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July 18, 2003

Paul J. Finnegan
Audit Committee Chairman
Allegiance Telecom, Inc.
9201 North Central Expressway
Dallas, Texas 75231

Dear Paul:

Thank you for selecting KPMG LLP ("KPMG") to provide accounting and auditing services, tax services, and bankruptcy compliance services to Allegiance Telecom, Inc. (the "Company" or "Debtor"). This letter outlines the terms of our employment, including our mutual understanding and agreement of the services to be provided and the manner in which we will bill the Company for these services. Our terms of engagement are as follows:

1. We will provide services to the Company during the pendency of its Chapter 11 Reorganization proceedings as outlined in the following exhibits:

Exhibit A-1 - Accounting and Auditing Services

Exhibit A-2 - Tax Services

Exhibit A-3 - Bankruptcy Compliance Services

2. The Company will be responsible for the accuracy and completeness of all information provided to KPMG during this engagement. We will make inquiries and perform analyses based on information made available to us. Our ability to complete our work and form our opinions will be dependent upon the availability of information and the cooperation of the officers and management of the Company.

3. We performed an internal search for any potential conflicts of interest and relationships based upon the names of the parties you have provided. We have not found any conflict of interest with respect to any of these parties and we have disclosed those relationships which we believe are required to be disclosed pursuant to Bankruptcy Rule 2014 in the AFFIDAVIT OF JERRY BOROWICK PURSUANT TO BANKRUPTCY





RULE 2014 IN SUPPORT OF APPLICATION AUTHORIZING EMPLOYMENT OF KPMG LLP AS ACCOUNTANTS, AUDITORS AND BANKRUPTCY COMPLIANCE ADVISORS TO THE DEBTORS. Should any potential conflict or additional relationship which we believe require disclosure come to our attention, we will so advise you and make the required disclosures within a reasonable time.

4. Our fees will be based upon the hours actually expended by each assigned staff member extended by each staff member's regular hourly billing rate. Our current project hourly billing rates by staff classification are as follows:

	<u>Accounting and Auditing Services</u>	<u>Tax Services</u>	<u>Bankruptcy Compliance Services</u>
<u>Classification</u>			
Partners/Managing Directors	\$450-650	\$500-750	\$540-600
Directors/Senior Managers/Managers	\$325-500	\$375-675	\$360-510
Senior/Staff Consultants	\$175-360	\$175-390	\$180-330
Paraprofessionals	\$120	\$120	\$120

5. These rates are adjusted periodically, in part due to the promotion of our staff members upon 30 days prior written notice to the Company. In addition to the fees, the Company agrees to reimburse KPMG for any reasonable and necessary expenses such as photocopying, travel, mileage, vendors, etc. that we incur.

6. Our fee is not contingent upon the results of this engagement. We make no express or implied warranties of our work or predict either results or final developments in this matter.

7. An advance payment retainer of \$350,000 will be held and applied against postpetition fees and expenses, to the extent allowed by the U.S. Bankruptcy Court.



8. Billings for our work will be in accordance with procedures established by the U.S. Bankruptcy Court.

9. Notwithstanding paragraph 3 of the attached KPMG LLP Standard Terms and Conditions, the Company may terminate this agreement at any time and we may terminate this agreement at any time for cause or upon 30 days advance written notice for any other reason. Upon notification of termination, we will stop all work immediately. The Company will be responsible for all fees and expenses incurred prior to our stopping work.

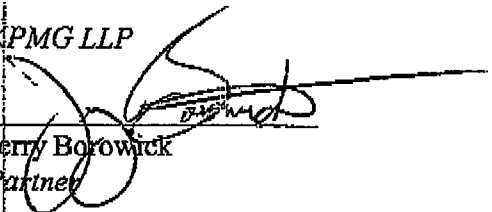
10. KPMG and the Company agree that this agreement shall not include any indemnification by the Company of KPMG for any matter, notwithstanding paragraph 8 of the attached KPMG LLP Standard Terms and Conditions and any other provision where the Company indemnifies KPMG for any reason.

11. KPMG and the Company agree that this agreement shall not limit any damages that the Company may seek against KPMG, notwithstanding paragraph 6 of the attached KPMG LLP Standard Terms and Conditions and any other provision limiting such damages.

