

Sample

Engagement Letter Wording

And other important Practice Letters



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Overview

Engagement Letters provide you with important protective wording for your practice. In addition, they allow you the opportunity to discuss additional services and ultimately create a stronger relationship with your clients.

Engagement letters should be utilized for all services and include:

- Outline scope of services
- Clarify all timelines
- Disclose all fees
- When appropriate, outline services not provided to deter “engagement letter creep”
- Include Alternative Dispute language

Engagement Letters are Essential to your Practice

As the title implies, you should truly consider engagement letters essential to every service that you provide. This is regardless of the extent of the service or the length of time that you have known the client.

Protective wording

A good percentage of professional liability claims arise because the client assumed that the accountant was providing a greater breadth of services than they were actually engaged to. A thorough engagement letter can be the basis of defense in responding to such an allegation. This is also why engagement letters should not only include those services that you have been engaged for, but outline those services that you are specifically not providing.

Defining scope of services, letting the client know they may need other services

By defining what services you are not providing, you open the door to suggest further services that you can provide your client. While protecting yourself, you are effectively advising about your firm’s service.

Satisfied Clients

Many Accountants fear using engagement letters will alienate long-standing clients, or are over-complicated for simple engagements. In reality, clients will be most satisfied when their expectations are based on a clear understanding of the services they are receiving. Client concerns should not be an excuse for protecting your practice. Read the section on “negative engagement letters” relevant to your individual tax clients.

Alternative Dispute Resolution

Each of your engagement letters should include an Alternative Dispute Resolution (Mediation or Arbitration) clause. The cost to mediate or arbitrate a client disagreement tends to be significantly less than litigation. This will mitigate the potential severity of any claims that do arise and can be effective in maintaining client relationships when unfortunate scenarios do arise. Mediation and arbitration is private, while litigation is public. The use of mediation or arbitration before litigation keeps your affairs private since litigation is documented publically. Ask your insurance broker if there are any deductible incentives in your professional liability policy when using mediation or arbitration to settle a case.

Limitation of Liability

A **limitation of liability provision** and a **consequential damage provision** within your engagement letter may not always be enforceable. They nonetheless offer several benefits. Namely, they are enforceable in many instances, and courts are accepting them with more frequency of late. See, Creative Playthings Franchising, Corp v. James A. Reiser, Jr., 463 Mass. 758, (2012). In addition, an accepted limitation provision should act as a deterrent in pursuing litigation when a client or plaintiff attorney understands that challenging the enforceability is an obstacle to pursuing a case. **Add language on the method of shortening the statute**

Overall, engagement letters are an important tool in creating a paper trail for the potential defense of any litigation with your clients. They should be utilized in all instances keeping in mind that professional standards require engagement letter usage for services such as audit, review and other attest services. Be sure to check with your state board of accountancy for regulations around engagement letter usage. The hope is that all accounting firms consider engagement letter usage a positive step in protecting your practice and creating client satisfaction.

Example Audit Engagement Letter

[Date]

[Client Contact]

[Client Name]

[Client Address]

Dear [Client Contact]:

This letter is to confirm our understanding of the terms and objectives of our engagement and the nature and limitations of the services we will provide.

We will audit the consolidated balance sheet of [Client Name] as of [Date], and the related consolidated statements of operations, retained earnings (deficit), and cash flows for the year then ended.

The objective of our audit is the expression of an opinion about whether your consolidated financial statements are fairly presented, in all material respects, in conformity with accounting principles generally accepted in the United States of America. Our audit will be conducted in accordance with auditing standards generally accepted in the United States and will include tests of your accounting records and other procedures we consider necessary to enable us to express such an opinion. If our opinion is other than unqualified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed an opinion, we may decline to express an opinion or to issue a report as a result of this engagement.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, tests of the physical existence of inventories, and direct confirmation of receivables and payables and certain other assets and liabilities by correspondence with selected customers, creditors, and financial institutions. We will also request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. Consequently, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. Also, we will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. Because an audit is designed to provide reasonable, but not absolute, assurance and because we will not perform a detailed examination of all transactions, there is a risk that material errors, fraud, or illegal acts, may exist and not be detected by us. In addition, an audit is not designed to detect immaterial errors, fraud, or other illegal acts or illegal acts that do not have a direct effect on the financial statements. Our engagement cannot, therefore, be relied upon to disclose errors, fraud, or other illegal acts that may exist. However, we will inform you of any material errors that come to our attention and any fraud that comes to our attention. We will also inform you of any other illegal acts that come to our

attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods of which we are not engaged as auditors.

Our audit will include obtaining an understanding of your internal controls sufficient to plan the audit and to determine the nature, timing, and extent of audit procedures to be performed. An audit is not designed to provide assurance on internal controls or to identify reportable conditions, that is, significant deficiencies or material weaknesses in the design or operation of internal control. Accordingly, we have no responsibility to identify and communicate significant deficiencies or material weaknesses in your internal controls as part of this engagement, and our engagement cannot be relied upon to disclose the same. However, during the audit, if we become aware of such reportable conditions, we will communicate them to you.

Prior to preparation and execution of this engagement letter, we discussed with you the fact that we provide clients with services specifically focused on identifying and addressing weaknesses in internal controls (internal control review) and on searching for the existence of fraud within your company (fraud audit). We further explained the additional costs associated with such different levels of service. After consideration of such services, you have informed us that you wish to retain us to perform only the audit services described in this letter.

You are responsible for adopting sound accounting policies, for maintaining an adequate and efficient accounting system, for safeguarding assets, for authorizing transactions, for retaining supporting documentation for those transactions, and for devising a system of internal controls that will, among other things, help assure the preparation of proper financial statements. You are also responsible for adjusting the financial statements to correct material misstatements and for confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole. Furthermore, you are responsible for management decisions and functions, for designating a competent employee to oversee any of the services we provide, and for evaluating the adequacy and results of those services.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the Company involving (a) management (b) employees who have significant roles in internal control, and (c) others where the fraud could have a material effect on the financial statements. You are also responsible for informing us of your knowledge of any allegations of fraud or suspected fraud affecting the Company received in communications from employees, former employees, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws and regulations.

You are responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. We will advise you about appropriate accounting principles and their application and will assist in the preparation of your financial statements, but the responsibility for the financial statements remains with you. As part of our engagement, we may propose standard, adjusting, or correcting journal entries to your financial statements. You are

responsible for reviewing the entries and understanding the nature of any proposed entries and the impact they have on the financial statements.

In order for us to complete this engagement, and to do so efficiently, we require unrestricted access to the following documents and individuals within your company:_____. We understand that your employees will prepare all cash, accounts receivable, and other confirmations we request and will locate any documents selected by us for testing. Any failure to provide such cooperation, and to do so on a timely basis, will impede our services and may require us to suspend our services or withdraw from the engagement.

Our fees for this engagement are not contingent on the results of our services. Rather, our fees for this engagement will be based on our standard hourly rates, as set forth on the attached rate sheet. In addition, you agree to reimburse us for any of our out-of-pocket costs incurred in connection with the performance of our services. We estimate that our fee for these services will range from approximately _____ to _____. You acknowledge that this range is not a limit to the total fees we may charge for our services and that our fees may actually exceed that range. However, in the event that we encounter unusual circumstances that would require us to expand the scope of the engagement, and/or if we anticipate our fees exceeding the aforementioned range, we will adjust our estimate and obtain your prior approval before continuing with the engagement.

Prior to commencing our services, we require that you provide us with a retainer in the amount of _____. The retainer will be applied against our final invoice, and any unused portion will be returned to you upon our collection of all outstanding fees and costs related to this engagement. Our fees and costs will be billed monthly, and are payable upon receipt. Invoices unpaid 30 days past the billing date may be deemed delinquent, and are subject to an interest charge of 1.0% per month. We reserve the right to suspend our services or to withdraw from this engagement in the event that any of our invoices are deemed delinquent. In the event that any collection action is required to collect unpaid balances due us, you agree to reimburse us for our costs of collection, including attorneys' fees.

If we elect to terminate our services for nonpayment, or for any other reason provided for in this letter, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our report. You will be obligated to compensate us for all time expended, and to reimburse us for all of our out-of-pocket costs, through the date of termination.

