to compensate me/our firm for the time incurred in connection with preparation for and provision of such testimony and/or documents at my/our regular hourly rates in effect at that time for expert/testimonial services and to reimburse my/our reasonable actual expenses. The foregoing shall not apply to the extent that a third party pays my/our fees or expenses.

***[Consider Inclusion of the following Provision]***

**Hold Harmless and Limitation of Liability.** To assure that my/our services in this matter can be rendered freely and independently, your client agrees to indemnify, defend and hold harmless my/our firm, its owners, appraisers and employees from and against any and all liabilities, losses, costs and expenses relating to my/our consulting or testimonial services under this engagement. The foregoing shall not apply to any matter resulting from my/our gross negligence or willful misconduct. In any case, however, the total collective liability of my/our firm, its owners, appraisers and employees for all claims of any kind arising out of, relating to or connected with this engagement shall be limited to the total fees paid to me/us under this engagement.

Sincerely,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name]

[Firm]

Approved as to engagement:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Attorney Name]

[Attorney Firm Name]

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

Approved as to engagement terms and

fees by [insert name of attorneys’ client]:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Company: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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