We look forward to working with you on this project.

Very truly yours,

KPMG LLP


Jerry Borowick
Partner

cc: Royce J. Holland, CEO and Chairman
G. Clay Myers, Senior Vice President, Finance and Accounting

~~KPMG~~

This letter confirms the retention of KPMG, subject to U.S. Bankruptcy Court approval, of KPMG LLP as auditors, accountants and bankruptcy compliance advisers to the Company to provide the services described herein and in the Company's APPLICATION FOR AUTHORIZATION OF THE EMPLOYMENT OF KPMG LLP AS ACCOUNTANTS, AUDITORS AND BANKRUPTCY COMPLIANCE ADVISORS TO THE DEBTORS.

Accepted by Allegiance Telecom, Inc.

BY [Signature]

Date: 7/22/2003

ITS SENIOR VICE PRESIDENT - FINANCE



Exhibit A-1
Accounting and Auditing Services

We will issue a written report upon our audit of the consolidated balance sheets of Allegiance Telecom, Inc. and subsidiaries as of December 31, 2003 and 2002, the related consolidated statements of operations, stockholders' equity (deficit), and cash flows for each of the years in the two-year period ended December 31, 2003, and schedules supporting such financial statements, all of which are to be included in the annual report (Form 10-K) proposed to be filed by Allegiance under the Securities Exchange Act of 1934.

Should Allegiance wish to include or incorporate these consolidated financial statements, schedules, and our report thereon by reference into a future filing under the Securities Act of 1933 or other offering document, we would consider our consent to the inclusion of our report and the terms thereof at that time.

We have a responsibility to conduct and will conduct the audit in accordance with auditing standards generally accepted in the United States of America, with the objective of expressing an opinion as to whether the presentation of the consolidated financial statements and schedules, taken as a whole, conforms with accounting principles generally accepted in the United States of America. It should be understood that our report and the consolidated financial statements and schedules may be subject to review by the Securities and Exchange Commission staff and to the application by them of their interpretation of the relevant rules and regulations.

In conducting the audit, we will perform tests of the accounting records and such other procedures as we consider necessary in the circumstances to provide a reasonable basis for our opinion on the consolidated financial statements. We also will assess the accounting principles used and significant estimates made by management, and evaluate the overall consolidated financial statement presentation.

Our report will be addressed to the board of directors of the Company and will be in a form that is in accordance with the published rules and regulations of the Securities and Exchange Commission. We cannot provide assurance that an unqualified opinion will be rendered. Circumstances may arise in which it is necessary for us to modify our

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report or withdraw from the engagement. In such circumstances, our findings or reasons for withdrawal will be communicated to the audit committee.

We will read the other information in your annual report (Form 10-K) and consider whether such information, or the manner of its presentation, is materially inconsistent with information, or the manner of its presentation, appearing in the consolidated financial statements. However, our audit does not include the performance of procedures to corroborate such other information (including forward-looking statements).

Allgiance agrees that all records, documentation, and information we request in connection with our audit will be made available to us, that all material information will be disclosed to us, and that we will have the full cooperation of Allgiance's personnel. As required by auditing standards generally accepted in the United States of America, we will make specific inquiries of management about the representations embodied in the consolidated financial statements and the effectiveness of internal control, and obtain a representation letter from management about these matters. The responses to our inquiries, the written representations, and the results of audit tests, among other things, comprise the evidential matter we will rely upon in forming an opinion on the consolidated financial statements.

The management of Allgiance has responsibility for the consolidated financial statements, schedules, and all representations contained therein. Management also is responsible for identifying and ensuring that the Company complies with laws and regulations applicable to its activities, for preventing and detecting fraud, including the design and implementation of programs and controls to prevent and detect fraud, for adopting sound accounting policies, and for establishing and maintaining effective internal controls and procedures for financial reporting to maintain the reliability of the consolidated financial statements and to provide reasonable assurance against the possibility of misstatements that are material to the consolidated financial statements.