In connection with this engagement, we may communicate with you or others via email transmission. As emails can be intercepted and read, disclosed, or otherwise used or communicated by an unintended third party, or may not be delivered to each of the parties to whom they are directed and only to such parties, we cannot guarantee or warrant that emails from us will be properly delivered and read only by the addressee. Therefore, we specifically disclaim and waive any liability or responsibility whatsoever for interception or unintentional disclosure of emails transmitted by us in connection with the performance of this engagement. In that regard, you agree that we shall have no liability for any loss or damage to any person or entity resulting from the use of email transmissions, including any consequential, incidental, direct, indirect, or special damages, such as loss of revenues or anticipated profits, or disclosure or communication of confidential or proprietary information.

You are responsible to notify us in advance of your intent to reproduce our report for any reason, in whole or in part, and to give us the opportunity to review any printed material containing our report

before its issuance. Such notification does not constitute an acknowledgment on our part of any third party's intent to rely on the financial statements. With regard to financial statements published electronically on your internet website, you understand that electronic sites are a means to reproduce and distribute information. We are not required to read the information contained in your sites, or to consider the consistency of other information in the electronic site with the original document.

It is our policy to retain engagement documentation for a period of seven years, after which time we will commence the process of destroying the contents of our engagement files. **Note to accounting firm, be sure to check with the State Board of Accountancy for longer retention requirements.** To the extent we accumulate any of your original records during the engagement, those documents will be returned to you promptly upon completion of the engagement, and you will provide us with a receipt for the return of such records. The balance of our engagement file, other than the compiled financial statement, which we will provide to you at the conclusion of the engagement, is our property, and we will provide copies of such documents at our discretion and if compensated for any time and costs associated with the effort. In providing services under this agreement, we will not be the sole host or custodian of your original records

In the event we are required to respond to a subpoena, court order or other legal process for the production of documents and/or testimony relative to information we obtained and/or prepared during the course of this engagement, you agree to compensate us at our hourly rates, as set forth above, for the time we expend in connection with such response, and to reimburse us for all of our out-of-pocket costs incurred in that regard.

In the event that we are or may be obligated to pay any cost, settlement, judgment, fine, penalty, or similar award or sanction as a result of a claim, investigation, or other proceeding instituted by any third party, then to the extent that such obligation is or may be a direct or indirect result of your intentional or knowing misrepresentation or provision to us of inaccurate or incomplete information in connection with this engagement, and not any failure on our part to comply with professional standards, you agree to indemnify us, defend us, and hold us harmless as against such obligations.

You agree that any dispute (other than our efforts to collect an outstanding invoice) that may arise regarding the meaning, performance or enforcement of this engagement or any prior engagement that we have performed for you, will, prior to resorting to litigation, be submitted to mediation and that the parties will engage in the mediation process in good faith once a written request to mediate has been given by any party to the engagement. Any mediation initiated as a result of this engagement shall be administered within the county of [County and State], by [Name of Mediation Organization], according to its mediation rules, and any ensuing litigation shall be conducted within said county, according to [State] law. The results of any such mediation shall be binding only upon agreement of each party to be bound. The costs of any mediation proceeding shall be shared equally by the participating parties.

Any litigation arising out of this engagement, except actions by us to enforce payment of our professional invoices, must be filed within one year from the completion of the engagement, notwithstanding any statutory provision to the contrary.

Notwithstanding anything contained herein both accountant and client agree that regardless of where the client is domiciled and regardless of where this Agreement is physically signed this Agreement shall have been deemed to have been entered into at accountant's office located in <Specific County>, <Specific State>.

USA and <Specific County>, <Specific State>, USA shall be the exclusive jurisdiction for resolving disputes related to this Agreement. This Agreement shall be interpreted and governed in accordance with the Laws of <State>.

This engagement letter is contractual in nature, and includes all of the relevant terms that will govern the engagement for which it has been prepared. The terms of this letter supersede any prior oral or written representations or commitments by or between the parties. Any material changes or additions to the terms set forth in this letter will only become effective if evidenced by a written amendment to this letter, signed by all of the parties.

If, after full consideration and consultation with counsel if so desired, you agree that the foregoing terms shall govern this engagement, please sign this letter in the space provided and return the original signed letter to me, keeping a fully-executed copy for your records.

The Partner In Charge of this engagement is: _____

Thank you for your attention to this matter, and please contact me with any questions that you may have.

Very truly yours,

[Firm Contact]

[Title]

ACCEPTED AND AGREED:

[CLIENT NAME]

By: [Name of Signatory]

Date

Its: [Title]

Example Compilation Engagement Letter

[Date]

[Client Contact]

[Client Name]

[Client Address]

Dear (Client):

This letter will confirm our understanding of the terms and objectives of our engagement and the nature and limitations of the services we will provide.

We will compile, from information you provide, the balance sheet as of (Balance Sheet Date), and the related statements of income, retained earnings (deficit), and cash flows of (Client Name) for the year then ended in accordance with current Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. We will not audit or review such financial statements. Our services will be limited to presenting in financial statement form information that management represents to us.

Our report on the financial statements of (Client Name) for (Date) is currently expected to read as follows:

We have compiled the accompanying balance sheet of (Client Name) as of (Balance Sheet Date) and the related statements of income, retained earnings, and cash flows for the year then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them.

If management elects to omit substantially all disclosures from the financial statements, we will include an additional paragraph that reads as follows:

Management has elected to omit substantially all of the disclosures required by generally accepted accounting principles and the statement of cash flows. If the omitted disclosures and the statement of cash flows were included in the financial statements, they might influence the users conclusions about the company's financial position, results of operations and cash flows. Accordingly these financial statements are not designed for those who are not informed about such matters.

If for any reason we are unable to complete the compilation of your financial statements, we will not issue a compilation report on such statements as a result of this engagement.

A compilation differs significantly from a review or an audit of financial statements. A compilation does not include performing any analytical procedures, inquiry or other procedures performed in a review. In

addition, in a compilation one does not seek to obtain an understanding of an entity's internal control or assess fraud risk; test accounting records or examine source documents or other, more detailed procedures ordinarily performed in an audit. As a consequence, we will not express an opinion or provide any assurance regarding the financial statements being compiled.

Our engagement cannot be relied on to disclose errors, irregularities, or illegal acts, including fraud or embezzlements that may exist. However, we will inform the appropriate level of management of any material errors that come to our attention and any irregularities or illegal acts that come to our attention, unless they are clearly inconsequential.

You are responsible for adopting sound accounting policies, for maintaining an adequate and efficient accounting system for safeguarding assets, for authorizing transactions and retaining supporting documentation for those transactions and for devising an internal control system that will help assure the proper preparation of financial statements.

You are also responsible for the design and implementation of programs and controls to prevent and detect fraud and informing us about all known or suspected fraud affecting the Company. In addition, you remain responsible for identifying and ensuring that the Company complies with applicable laws and regulations. Our fee for these services will be based on the amount of time required at the standard billing rate plus out of pocket expenses. However, if we encounter unexpected circumstances that require more staff time than anticipated, we will discuss the matter with you. All invoices are due and payable upon presentation.

If any dispute arises (between/among) the parties hereto, the parties agree first to try in good faith to settle the dispute through non-binding mediation. The costs of mediation shall be shared equally by the parties.

The parties agree that, if any dispute cannot be settled through mediation, the dispute may then be brought before a court of competent jurisdiction, but the matter will ultimately be decided by the court, sitting without a jury. The parties recognize they have *knowingly and voluntarily* agreed to waive all rights to have any such dispute determined by a jury, but otherwise retain all rights afforded under the applicable civil justice system.

This Agreement, and the rights and obligations of the Parties hereunder, shall be governed by and construed in accordance with the laws (enter state or other jurisdiction) (without giving effect to its provisions on conflict of laws).

This Agreement is fully and voluntarily entered into by the Parties. Each Party states that he, she, or it has read this Agreement, has obtained advice of counsel if he, she, or it so desired, understands all of this Agreement, and executes this Agreement voluntarily and of his, her, or its own free will and accord with full knowledge of the legal significance and consequences of this Agreement.

If this letter correctly expresses your understanding, please sign the enclosed copy where indicated and return it to us.

The Partner In-Charge of this engagement is: _____

We appreciate the opportunity to serve you and trust that our association will be a long and pleasant one.

Sincerely,

Signed on behalf of (Firm Name)

ACCEPTED AND AGREED TO BY:
(Insert Client Name)

(Client Signature) Date: _____

Please be advised that this sample letter/information is provided as a service from your insurance broker. These are risk management suggestions and are not to be construed as legal advice from an attorney to a client. We strive to provide sound risk management advice and suggestions and hope this information is useful to you in this matter.

Please be further advised that McGowan cannot be responsible for material changes to this document or information supplied in the blanks currently provided. If you would like to have a proposed finished product reviewed in advance of utilization of this document, please contact our Risk management Director, John Raspante at 732-216-7552.

Example Review Engagement Letter

FIRM NAME
FIRM ADDRESS
FIRM CITY, STATE ZIP

COMPANY NAME
COMPANY ADDRESS 1
COMPANY ADDRESS 2
COMPANY CITY, STATE ZIP

Dear SALUTATION:

This will confirm our understanding of the terms and objectives of our engagement and the nature and limitations of the services we will provide:

We will perform the following services:

1. We will review the balance sheet of COMPANY NAME as of BALANCE SHEET DUE, and the related statements of income, retained earnings, and cash flows for the year then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. Our review will consist primarily of inquiries of company personnel and analytical procedures and we will require a client representation letter from you. A review does not contemplate obtaining an understanding of the internal control structure or assessing control risk, tests of accounting records and 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. Our engagement cannot be relied upon to disclose errors, irregularities, or illegal acts, including fraud or defalcations that may exist. However, we will inform the appropriate level of management of any material errors that come to our attention and any irregularities or illegal acts that come to our attention, unless they are clearly inconsequential. We will not perform an audit of such financial statements, the objective of which is the expression of an opinion regarding the financial statements taken as a whole, and, accordingly, we will not express such an opinion on them.

Our report is presently expected to read as follows:

We have reviewed the accompanying balance sheet of COMPANY NAME as of BALANCE SHEET DATE, and the related statements of income, retained earnings, and cash flows for the year then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. All information included in these financial statements is the representation of the management of COMPANY NAME.

A review consists principally of inquiries of company personnel and analytical procedures applied to financial data. It is substantially less in scope than an audit in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly we do not express such an opinion.

Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with generally accepted accounting principles.

If, for any reason, we are unable to complete our review of your financial statements, we will not issue a report on such statements as a result of this engagement.

We will not audit or otherwise verify the data you submit. Accordingly, our engagement cannot be relied upon to disclose errors, fraud, or other illegal acts that may exist. However, it may be necessary to ask you for clarification of some of the information you provide, and we will inform you of any material errors, fraud or other illegal acts that come to my attention.

You are responsible for maintaining an adequate and efficient accounting system, for safeguarding assets, for authorizing transactions, and for retaining supporting documentation for those transactions, all of which will, among other things, help assure the preparation of proper returns. Furthermore, you are responsible for evaluating the adequacy and results of the services we provide.

It is our policy to retain engagement documentation for a period of seven years, after which time we will commence the process of destroying the contents of our engagement files. To the extent we accumulate any of your original records during the engagement, those documents will be returned to you promptly upon completion of the engagement, and you will provide us with a receipt for the return of such records. The balance of our engagement file, other than a copy of your reviewed financial statements, which we will provide to you at the conclusion of the engagement, is our property, and we will provide copies of such documents at our discretion, unless required by law, and if compensated for any time and costs associated with the effort. In providing services under this agreement, we will not be the sole host or custodian of your original records.

Any litigation arising out of this engagement, except actions by us to enforce payment of our professional invoices, must be filed within one year from the completion of the engagement, notwithstanding any statutory provision to the contrary.

Our liability relating to the performance of the services rendered under this letter is limited solely to direct damage sustained by you. In no event shall we be liable for the consequential, special, incidental, or punitive loss, damage or expense caused to you or to any third party (including without limitation, lost profits, opportunity costs, etc.). Notwithstanding the foregoing, our maximum liability relating to services rendered under this letter (regardless of form of action, whether in contract, negligence or otherwise) shall be limited to the fees received by me for this engagement. The provisions set forth in this paragraph shall survive the completion of the engagement.

Notwithstanding anything contained herein both accountant and client agree that regardless of where the client is domiciled and regardless of where this Agreement is physically signed this Agreement shall have been deemed to have been entered into at Accountant's office located in <Specific County>, <Specific State>.

USA and <Specific County>, <Specific State>, USA shall be the exclusive jurisdiction for resolving disputes related to this Agreement. This Agreement shall be interpreted and governed in accordance with the Laws of <State>.

Our fees for these services will be billed as work progresses and are based on the amount of time required plus out-of-pocket expenses. Invoices are payable upon presentation. We will notify you immediately of any circumstances we encounter that could significantly affect our initial estimate of total fees, which will range from \$X,XXX to \$X,XXX.

We shall be pleased to discuss this letter with you at any time and appreciate the opportunity to serve you and trust that our association will be a long and pleasant one.

If the foregoing is in accordance with your understanding, please sign the copy of this letter in the space provided and return it to us.

The Partner In-Charge of this engagement is: _____

Sincerely yours,

(Signature of Accountant)

Acknowledged:
COMPANY NAME
DATE

Example Tax Return Preparation Engagement Letter (Personal--Joint)

[Date]

[Client #1 Name]

[Client #2 Name]

[Clients' Address]

Dear [Client #1 Name and Client #2 Name]:

This letter is to confirm and specify the terms of our engagement with you and to clarify the nature and extent of the services we will provide.

We will prepare your [Year] joint federal income tax return, and only the income tax returns for the states of ___ (collectively, the "returns"). This engagement pertains only to the [Year] tax year, and our responsibilities do not include preparation of any other tax returns that may be due to any taxing authority. Our engagement will be complete upon the delivery of the completed returns to you. Thereafter, you will be solely responsible to file the returns with the appropriate taxing authorities.

We are available under the terms of a separately stated engagement letter to provide a nexus study to determine if you have filing requirements in other states or jurisdictions.

Your returns may be selected for review by one or more than one taxing authority. Any proposed adjustments by the examining agent are subject to certain rights of appeal. In the event of such government tax examination, we will be available upon your written request to represent you during the examination and/or during any appeal. Any such representation will be the subject of, and governed by, a separate engagement letter.

We will prepare the returns from information which you will furnish to us. It is your responsibility to provide all the information required for the preparation of complete and accurate returns. We will furnish you with questionnaires and/or worksheets as needed to guide you in gathering the necessary information. Your use of such forms will assist us in keeping our fee to a minimum. To the extent we render any accounting and/or bookkeeping assistance, it will be limited to those tasks we deem necessary for preparation of the returns.

Newly formed I.R.S Code section 199A may be applicable to your tax filings for 2018. We will provide guidance as best as we can based on our interpretation of this code section. Many unanswered questions have arisen in the tax profession and the I.R. S. in many cases has yet to provide authoritative guidance. Further, the planning possibilities embedded in this code section may provide unintended results in other facets of tax planning such as pension, F.I.C.A tax, reasonable and unreasonable compensation, entity selection, etc..... By executing this engagement letter you are asserting that you are aware of the difficulties in tax planning created by this newly formed code section and waive any liability against our firm for either failing to contact us prior to December 31st 2018 and or subsequent authoritative guidance by the tax courts, I.R.S, and other agencies that may affect tax planning and preparation for 2018.

The timeliness of your cooperation is essential to our ability to complete this engagement. Specifically, we must receive sufficient information from which to prepare your returns within a reasonable period of time prior to the applicable filing deadline. Accordingly, if we do not receive information from you, as noted above, by _____, it may be necessary for us to pursue an extension of the due date of your returns, and we reserve the right to suspend our services or withdraw from this engagement.

We will not audit or otherwise verify the data you submit. Accordingly, our engagement cannot be relied upon to disclose errors, fraud, or other illegal acts that may exist. However, it may be necessary to ask you for clarification of some of the information you provide, and we will inform you of any material errors, fraud or other illegal acts that come to our attention.