Our audit is planned and performed to obtain reasonable, but not absolute, assurance about whether the consolidated financial statements are free of material misstatement, whether caused by error or fraud. Absolute assurance is not attainable because of the nature of audit evidence and the characteristics of fraud. Therefore, there is a risk that material errors, fraud (including fraud that may be an illegal act), and other illegal acts



may exist and not be detected by an audit performed in accordance with auditing standards generally accepted in the United States of America. Also, an audit is not designed to detect matters that are immaterial to the consolidated financial statements.

To the extent that they come to our attention, we will inform management about any material errors and any instances of fraud or illegal acts. Further, to the extent that they come to our attention, we will inform the audit committee about fraud and illegal acts that involve senior management, fraud that in our judgment causes a material misstatement of the consolidated financial statements of Allegiance, and illegal acts, unless clearly inconsequential, that have not otherwise been communicated to the committee. In the case of illegal acts which in our judgment would have a material effect on the consolidated financial statements of Allegiance, we are also required to follow the procedures set forth in the Private Securities Litigation Reform Act of 1995, which under certain circumstances requires us to communicate our conclusions to the Securities and Exchange Commission.

Management is responsible for adjusting the consolidated financial statements to correct material misstatements and for affirming to the auditor in the representation letter that the effects of any uncorrected misstatements aggregated by the auditor during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the consolidated financial statements being reported upon taken as a whole.

In planning and performing our audit, we will consider Allegiance's internal control in order to determine the nature, timing, and extent of our audit procedures for the purpose of expressing an opinion on the consolidated financial statements and not to provide assurance on internal control.

While we are not being engaged to report on Allegiance's internal control and are not obligated to search for reportable conditions, we will communicate reportable conditions to you to the extent they come to our attention. Reportable conditions are significant deficiencies in the design or operation of internal control which could adversely affect the organization's ability to record, process, summarize and report financial data consistent with the assertions of management in the consolidated financial statements. The definition of *reportable conditions* does not include potential future internal control problems, that is, control problems coming to our attention that do not affect the



preparation of consolidated financial statements for the period under audit. We will, however, attest to, and report on, management's assessment of the effectiveness of Allegiance's internal controls and procedures for financial reporting as of December 31, 2003, as required by Section 404 of the Sarbanes-Oxley Act. This engagement letter will be supplemented with a letter setting forth our and Allegiance's responsibilities in connection with the Section 404 attestation services, and setting forth the estimated fees and costs associated with performing those services, when the applicable standards have been finalized.

Quarterly Review Services

We will review the condensed consolidated balance sheets of Allegiance as of June 30, and September 30, 2003, and the related condensed consolidated statements of operations, and cash flows for the quarterly and year-to-date periods then ended, which are to be included in the quarterly reports (Form 10-Q) proposed to be filed by Allegiance under the Securities Exchange Act of 1934. We will also review the selected quarterly financial data specified by Item 302 of Regulation S-K, which is required to be included in the annual report (Form 10-K) proposed to be filed by Allegiance under the Securities Exchange Act of 1934.

We have a responsibility to conduct our reviews in accordance with the provisions of Statement on Auditing Standards No. 100, *Interim Financial Information*, issued by the American Institute of Certified Public Accountants. The objective of a review of interim financial information is to provide us with a basis for communicating whether we are aware of any material modifications that should be made to such interim financial information for it to conform with accounting principles generally accepted in the United States of America. Our procedures will be substantially less in scope than an audit of financial statements performed in accordance with auditing standards generally accepted in the United States of America, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we will not express an opinion on the Company's interim financial information.

Our reviews will consist principally of performing analytical procedures applied to financial data and making inquiries of Company personnel responsible for financial and accounting matters. Our reviews will include obtaining sufficient knowledge of the Company's business and its internal control as it relates to the preparation of both annual



and interim financial information to (a) identify the types of potential material misstatements in the interim financial information and consider the likelihood of their occurrence, and (b) select the inquiries and analytical procedures that will provide us with a basis for communicating whether we are aware of any material modifications that should be made to the interim financial information for it to conform with accounting principles generally accepted in the United States of America.

At the conclusion of each review of interim financial information, we will obtain a representation letter from management confirming certain representations made during the review. It should be understood that the management of Allegiance is responsible for the fair presentation of the Company's interim financial information in conformity with accounting principles generally accepted in the United States of America, and for establishing and maintaining effective internal controls and procedures for financial reporting. Further, management is responsible for making all financial records and related information available to us. Management is also responsible for identifying and ensuring that the Company complies with the laws and regulations applicable to its activities.