Did you mine, buy, sell, or exchange a virtual currency, use a virtual currency to pay for goods and services, or receive a virtual currency as payment for goods and services? Be sure to let us know.

You are responsible for maintaining an adequate and efficient accounting system, for safeguarding assets, for authorizing transactions, and for retaining supporting documentation for those transactions, all of which will, among other things, help assure the preparation of proper returns. Furthermore, you are responsible for evaluating the adequacy and results of the services we provide.

The law provides various penalties and interest that may be imposed when taxpayers underestimate their tax liability. You acknowledge that any such understated tax, and any imposed interest and penalties, are your responsibility, and that we have no responsibility in that regard. If you would like information on the amount or circumstances of these penalties, please contact me.

We may encounter instances where the tax law is unclear, or where there may be conflicts between the taxing authorities' interpretations of the law and other supportable positions. In those instances, we will outline for you each of the reasonable alternative courses of action, including the risks and consequences of each such alternative. In the end, we will adopt, on your behalf, the alternative which you select after having considered the information provided by us, provided the position(s) satisfy the substantial authority standard.

Without disclosure in the return itself of the specific position taken on a given issue, we must have a reasonable belief that it is more likely than not that the position will be held to be the correct position upon examination by taxing authorities. If we do not have that reasonable belief, we must be satisfied that there is at least a reasonable basis for the position, and in such a case, the position must be formally disclosed on Form 8275 or 8275-R, which form would be filed as part of the return. If we do not believe there is a reasonable basis for the position, either the position cannot be taken or we cannot sign the return. In order for us to make these determinations, we must rely on the accuracy and completeness of the relevant information you provide to us, and, in the event we and/or you are assessed penalties due to our reliance on inaccurate, incomplete, or misleading information you supplied to us (with or without your knowledge or intent), you will indemnify us, defend us and hold us harmless as to those penalties.

U.S. filing obligations related to foreign financial assets

As part of your filing obligations, you are required to report the maximum value of specified foreign financial assets, which include financial accounts with foreign institutions and certain other foreign non-account investment assets that exceed certain thresholds. You are responsible for informing us of all foreign assets, so we may properly advise you regarding your filing obligations.

These assets include any ownership interests you directly or indirectly hold in businesses located in a foreign country, and any assets or financial accounts located in a foreign country over which you have signature authority. Based upon the information you provide; this information will be used to calculate any applicable foreign tax credits. We will also use this data to inform you of any additional filing requirements, which may include *Form 8938, Statement of Specified Foreign Assets*, and *FinCEN Form 114, Report of Foreign Bank and Financial Accounts* ("FBAR"). Failure to file required forms can result in the imposition of both civil and criminal penalties, which may be significant. The FBAR is not a tax return and its preparation is not within the scope of this engagement. If you ask us to prepare the FBAR, we will confirm this representation in a separate engagement letter.

Foreign filing obligations

You are responsible for complying with the tax filing requirements of any other country. You acknowledge and agree that we have no responsibility to raise these issues with you and that foreign filing obligations are not within the scope of this engagement.

We will also provide you with interim and year-end tax planning services on issues that you specifically bring to our attention in writing. Our ability to provide you with appropriate guidance on such issues will be entirely dependent on the timeliness, accuracy, and completeness of the relevant information bearing on the issue which we will rely on you to provide to us. Although we may orally discuss tax planning issues with you from time to time, such discussions will not constitute advice upon which we intend for you to rely for any purpose. Rather, any advice upon which we intend for you to rely, and upon which you will rely, will be embodied in a written report or correspondence from us to you, and any such writing will supersede any prior oral representations between the parties on the issue.

Our fees for this engagement are not contingent on the results of our services. Rather, our fees for this engagement, including tax planning, preparation of your returns, and any representation of your interests during an examination by a taxing authority and/or any subsequent appeal, will be based on our standard hourly rates, as set forth on the attached rate sheet. In addition, you agree to reimburse us for any of our out-of-pocket costs incurred in connection with the performance of our services. We estimate that our fee for these services will range from approximately _____ to _____. You acknowledge that this range is not a limit to the total fees we may charge for our services and that our fees may actually exceed that range. However, in the event that we encounter unusual circumstances that would require us to expand the scope of the engagement, and/or if we anticipate our fees

exceeding the aforementioned range, we will adjust our estimate and obtain your prior approval before continuing with the engagement.

Prior to commencing our services, we require that you provide us with a retainer in the amount of _____. The retainer will be applied against our final invoice, and any unused portion will be returned to you upon our collection of all outstanding fees and costs related to this engagement. Our fees and costs will be billed monthly, and are payable upon receipt. Invoices unpaid 30 days past the billing date may be deemed delinquent and are subject to an interest charge of 1.0% per month. We reserve the right to suspend our services or to withdraw from this engagement in the event that any of our invoices are deemed delinquent. In the event that any collection action is required to collect unpaid balances due us, you agree to reimburse us for our costs of collection, including attorneys' fees.

If we elect to terminate our services for nonpayment, or for any other reason provided for in this letter, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed your return. You will be obligated to compensate us for all time expended and to reimburse us for all of our out-of-pocket costs, through the date of termination.

You should retain all the documents, canceled checks and other data that form the basis of income and deductions. These may be necessary to prove the accuracy and completeness of the returns to a taxing authority. You have the final responsibility for the income tax returns and, therefore, you should review them carefully before you sign them.

In connection with this engagement, we may communicate with you or others via email transmission. As emails can be intercepted and read, disclosed, or otherwise used or communicated by an unintended third party, or may not be delivered to each of the parties to whom they are directed and only to such parties, we cannot guarantee or warrant that emails from us will be properly delivered and read only by the addressee. Therefore, we specifically disclaim and waive any liability or responsibility whatsoever for interception or unintentional disclosure of emails transmitted by us in connection with the performance of this engagement. In that regard, you agree that we shall have no liability for any loss or damage to any person or entity resulting from the use of email transmissions, including any consequential, incidental, direct, indirect, or special damages, such as loss of revenues or anticipated profits, or disclosure or communication of confidential or proprietary information.

It is our policy to retain engagement documentation for a period of seven years, after which time we will commence the process of destroying the contents of our engagement files. To the extent we accumulate any of your original records during the engagement, those documents will be returned to you promptly upon completion of the engagement, and you will provide us with a receipt for the return of such records. The balance of our engagement file, other than a copy of your income tax return, which we will provide to you at the conclusion of the engagement, is our property, and we will provide copies of such documents at our discretion and if compensated for any time and costs associated with the effort.

Because the income tax returns we are to prepare in connection with this engagement are joint returns, and because you will each sign those returns, you are each our client. You each acknowledge that there is no expectation of privacy from the other concerning our services in connection with this engagement, and we are at liberty to share with either of you, without the prior consent of the other, any and all documents and other information concerning preparation of your returns. We will require, however,

that any request for documents or other information be communicated to us in written form. You also acknowledge that unless we are notified otherwise in advance and in writing, we may construe an instruction from either of you to be an instruction on your joint behalf. Absent a contrary written instruction in the future, from either or both of you, we will communicate with either or both of you at the following mailing address: _____.

In the event we are required to respond to a subpoena, court order or other legal process for the production of documents and/or testimony relative to information we obtained and/or prepared during the course of this engagement, you agree to compensate us at our hourly rates, as set forth above, for the time we expend in connection with such response, and to reimburse us for all of our out-of-pocket costs incurred in that regard.

In the event that we are or may be obligated to pay any cost, settlement, judgment, fine, penalty, or similar award or sanction as a result of a claim, investigation, or other proceeding instituted by any third party, and if such obligation is or may be a direct or indirect result of any inaccurate, incomplete, or misleading information that you provide to us during the course of this engagement (with or without your knowledge or intent), you agree to indemnify us, defend us, and hold us harmless as against such obligation.

My liability relating to the performance of the services rendered under this letter is limited solely to direct damage sustained by you. In no event shall I be liable for the consequential, special, incidental, or punitive loss, damage or expense caused to you or to any third party (including without limitation, lost profits, opportunity costs, etc.). Notwithstanding the foregoing, our maximum liability relating to services rendered under this letter (regardless of form of action, whether in contract, negligence or otherwise) shall be limited to the fees received by me for this engagement. The provisions set forth in this paragraph shall survive the completion of the engagement.

Notwithstanding anything contained herein both accountant and client agree that regardless of where the client is domiciled and regardless of where this Agreement is physically signed this Agreement shall have been deemed to have been entered into at Accountant's office located in <Specific County>, <Specific State>, USA and <Specific County>, <Specific State>, USA shall be the exclusive jurisdiction for resolving disputes related to this Agreement. This Agreement shall be interpreted and governed in accordance with the Laws of <State>.

You agree that any dispute (other than our efforts to collect an outstanding invoice) that may arise regarding the meaning, performance or enforcement of this engagement or any prior engagement that we have performed for you, will, prior to resorting to litigation, be submitted to mediation, and that the parties will engage in the mediation process in good faith once a written request to mediate has been given by any party to the engagement. Any mediation initiated as a result of this engagement shall be administered within the county of [County and State], by [Name of Mediation Organization], according to its mediation rules, and any ensuing litigation shall be conducted within said county, according to [State] law. The results of any such mediation shall be binding only upon agreement of each party to be bound. The costs of any mediation proceeding shall be shared equally by the participating parties.

Any litigation arising out of this engagement, except actions by us to enforce payment of our professional invoices, must be filed within one year from the completion of the engagement, notwithstanding any statutory provision to the contrary. In the event of litigation brought against us, any judgment you obtain shall be limited in amount, and shall not exceed the amount of the fee charged by us, and paid by you, for the services set forth in this engagement letter

This engagement letter is contractual in nature and includes all of the relevant terms that will govern the engagement for which it has been prepared. The terms of this letter supersede any prior oral or written representations or commitments by or between the parties. Any material changes or additions to the terms set forth in this letter will only become effective if evidenced by a written amendment to this letter, signed by all of the parties.

If, after full consideration and consultation with counsel, if so desired, you agree to authorize us to prepare your personal income tax returns pursuant to the terms set forth above, please execute this letter on the line below designated for your signature, and return the original of this executed letter to this office along with a completed copy of the enclosed tax organizer and the supporting documentation

requested therein. You should keep a copy of this fully executed letter for your records. If this firm does not receive from you the original of this letter, in fully executed form, but receives from you a completed copy of the enclosed tax organizer and/or supporting documentation requested therein, then such receipt by this office shall be deemed to evidence your acceptance of all of the terms set forth above. If, however, this office receives from you no response to this letter, then this office will not proceed to provide you with any professional services, and will not prepare your income tax returns.

Thank you for your attention to this matter, and please contact me with any questions that you may have.

Very truly yours,

[Firm Contact]

[Title]

ACCEPTED AND AGREED:

[Name of Signatory #1]

Date

[Name of Signatory #2]

Date

Example Tax Return Preparation Engagement Letter (No A&A Services)

[Date]

[Client Contact]

[Client Name]

[Client Address]

Dear [Client Contact]:

This letter is to confirm our understanding of the terms and objectives of our engagement and the nature and limitations of the services we will provide.

We will prepare your [Year] federal income tax return, and only the income tax returns for the states of _____, (collectively, the “returns”) with supporting schedules, and perform related research as considered necessary. This engagement pertains only to the [Year] tax year, and our responsibilities do not include preparation of any other tax returns that may be due to any taxing authority. Our engagement will be complete upon the delivery of the completed returns to you. Thereafter, you will be solely responsible to file the returns with the appropriate taxing authorities.

If, during our work, we discover information that affects your prior-year tax returns, we will make you aware of the facts. However, we cannot be responsible for identifying all items that may affect prior-year returns. If you become aware of such information during the year, please contact us to discuss the best resolution of the issue.

Your returns may be selected for review by one or more than one taxing authority. Any proposed adjustments by the examining agent are subject to certain rights of appeal. In the event of such government tax examination, if you wish to have us represent you during the examination and/or during any appeal, please make that request of us in writing. If we agree to represent you in that regard, such representation will be the subject of, and governed by, a separate engagement letter.

Certain communications involving tax advice may be privileged and not subject to disclosure to the IRS. By disclosing the contents of those communications to anyone, or by turning over information about those communications to the government, you (or other employees) may be waiving this privilege. To protect this right to privileged communication, please consult with us or the corporation’s attorney prior to disclosing any information about our tax advice.

Our engagement cannot be relied upon to disclose errors, fraud, or other illegal acts that may exist. However, we will inform you of any material errors that come to our attention and any fraud that comes to our attention. We will also inform you of any other illegal acts that come to our attention, unless clearly inconsequential. Our responsibility as tax preparer is limited to the tax period specified above and does not extend to any later periods of which we are not engaged as tax preparers.

Our services are not designed to provide assurance on internal controls or to identify reportable conditions, that is, significant deficiencies or material weaknesses in the design or operation of internal control. Accordingly, we have no responsibility to identify and communicate significant deficiencies or material weaknesses in your internal controls as part of this engagement, and our engagement cannot be relied upon to disclose the same. However, during the procedures, if we become aware of such reportable conditions, we will communicate them to you.

Prior to preparation and execution of this engagement letter, we discussed with you the fact that we provide clients with attest and accounting services, as well as services specifically focused on identifying and addressing weaknesses in internal controls (internal control review), and on searching for the existence of fraud within your company (fraud audit). We further explained the additional costs associated with such different levels of service. After consideration of such services, you have informed us that you wish to retain us to perform only the income tax return preparation services described in this letter.

You are responsible for adopting sound accounting policies, for maintaining an adequate and efficient accounting system, for safeguarding assets, for authorizing transactions, for retaining supporting documentation for those transactions, and for devising a system of internal controls that will, among other things, help assure the preparation of proper income tax returns. Furthermore, you are responsible for management decisions and functions, for designating a competent employee to oversee any of the services we provide, and for evaluating the adequacy and results of those services. You have the final responsibility for the income tax returns and, therefore, should review them carefully before you sign and file them.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the Company involving (a) management (b) employees who have significant roles in internal control, and (c) others where the fraud could have a material effect on the financial statements. You are also responsible for informing us of your knowledge of any allegations of fraud or suspected fraud affecting the Company received in communications from employees, former employees, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws and regulations.

In order for us to complete this engagement, and to do so efficiently, we require unrestricted access to the following documents and individuals within your company:_____. Specifically, we must receive sufficient information from which to prepare your returns within a reasonable period of time prior to the applicable filing deadline, specifically, on or before_____. Any failure to provide such cooperation, and to do so on a timely basis, will impede our services and may require us to pursue an extension of the due date of your returns, suspend our services or withdraw from the engagement.

Did you mine, buy, sell, or exchange a virtual currency, use a virtual currency to pay for goods and services, or receive a virtual currency as payment for goods and services? Be sure to let us know.

The law provides various penalties and interest that may be imposed when taxpayers understate their tax liability. You acknowledge that any such understated tax, and any imposed interest and penalties, are your responsibility and that we have no responsibility in that regard. If you would like information on the amount or circumstances of these penalties, please contact me.

We may encounter instances where the tax law is unclear, or where there may be conflicts between the taxing authorities' interpretations of the law and other supportable positions. In those instances, we will outline for you each of the reasonable alternative courses of action, including the risks and consequences of each such alternative. In the end, we will adopt, on your behalf, the alternative which you select after having considered the information provided by us, provided the position(s) taken satisfy the substantial authority standard.

Without disclosure in the return itself of the specific position taken on a given issue, we must have a reasonable belief that it is more likely than not that the position will be held to be the correct position upon examination by taxing authorities. If we do not have that reasonable belief, we must be satisfied that there is at least a reasonable basis for the position, and in such a case the position must be formally disclosed on Form 8275 or 8275-R, which form would be filed as part of the return. If we do not believe there is a reasonable basis for the position, either the position cannot be taken or we cannot sign the return. In order for us to make these determinations, we must rely on the accuracy and completeness of the relevant information you provide to us, and, in the event we and/or you are assessed penalties due to our reliance on inaccurate, incomplete, or misleading information you supplied to us (with or without your knowledge or intent), you will indemnify us, defend us and hold us harmless as to those penalties

Our fees for this engagement are not contingent on the results of our services. Rather, our fees for this engagement, including preparation of your returns and any representation of your interests during an examination by a taxing authority and/or any subsequent appeal, will be based on our standard hourly rates, as set forth on the attached rate sheet. In addition, you agree to reimburse us for any of our out-of-pocket costs incurred in connection with the performance of our services. We estimate that our fee for these services will range from approximately _____ to _____. You acknowledge that this range is not a limit to the total fees we may charge for our services and that our fees may actually exceed that range. However, in the event that we encounter unusual circumstances that would require us to expand the scope of the engagement, and/or if we anticipate our fees exceeding the aforementioned range, we will adjust our estimate, and obtain your prior approval before continuing with the engagement.