A review does not contemplate tests of internal controls or accounting records, tests of responses to inquiries by obtaining corroborating evidential matter, and certain other procedures ordinarily performed during an audit. Thus, a review does not provide assurance that we will become aware of all significant matters that would be disclosed in an audit. Further, a review is not designed to provide assurance on internal control or to identify reportable conditions. However, we will communicate to the audit committee any reportable conditions that come to our attention.

Our review cannot be relied upon to disclose errors, fraud, or illegal acts that may exist. However, to the extent that they come to our attention in completing our review procedures, we will inform management about any material errors and any instances of fraud or illegal acts. Further, to the extent that they come to our attention, we will inform the audit committee about fraud and illegal acts that involve senior management, fraud that in our judgment causes a material misstatement of the interim financial information, and illegal acts, unless clearly inconsequential, that have not otherwise been communicated to the committee.



If we become aware of matters during our review that cause us to believe that interim financial information, filed or to be filed with the Securities and Exchange Commission, is probably materially misstated as a result of a departure from accounting principles generally accepted in the United States of America, we will discuss the matter with management and, if appropriate, communicate such matters to the audit committee.

Management is responsible for adjusting the interim financial information to correct material misstatements and for affirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the current-year period under review are immaterial, both individually and in the aggregate, to the interim financial information taken as a whole.

As agreed, we will not issue a written report upon completion of each review. However, we will inform you if we become aware of any material modifications that should be made to the interim financial information for it to be in conformity with accounting principles generally accepted in the United States of America. Should conditions preclude us from completing a review, we will advise you and the audit committee of Allegiance promptly. Allegiance agrees that it will not state in any document filed with the Securities and Exchange Commission or issued to stockholders that the interim financial information was reviewed by us, as such statement may require us to issue a written report.

Registration Statements and Other Offering Documents

We understand that the consolidated financial statements and schedules and our written report thereon, as described above, are to be included by Allegiance in its annual report (Form 10-K), and that in so doing Allegiance will be incorporating by reference these consolidated financial statements and schedules and our reports thereon in previously filed and effective Forms S-3 and S-8. Prior to issuing our consent to the incorporation by reference in these registration statements of our report with respect to the consolidated financial statements and schedules described above, we will perform procedures as required by Statement on Auditing Standards No. 37, *Filings Under Federal Securities Statutes*, including, but not limited to, reading information incorporated by reference in these registration statements and performing subsequent event procedures.



Should Allegiance wish to include or incorporate by reference these consolidated financial statements and our report thereon into a future filing under the Securities Act of 1933, or an exempt offering, prior to our consenting to include or incorporate by reference our report on such consolidated financial statements, we will be required to perform procedures as required by Statement on Auditing Standards No. 37, *Filings Under Federal Securities Statutes*, including, but not limited to, reading other information incorporated by reference in the registration statement or other offering document and performing subsequent event procedures. Our reading of the other information included or incorporated by reference in the offering document will consider whether such information, or the manner of its presentation, is materially inconsistent with information, or the manner of its presentation, appearing in the consolidated financial statements. However, we will not perform procedures to corroborate such other information (including forward-looking statements). The specific terms of our future services with respect to future filings or other offering documents will be determined at the time the services are to be performed.

Comfort Letters

Should a comfort letter be requested in connection with a future filing under the Securities Act of 1933, or an exempt offering, the specific terms of our services will be determined at that time. Prior to our issuance of a comfort letter, management of the Company agrees to supply us with a representation letter that will, among other things, confirm that no events have occurred that would require adjustments to (or additional disclosures in) the audited consolidated financial statements referred to above and confirm the Company's responses to certain inquiries made in connection with our issuance of the comfort letter.