Prior to commencing our services, we require that you provide us with a retainer in the amount of _____. The retainer will be applied against our final invoice, and any unused portion will be returned to you upon our collection of all outstanding fees and costs related to this engagement. Our fees and costs will be billed monthly, and are payable upon receipt. Invoices unpaid 30 days past the billing date may be deemed delinquent, and are subject to an interest charge of 1.0% per month. We reserve the right to suspend our services or to withdraw from this engagement in the event that any of our invoices are deemed delinquent. In the event that any collection action is required to collect unpaid balances due us, you agree to reimburse us for our costs of collection, including attorneys' fees.

If we elect to terminate our services for nonpayment, or for any other reason provided for in this letter, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed your return. You will be obligated to compensate us for all time expended, and to reimburse us for all of our out-of-pocket costs, through the date of termination.

You should retain all the documents, canceled checks and other data that form the basis of income and deductions. These may be necessary to prove the accuracy and completeness of the returns to a taxing authority. You have the final responsibility for the income tax returns and, therefore, you should review them carefully before you sign them.

In connection with this engagement, we may communicate with you or others via email transmission. As emails can be intercepted and read, disclosed, or otherwise used or communicated by an unintended third party, or may not be delivered to each of the parties to whom they are directed and only to such parties, we cannot guarantee or warrant that emails from us will be properly delivered and read only by the addressee. Therefore, we specifically disclaim and waive any liability or responsibility whatsoever for interception or unintentional disclosure of emails transmitted by us in connection with the performance of this engagement. In that regard, you agree that we shall have no liability for any loss or damage to any person or entity resulting from the use of email transmissions, including any consequential, incidental, direct, indirect, or special damages, such as loss of revenues or anticipated profits, or disclosure or communication of confidential or proprietary information.

It is our policy to retain engagement documentation for a period of seven years, after which time we will commence the process of destroying the contents of our engagement files. To the extent we accumulate any of your original records during the engagement, those documents will be returned to you promptly upon completion of the engagement, and you will provide us with a receipt for the return of such records. The balance of our engagement file, other than a copy of your income tax return, which we will provide to you at the conclusion of the engagement, is our property, and we will provide copies of such documents at our discretion and if compensated for any time and costs associated with the effort.

In the event we are required to respond to a subpoena, court order or other legal process for the production of documents and/or testimony relative to information we obtained and/or prepared during the course of this engagement, you agree to compensate us at our hourly rates, as set forth above, for the time we expend in connection with such response, and to reimburse us for all of our out-of-pocket costs incurred in that regard.

In the event that we are or may be obligated to pay any cost, settlement, judgment, fine, penalty, or similar award or sanction as a result of a claim, investigation, or other proceeding instituted by any third party, and if such obligation is or may be a direct or indirect result of any inaccurate, incomplete, or misleading information that you provide to us during the course of this engagement (with or without your knowledge or intent), you agree to indemnify us, defend us (with counsel of our choosing), and hold us harmless as against such obligation.

You agree that any dispute (other than our efforts to collect an outstanding invoice) that may arise regarding the meaning, performance or enforcement of this engagement or any prior engagement that we have performed for you, will, prior to resorting to litigation, be submitted to mediation, and that the parties will engage in the mediation process in good faith once a written request to mediate has been given by any party to the engagement. Any mediation initiated as a result of this engagement shall be administered within the county of [County and State], by [Name of Mediation Organization], according to its mediation rules, and any ensuing litigation shall be conducted within said county, according to [State] law. The results of any such mediation shall be binding only upon agreement of each party to be bound. The costs of any mediation proceeding shall be shared equally by the participating parties.

Any litigation arising out of this engagement, except actions by us to enforce payment of our professional invoices, must be filed within one year from the completion of the engagement, notwithstanding any statutory provision to the contrary. In the event of litigation brought against us, any judgment you obtain shall be limited in amount, and shall not exceed the amount of the fee charged by us, and paid by you, for the services set forth in this engagement letter. In no event will we be responsible for any additional tax that may be assessed against you, or any interest that may be assessed against you with respect to such additional tax.

This engagement letter is contractual in nature, and includes all of the relevant terms that will govern the engagement for which it has been prepared. The terms of this letter supersede any prior oral or written representations or commitments by or between the parties. Any material changes or additions to the terms set forth in this letter will only become effective if evidenced by a written amendment to this letter, signed by all of the parties.

If, after full consideration and consultation with counsel if so desired, you agree that the foregoing terms shall govern this engagement, please sign this letter in the space provided and return the original signed letter to me, keeping a fully-executed copy for your records.

Thank you for your attention to this matter, and please contact me with any questions that you may have.

Very truly yours,

[Firm Contact]

[Title]

ACCEPTED AND AGREED:

[CLIENT NAME]

By: [Name of Signatory]

Date

Its: [Title]

Example Agreed Upon Procedures Engagement Letter

<Date>

<Client Representative>

<Client Name>

<Client Address>

Re: Agreed-upon Procedures

Dear <Client Representative>:

This letter confirms our mutual understanding with respect to the engagement of **[FIRM] (hereinafter “firm”, “we”, or “us”)** by **[CLIENT] (hereinafter “client” or “you”)** to provide professional services in connection with **[identify agreed upon procedure assignment]**, to specify the terms of our engagement and to clarify the nature and extent of the services we will provide. [The term “client” includes the “client” and its management.]

We will apply the agreed upon procedures which [client] has specified listed in the attached schedule to the [insert appropriate financials, ex. A/R activity, etc.] This engagement is solely to assist [client] with verifying [_____] and will be conducted in accordance with the attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of [client]. Consequently, we make no representation regarding the sufficiency of the procedures described in the attached schedule either for the purpose for which the report has been requested or for any other purposes. If, for any reason, we are unable to complete the procedures, we will describe any restrictions on the performance of the procedures in our report, or we will not issue a report as a result of this engagement.

Or –depends on engagement

Our engagement to apply agreed-upon procedures will be performed in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of the specified users of the report. Consequently, we make no representation regarding the sufficiency of the procedures either for the purpose for which this report has been requested or for any other purpose. If, for any reason, we are unable to complete the procedures, we will describe any restrictions on the performance of the procedures in our report, or will not issue a report as a result of this engagement.

Our engagement will be designed to perform the following agreed-upon procedures <list specific procedures agreed to between you and the final users>:

Examples of procedures:

1. Inspection of specified documents evidencing certain types of transactions or detailed attributes thereof
2. Confirmation of specific information with third parties
3. Comparison of documents, schedules, or analyses with certain specified attributes
4. Performance of mathematical computations

5. Performance of specific procedures on work performed by others

Our engagement is limited in scope and will be confined to our agreed-upon procedures. We have no obligation to perform any procedures beyond those listed [above or in the attached schedule] We will not be conducting an audit or review of the financial statements of <Client Name>, and therefore we will not express an opinion or any other form of assurance on them.

At the end of our engagement, we will submit a report listing the procedures performed and our findings. The report is intended solely for the use of [client in connection with []] and should not be used by anyone else for any other purpose. Our report will include a statement indicating that had we performed additional procedures, other matters might have come to our attention that would have been reported to you. Accordingly, using this report for anything other than the original intent of the agreed-upon procedures could mislead the readers. You must notify us immediately if the original users of the report change.