* * * *

The work papers for this engagement are the property of KPMG LLP (KPMG). In the event KPMG is requested pursuant to subpoena or other legal process to produce its documents relating to this engagement for Allegiance in judicial or administrative proceedings to which KPMG is not a party, Allegiance shall reimburse KPMG at standard billing rates for its professional time and expenses, including reasonable attorney's fees, incurred in responding to such requests. We may be requested to make



certain workpapers available to regulators pursuant to authority given to it by law or regulation. If requested, access to such workpapers will be provided under the supervision of KPMG personnel. Furthermore, upon request, we may provide photocopies of selected workpapers to the regulator. The regulator may intend, or decide, to distribute the photocopies or information contained therein to others, including other government agencies.

While the audit report may be sent to Allegiance electronically by the KPMG engagement partner for Allegiance's convenience, only the manually signed audit report constitutes the Company's record copy.

We estimate that our fees for completion of our audit of the consolidated financial statements of Allegiance Telecom, Inc. and subsidiaries as of and for the year ended December 31, 2003, including completion of review procedures for the quarters ended June 30, September 30, and December 31, 2003 will be approximately \$675,000 to \$700,000. This estimate is based on the level of skill and experience of the individuals who will serve you. In addition, expenses are billed for reimbursement as incurred. Circumstances encountered during the performance of our procedures that warrant additional time or expense could cause us to be unable to complete them within the above estimates. We will notify you of any such circumstances as they are assessed and agree upon any additional billings at such time. Our estimated fees do not contemplate any accounting issues that might arise if the Company emerges from Bankruptcy protection prior to completion of our audit. Any additional procedures related to such issues, such as application of "fresh-start" accounting will be discussed and agreed upon at such time.



Exhibit A-2

Tax Advisory Services

KPMG anticipates that its tax services will include the following, as and if requested by the Debtors:

- i. Review of and assistance in the preparation and filing of any tax returns;
- ii. Advice and assistance to the Debtor regarding tax planning issues, including, but not limited to, assistance in estimating net operating loss carryforwards, international taxes, and state and local taxes;
- iii. Assistance regarding transaction taxes, state and local sales and use taxes;
- iv. Assistance regarding tax matters related to the Debtor's pension plans;
- v. Assistance regarding real and personal property tax matters, including, but not limited to, review of real and personal property tax records, negotiation of values with appraisal authorities, preparation and presentation of appeals to local taxing jurisdictions and assistance in litigation of property tax appeals;
- vi. Advice and assistance on the tax consequences of proposed plans of reorganization, including, but not limited to, assistance in the preparation of Internal Revenue Service ("IRS") ruling requests regarding the future tax consequences of alternative reorganization structures;
- vii. Assistance regarding any existing or future IRS, state and/or local tax examinations; and



viii. Other consulting, advice, research, planning or analysis regarding tax issues as may be requested from time to time.

Scope of Services

We will not audit or independently verify the information used to prepare returns. However, we may ask for clarification of some of the information. Our engagement cannot be relied on to uncover errors in the underlying information incorporated in the tax returns, or irregularities, should any exist. However, we will inform you of any such matters that come to our attention.

We will use our judgment in resolving questions where the tax law is unclear or where there may be conflicts between taxing authorities' interpretations of the law and other supportable positions. Unless otherwise instructed by you, we will resolve such questions in the corporation's favor whenever possible.

Because management has ultimate responsibility for the returns, the appropriate corporate personnel should review the returns before the officer signs and files the returns. All returns are subject to examination by the taxing authorities. In the event of an examination, the corporations may be requested to produce documents, records, or other evidence to substantiate the items of income and deduction shown on the returns. If an examination occurs, we will be available, upon request, to assist or represent the corporations.

The Company releases and will indemnify and hold harmless KPMG and its personnel from any claims, liabilities, costs and expenses relating to our services under this letter, except to the extent determined to have resulted from the intentional or deliberate misconduct of KPMG personnel. Also, our maximum liability to the Company arising for any reason relating to services rendered under this letter shall be limited to the amount of fees paid to us for these services.

Federal Confidential Communications Privilege

A confidentiality privilege under Internal Revenue Code Section 7525 may pertain to certain communications between KPMG personnel and the Company regarding federal tax advice provided pursuant to this engagement. By retaining KPMG, you agree that KPMG is instructed to claim the privilege on your behalf, with respect to any applicable



communications, up and until such time as you may waive any such privilege in writing. As disclosure of any such confidential communications to the Internal Revenue Service or other third party may cause any confidentiality privilege to be waived, you should notify us if the Internal Revenue Service or other third party requests information about any tax advice or tax advice documents provided by us.

Privileged information may be used by you in preparing your financial statements and, subsequently by KPMG, as your auditors and consultants. In addition, professional standards require members of our audit team to discuss matters that may affect the audit with firm personnel responsible for nonaudit services, which includes tax services. The Internal Revenue Service may take the position that such use or communication results in waiver of the privilege. By executing this agreement, you acknowledge this possibility and authorize KPMG's use of such information in its audit work when required by applicable professional standards.

The Company understands that KPMG makes no representation, warranty or promise, and offers no opinion with respect to the applicability of such confidentiality privilege to any communication and agrees to hold KPMG harmless should the privilege be determined not to apply to particular communications. The Company agrees to indemnify KPMG for any attorney's fees and other costs and expenses incurred by KPMG in defending the confidential communications privilege on the Company's behalf.



Exhibit A-3

Bankruptcy Compliance Services

KPMG anticipates that its Bankruptcy Compliance Services will include, as and if requested by the Debtors:

Bankruptcy Compliance Services

- i. Analysis and consultation regarding financial information or filings as required by the Bankruptcy Court or the Office of the United States Trustee, including but not limited to schedules of assets and liabilities, statement of financial affairs, mailing matrix and monthly operating reports;
- ii. Analysis and consultation regarding financial information for distribution to creditors and other parties-in-interest;
- iii. Assistance with analysis, tracking and reporting regarding cash collateral and any debtor-in-possession financing arrangements and budgets;
- iv. Assistance with implementation of bankruptcy accounting procedures as required by the Bankruptcy Code and generally accepted accounting principles, including, but not limited to, Statement of Position 90-7;
- v. Assistance with identifying potential cost containment opportunities;
- vi. Assistance with identifying asset redeployment opportunities;
- vii. Analysis of assumption and rejection issues regarding executory contracts and leases;
- viii. Reading and commenting on business plans, financial projections and business assumptions of the Debtor;



- ix. Assistance in evaluating reorganization strategy and alternatives available to the Debtor;
- x. Assistance in the preparation of hypothetical liquidation analysis under Chapter 7 of the US Bankruptcy Code;
- xi. Assistance in preparing documents necessary for confirmation;
- xii. Attendance, if necessary at meetings with bank lenders, creditors and any official or informal committees;
- xiii. Assistance with claims resolution procedures, including, but not limited to, analyses of creditors' claims by type and entity;
- xiv. Other such functions as requested by the Debtor or its counsel to assist the Debtor in its business and reorganization.

Scope of Services

While we may suggest and evaluate various options available to the Debtors, the ultimate decision as to which, if any, of these options to implement rests with the Debtors, its management and board of directors. KPMG and its individual partners and employees will not make any management decisions for the Debtors and will not be responsible for communicating information concerning the Debtors to the public or the Debtors' shareholders.

The Debtors will be responsible for the accuracy and completeness of all information provided to KPMG relating to this portion of the engagement. We will make inquiries and perform analyses based on information made available to us. Our ability to complete our work and form our opinions will be dependent upon the availability of information and the cooperation of the officers and management of the Debtors.

As a part of this portion of the engagement, KPMG may be requested to assist the Debtors (and its legal or other advisors) in negotiating with the Debtors' creditors and with other interested parties (together referred to as "Interested Parties"). In the event that we



participate in such negotiations, the representations made and the positions advanced will be those of the Debtors and its management, not KPMG, its partners or employees.

Written reports, memoranda, work papers or status summaries that we prepare in connection with this portion of the engagement will be maintained in accordance with our retention procedures. Except as may be required by law, regulation or judicial or administrative process, we will not disclose to anyone, without your permission, the content of any oral or written confidential communications received during the course of this engagement, or any information gained from the inspection of any records or documents provided by you that are identified as confidential. The work papers and other materials created by KPMG during this engagement are the property of KPMG. All documents in our possession belonging to the Debtors will be returned upon request.



KPMG LLP
Standard Terms and Conditions
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1. **Services.** Our services may include advice and recommendations; but all decisions in connection with the implementation of such advice and recommendations shall be your sole responsibility.