The client shall upon the receipt of written notice indemnify and hold the firm and its affiliates, and their partners, principals, and personnel, harmless against all costs, fees, expenses, damages, and liabilities (including legal defense costs) associated with any third-party claim arising from or relating to any misrepresentation to firm by the Client or the withholding or concealment of information from the firm by the client. In addition, the Client shall upon receipt of written notice indemnify and hold the firm and its affiliates, and their partners, principals and personnel, harmless against all punitive damages associated with any third-party claim arising from or relating to: (i) any services, work product, or deliverables from the firm that the Client or its management uses or discloses to others; or (ii) this engagement generally. The terms of this paragraph shall apply regardless of the nature of any claim asserted (including those arising from contract law, statutes, regulations, or any form of negligence of the Client, whether arising out of tort, strict liability, or otherwise) and whether or not the firm was advised of the possibility of the damage or loss asserted. These terms shall also continue to apply after any termination of this agreement by either party and during any dispute between the parties.

With respect to any services, work product, or other deliverables hereunder, or this engagement generally, the firm's liability to the Client shall in no event exceed the fees that it receives for the portion of the work giving rise to liability, nor shall the firm's liability include any special, consequential, incidental, or exemplary damages or loss, including any lost profits, savings, or business opportunity.

The limitation on liability provisions of this engagement letter will apply to the fullest extent of the law, whether in contract, statute, tort (such as negligence), or otherwise. The parties' agreements and undertakings contained in this engagement letter, such as those pertaining to the limitation on liability, will survive the completion or termination of this engagement. The parties agree that their rights and obligations hereunder will be construed and governed under the laws of the [insert State]

Either party may terminate this engagement, with or without cause, by providing written notice to the other party. In the event of early termination for any reason, the client will be invoiced and agrees to remit payment for time and expenses incurred up to the end of the notice period together with reasonable time and expenses incurred to bring the engagement to a close in a prompt and orderly manner. Neither the client nor the firm shall have any liability to the other for any loss or consequential damage arising from early termination by either the client or the firm.

<Name of Firm Representative> is the engagement partner for the services specified in this letter. <His/Her> responsibilities include supervising <Firm>'s services performed as part of this engagement and signing or authorizing another qualified firm representative to sign the report.

Prior to preparation and execution of this engagement letter, we discussed with you the fact that we provide clients with attest and accounting services, as well as services specifically focused on identifying and addressing weaknesses in internal controls (internal control review), and on searching for the existence of fraud within your company (fraud audit). We further explained the additional costs associated with such different levels of service. After consideration of such services, you have informed us that you wish to retain us to perform only the agreed upon procedures services described in this letter.

Our engagement cannot be relied upon to disclose errors, irregularities, or illegal acts, including fraud or defalcations, which may exist. However, we will inform you of any such matters that come to our attention. Further, our engagement is not designed to provide assurance on internal controls or to identify reportable conditions, that is, significant deficiencies or material weaknesses in the design or operation of internal control. Accordingly, we have no responsibility to identify and communicate significant deficiencies or material weaknesses in your internal control as part of this engagement, and our engagement cannot be relied upon to disclose the same. However, during the procedures, if we become aware of such reportable conditions, we will communicate them to you.

By your signature below, you acknowledge that you are responsible for management decisions and functions. That responsibility includes designating qualified individuals with the necessary expertise to be responsible and accountable for overseeing all the services we perform (e.g., agreed-upon procedures, bookkeeping services, payroll services, tax services, prospective financial statements, profit-sharing plan services, etc.) as part of this engagement, as well as evaluating the adequacy and results of the services performed. You are responsible for establishing and maintaining internal controls, including monitoring ongoing activities.

We plan to begin our procedures on approximately [insert date] and, unless unforeseeable problems are encountered, the engagement should be completed by [insert date]. To facilitate the timely completion of the engagement contemplated in this letter, you authorize us to send to or receive from you certain information, including correspondence via electronic means (i.e., email, Sharefile, etc.). This authorization extends to the electronic transmission of information to or from any third parties we may engage to assist us in the completion of the engagement. The text of such correspondence, as well as any attachments thereto such as draft or final financial statements or other documents, may contain information of a sensitive nature. We represent to you that we have made a good faith effort to ensure that the security of our information technology infrastructure and our policies and procedures for handling client information meet customary standards. However, due to the inherent limitations of currently available security systems, we cannot provide absolute assurance that any information transmitted to or from us via electronic means will not be compromised as a result of unauthorized access to our files. As such, you agree to hold us harmless with respect to any loss you may suffer as a result of such compromise.

All documentation for this engagement remains the property of firm and constitutes confidential information.

All information you provide to us in connection with this engagement will be maintained by us on a strictly confidential basis. In the event we receive a subpoena or summons requesting that we produce documents from this engagement or testify about the engagement, we will notify you prior to responding to it if we are legally permitted to do so. You may, within the time permitted for our firm to respond to any request, initiate such legal action as you deem appropriate to protect information from discovery. If you take no action within the time permitted for us to respond or if your action does not result in a judicial order protecting us from supplying requested information, we may constitute your inaction or failure as consent to comply with the request. Time incurred in connection with subpoenas, and/ or other related legal matters involving you, and or your account(s), will be billed at our normal per diem rates.

In connection with this engagement, we may communicate with you or others via email transmission. As emails can be intercepted and read, disclosed, or otherwise used or communicated by an unintended third party, or may not be delivered to each of the parties to whom they are directed and only to such parties, we cannot guarantee or warrant that emails from us will be properly delivered and read only by the addressee. Therefore, we specifically disclaim and waive any liability or responsibility whatsoever for interception or unintentional disclosure of emails transmitted by us in connection with the performance of this engagement. In that regard, you agree that we shall have no liability for any loss or damage to any person or entity resulting from the use of email transmissions, including any consequential, incidental, direct, indirect, or special damages, such as loss of revenues or anticipated profits, or disclosure or communication of confidential or proprietary information.

Our fees for this work will be at our regular hourly rates for the individuals involved plus direct out-of-pocket expenses. Payment for service is due when rendered, and interim billings may be submitted as work progresses and expenses are incurred. Billings become delinquent if not paid within <number> days of the invoice date. If billings are not paid within <number> days of the invoice date, at our election, we may stop all work until your account is brought current, or we may withdraw from this engagement. <Client> acknowledges and agrees that we are not required to continue work in the event of <client>'s failure to pay on a timely basis for services rendered as required by this engagement letter. <Client> further acknowledges and agrees that in the event we stop work or withdraw from this engagement as a result of <client>'s failure to pay on a timely basis for services rendered as required by this engagement letter, we shall not be liable to <client> for any damages that occur as a result of our ceasing to render services.

We will require a retainer of \$<amount>, which will be applied to current billings as registered.

At the conclusion of this engagement, we will return all original records you supplied to us. Your company records are the primary records for your operations and comprise the backup and support for your financial reports and tax returns. In providing services under this agreement, we will not be the sole host or custodian of your original records. Our records and files are our property and are not a substitute for your own records. Our firm destroys our client files and all pertinent work papers after a retention period of xx years, after which time these items will no longer be available. Catastrophic events or physical deterioration may result in our firm's records being unavailable. You should make and retain copies of original records given to us which may be needed after our retention period (e.g. basis

information, agreements). By your signature below, you acknowledge and agree that upon the expiration of the xx year period the firm shall be free to destroy our records relating to this engagement. **(Note to accounting firm, we recommend 7 years to retain documents. You should check with your state board of accountancy for longer requirements.)**

Parties to this engagement agree that any dispute that may arise regarding the meaning, performance or enforcement of this engagement will, prior to resorting to litigation, be submitted to mediation upon the written request of any party to the engagement subject to the selection of a mutually agreed upon mediator. All mediations initiated as a result of this engagement shall be administered pursuant to the mediation rules of the American Arbitration Association (AAA). The results of this mediation shall be binding only upon agreement of each party to be bound. Each party shall bear its own costs of any mediation proceeding. The mediation shall be confidential in all respects, as allowed or required by law, except our final settlement positions at mediation shall be admissible in litigation solely to determine the prevailing party's identity for purposes of the award of reasonable attorney's fees and costs. If any portion of this agreement is deemed invalid or unenforceable, said finding shall not operate to invalidate the remainder of the terms set forth in this engagement letter. This section shall survive completion or termination of this Agreement, but under no circumstances shall either party call for mediation of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceedings to litigate such claim or dispute under the laws of the [state]

If mediation fails to resolve the dispute or claim, the parties hereby agree to submit any action, claim or counterclaim whether based in contract, tort, statutory rights or otherwise to the Superior Court of the [state] The parties also agree that the laws of the [state] shall govern all legal proceedings arising from this engagement.