2. **Payment of Invoices.** You agree to pay properly submitted invoices within thirty (30) days of the invoice date (or any other date that we may agree to in writing). We shall have the right to halt or terminate entirely our services until payment is received on past due invoices.

All fees, charges and other amounts payable to us hereunder do not include any sales, use, excise, value added or other applicable taxes, tariffs or duties, payment of which shall be your sole responsibility, excluding any applicable taxes based on our net income or taxes arising from the employment or independent contractor relationship between us and our personnel.

3. **Term.** Unless terminated sooner in accordance with its terms, this engagement shall terminate on the completion of our services hereunder. In addition, this engagement may be terminated by either of us at any time by giving written notice to the other party not less than 30 calendar days before the effective date of termination.

4. Ownership.

(a) **KPMG Property.** We create, acquire or own various concepts, methodologies, and techniques; models; templates; software, user interfaces or screen designs; general purpose consulting and software tools; and logic, coherence and methods of operation of systems (collectively, the "KPMG Property"). We retain all ownership rights in the KPMG Property. You shall acquire no right or interest in such property, except for the license expressly granted in the next paragraph. In

addition, we shall be free to provide services of any kind to any other party as we deem appropriate, and we may use the KPMG Property to do so. We acknowledge that KPMG Property shall not include any of your confidential information or your tangible or intangible property, and we shall have no ownership rights in such property.

(b) **Ownership of Deliverables.** Except for KPMG Property, and upon full and final payment to us, deliverables or work product specified in the engagement letter or proposal to which these terms are attached (the "Deliverables") will become your property. If any KPMG Property is contained in any of the Deliverables, we hereby grant you, a royalty-free, non-exclusive license to use the KPMG Property in connection with the use of the Deliverables.

5. Limitation on Warranties. THIS IS A SERVICES ENGAGEMENT. KPMG WARRANTS THAT IT WILL PERFORM SERVICES HEREUNDER IN GOOD FAITH. KPMG DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. **Limitation on Damages.** Except for your and our respective indemnification obligations as described in these Standard Terms and Conditions, neither you nor we shall be liable to the other for any actions, damages, claims, liabilities, costs, expenses or losses arising out of the services performed hereunder for a total amount in excess of the fees paid or owing to us for services rendered by us under this engagement. In no event shall either you or we be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs). The provisions of this Paragraph shall apply regardless of the form of action, damage,



claim, liability, cost, expense, or loss, whether in contract, statute, tort, or otherwise.

7. Infringement.

(a) We agree to indemnify, hold harmless and defend you from and against all claims, liabilities, losses, expenses (including reasonable attorneys' fees), fines, penalties, taxes or damages (collectively "Liabilities") asserted by any third party against you to the extent such Liabilities result from the infringement by the Deliverables of any third party's trade secrets, trademarks, copyrights, or patents issued as of the date of the attached Engagement Letter. The preceding provisions shall not apply to any infringement arising out of the following:

- (i) use of the Deliverables other than in accordance with applicable documentation or instructions supplied by us or other than in accordance with Paragraph 8(b);
 - (ii) any alteration, modification or revision of the Deliverables not expressly agreed to in writing by us; or
 - (iii) the combination of the Deliverables with materials not supplied by us.
- (b) In case any of the Deliverables or any portion thereof is held, or in our reasonable opinion is likely to be held, in any such suit to constitute infringement, we may within a reasonable time, at our option, either:

KPMG LLP

Standard Terms and Conditions

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- (i) secure for you the right to continue the use of such infringing item; or
- (ii) replace, at our sole expense, such item with a substantially equivalent non-infringing item or modify such item so that it becomes noninfringing. In the event we are, in our reasonable discretion, unable to perform either of options described in (i) or (ii) above, you must return the Deliverable to us, and our sole liability shall be to refund to you the

amount you paid us for such item.

(c) The provisions of this Paragraph 7 state our entire liability and your sole and exclusive remedy with respect to any infringement or claim of infringement.

8. Indemnification.

(a) You and we each agree to indemnify, hold harmless and defend the other from and against any and all Liabilities for injury to, illness or death of, any person or persons regardless of status, and damage to or destruction of any tangible personal property which the other party may sustain or incur to the extent such Liabilities result from the negligence or willful misconduct of the indemnifying party.

(b) You acknowledge and agree that any advice, recommendations, information or work product provided to you by us in connection with this engagement is for your confidential use. Except as otherwise required by law, you will not disclose or permit access to such advice, recommendations, information or work product to any other party or summarize or refer to such advice, recommendations, information or work product or to our engagement hereunder without our prior written consent. In that regard, you will indemnify, defend and hold us harmless from and against any and all Liabilities asserted against us by any third party to the extent resulting from that party's use or possession of or reliance upon our advice, recommendations, information or work product as a direct or indirect result of your use or disclosure of such advice, recommendations, information or work product.

(c) The party entitled to indemnification (the "Indemnified Party") shall promptly notify the party obligated to provide such indemnification (the "Indemnifying Party") of any claim for which the Indemnified Party seeks indemnification and the Indemnifying Party shall have the right to conduct the defense or settlement of any such claim at the Indemnifying Party's sole expense, and the Indemnified Party shall cooperate with the Indemnifying Party. The party not conducting the defense shall nonetheless have the right to participate in such defense at its own expense. The Indemnified Party shall have the right to approve



the settlement of any claim hereunder that imposes any liability or obligation other than the payment of money damages.

9. Cooperation. You agree to cooperate with us in our performance of our services for you, including providing us with reasonable facilities and timely access to your data, information and personnel. You shall be responsible for the performance of your employees and agents and for the accuracy and completeness of all data and information provided to us for purposes of this engagement.

10. Force Majeure. Neither you nor we shall be liable for any delays resulting from circumstances or causes beyond our reasonable control, including, without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.

11. Limitation on Actions. Neither you nor we may bring any action arising under or relating to this engagement more than one year after the cause of action has accrued, except that we may bring an action for non-payment not later than one year after the date of the last payment due to us.

12. Independent Contractor. You and we are both independent contractors and neither you nor we are, or shall be considered to be, an agent, distributor or representative of the other. Neither you nor we shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other.

13. Confidentiality. You and we both acknowledge and agree that all information communicated by one party (the "Disclosing Party") to the other (the

"Receiving Party in connection with this engagement shall be received in confidence, shall be used only for purposes of this engagement, and no such confidential

information shall be disclosed by the Receiving Party or its agents or personnel without the prior written consent of the other party. Except to the extent otherwise required by applicable law or professional standards, the obligations under this section do not apply to information that: (a) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, (b) was known to the Receiving Party or had been previously possessed by the Receiving Party without restriction against disclosure at the time of receipt thereof by the Receiving Party, (c) was independently developed by

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the Receiving Party without violation of this Agreement or (d) you and we agree from time to time to disclose. Each party shall be deemed to have met its nondisclosure obligations under this Paragraph as long as it exercises the same level of care to protect the other's information as it exercises to protect its own confidential information, except to the extent that applicable law or professional standards impose a higher requirement. We may retain, subject to the terms of this Paragraph, one copy of your confidential information required for compliance with applicable professional standards or internal policies. If either you or we receive a subpoena or other validly issued administrative or judicial demand requiring it to disclose the other party's confidential information, such party shall provide prompt written notice to the other of such demand in order to permit it to seek a protective order. So long as the notifying party gives notice as provided herein, the notifying party shall be entitled to comply with such demand to the extent permitted by law, subject to any protective order or the like that may have been entered in the matter.

14. Survival. The provisions of Paragraphs 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13 and 15 hereof shall survive the expiration or termination of this engagement.



15. **Assignment.** Neither party may assign, transfer or delegate any of its rights or obligations without the prior written consent of the other party, such consent not to be unreasonably withheld.

16. **Severability.** In the event that any term or provision of this Agreement shall be held to be invalid, void or unenforceable, then the remainder of this Agreement shall not be affected, and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

17. **Entire Agreement.** These terms, and the Proposal or Engagement Letter to which these terms are appended, including Exhibits, constitute the entire Agreement between us with respect to the engagement and supersede all other oral and written representation, understandings or agreements relating to the engagement.