The party(ies) signing this engagement letter authorize and represent that they have the legal authority to bind the person(s) and/or entity(ies) listed on this contract. All parties to this agreement acknowledge and agree that facsimile, electronic and multi-party signatures used to execute this document will legally bind each party to the terms of this agreement.

We appreciate the opportunity to be of service to you and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

We are looking forward to working with you on this engagement.

The Partner in Charge of this engagement is: _____

Very truly yours,

<Accountant Name> <Firm Name>APPROVED AND

AUTHORIZED:

<Client Representative>

<Client Name>

<Final User Name> [*Optional: Use if client is not final user.*]

Date

[NOTE TO PREPARER: If the client is not the final user, also address letter to the users of the report.]

Example Bookkeeping Engagement Letter

[Date]

[Client Contact]

[Client Name]

[Client Address]

Dear [Client Contact]:

This letter is to confirm our understanding of the terms and objectives of our engagement and the nature and limitations of the services we will provide.

For the fiscal year ended _____, we will provide the following bookkeeping services:

1. Record journals
2. Post general ledger
3. Post other ledgers (*specify*)
4. Reconcile bank statements
5. Prepare gross receipts tax reports
6. Post earnings records
7. Prepare payroll tax returns
8. Prepare W-2's, W-3's
9. Prepare 1099's
10. Prepare Payroll Checks
11. Other bookkeeping services (*specify*)

Our engagement is limited to the period and the accounting services indicated above. We will not audit or review your financial statements, or any other accounting documents and information you provide, in accordance with generally accepted auditing standards. Accordingly, we ask that you not in any manner refer to this as an audit or review. Nor will we otherwise verify the data you submit for accuracy or completeness. Rather, we will rely on the accuracy and completeness of the documents and information you provide to us. Accordingly, our engagement cannot be relied upon to disclose errors, fraud, or other illegal acts that may exist. However, it may be necessary to ask you for clarification of some of the information you provide, and we will inform you of any material errors, fraud or other illegal acts that come to our attention, unless they are clearly inconsequential. In addition, we have no responsibility to identify and communicate significant deficiencies or material weaknesses in your internal controls as part of this engagement, and our engagement cannot, therefore be relied upon to make disclosure of such matters.

You are responsible for adopting sound accounting policies, for maintaining an adequate and efficient accounting system, for safeguarding assets, for authorizing transactions, for retaining supporting documentation for those transactions, and for devising a system of internal controls that will, among other things, help assure the preparation of proper financial statements. Furthermore, you are

responsible for management decisions and functions, for designating a competent employee to oversee any of the services we provide, and for evaluating the adequacy and results of those services.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the Company involving (a) management (b) employees who have significant roles in internal control, and (c) others where the fraud could have a material effect on the financial statements. You are also responsible for informing us of your knowledge of any allegations of fraud or suspected fraud affecting the Company received in communications from employees, former employees, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws and regulations.

Prior to preparation and execution of this engagement letter, we discussed with you the fact that we provide clients with levels of service higher than bookkeeping, such as audit, review, and compilation services, and we explained to you the manner in which such levels of service differ from bookkeeping. We also explained to you that we provide clients with services specifically focused on identifying and addressing weaknesses in internal controls (internal control review), and on searching for the existence of fraud within your company (fraud audit). We further explained the additional costs associated with such higher and different levels of service. After consideration of such services, you have informed us that you wish to retain us to perform only the bookkeeping services described in this letter.

In order for us to complete this engagement, and to do so efficiently, we require unrestricted access to the following documents and information concerning your company:

1. Copies of basic documents reflecting your financial transactions, including check stubs, summaries of cash receipts and sales (cash and charge), bank statements and canceled checks, listings of accounts receivable and accounts payable, and documentary support of property and equipment transactions-purchases, trades, sales, and other dispositions;
2. Information concerning any mortgage or pledge of business assets on business debts, any personal guarantees or debt, leases, or other information that effects or may effect the results of operations of the business;
3. Any other financial information necessary for purpose of reflection on your accounting records, trial balance and tax returns;
4. Identification of all cash receipts as to source (i.e., loans, sales, etc.), and information concerning all transactions that are consummated with cash.

Any failure to provide such documents and information, and to do so on a timely basis, will impede our services, and may require us to suspend our services or withdraw from the engagement. You agree to accept responsibility for any effect on your accounting records and financial statements of basic financial information or transaction documents not submitted to us for processing and entry, or losses that may result from their absence.

For purposes of entry of the financial information from your basic transaction documents, classification according to the agreed-upon chart of accounts will be performed by you or your employees. As business conditions change, we may mutually agree to change/modify this arrangement.

Prior to commencing our services, we require that you provide us with a retainer in the amount of _____. The retainer will be applied against our final invoice, and any unused portion will be returned to you upon our collection of all outstanding fees and costs related to this engagement. Our fees and costs will be billed monthly at the fixed rate of _____, and are payable upon receipt. Invoices unpaid 30 days past the billing date may be deemed delinquent, and are subject to an interest charge of 1.0% per month. We reserve the right to suspend our services or to withdraw from this engagement in the event that any of our invoices are deemed delinquent. In the event that any collection action is required to collect unpaid balances due us, you agree to reimburse us for our costs of collection, including attorneys' fees.

If we elect to terminate our services for nonpayment, or for any other reason provided for in this letter, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our report. You will be obligated to compensate us through the date of termination.

In connection with this engagement, we may communicate with you or others via email transmission. As emails can be intercepted and read, disclosed, or otherwise used or communicated by an unintended third party, or may not be delivered to each of the parties to whom they are directed and only to such parties, we cannot guarantee or warrant that emails from us will be properly delivered and read only by the addressee. Therefore, we specifically disclaim and waive any liability or responsibility whatsoever for interception or unintentional disclosure of emails transmitted by us in connection with the performance of this engagement. In that regard, you agree that we shall have no liability for any loss or damage to any person or entity resulting from the use of email transmissions, including any consequential, incidental, direct, indirect, or special damages, such as loss of revenues or anticipated profits, or disclosure or communication of confidential or proprietary information.

It is our policy to retain engagement documentation for a period of seven years, after which time we will commence the process of destroying the contents of our engagement files. To the extent we accumulate any of your original records during the engagement, those documents will be returned to you promptly upon completion of the engagement, and you will provide us with a receipt for the return of such records. The balance of our engagement file, other than the compiled financial statement, which we will provide to you at the conclusion of the engagement, is our property, and we will provide copies of such documents at our discretion and if compensated for any time and costs associated with the effort.

In the event we are required to respond to a subpoena, court order or other legal process for the production of documents and/or testimony relative to information we obtained and/or prepared during the course of this engagement, you agree to compensate us at our standard hourly rates then existing for the time we expend in connection with such response, and to reimburse us for all of our out-of-pocket costs incurred in that regard.

In the event that we are or may be obligated to pay any cost, settlement, judgment, fine, penalty, or similar award or sanction as a result of a claim, investigation, or other proceeding instituted by any

third party, and if such obligation is or may be a direct or indirect result of any inaccurate or incomplete information that you provide to us during the course of this engagement, you agree to indemnify us, defend us, and hold us harmless as against such obligation.

You agree that any dispute (other than our efforts to collect an outstanding invoice) that may arise regarding the meaning, performance or enforcement of this engagement or any prior engagement that we have performed for you, will, prior to resorting to litigation, be submitted to mediation, and that the parties will engage in the mediation process in good faith once a written request to mediate has been given by any party to the engagement. Any mediation initiated as a result of this engagement shall be administered within the county of [County and State], by [Name of Mediation Organization], according to its mediation rules, and any ensuing litigation shall be conducted within said county, according to [State] law. The results of any such mediation shall be binding only upon agreement of each party to be bound. The costs of any mediation proceeding shall be shared equally by the participating parties.

Any litigation arising out of this engagement, except actions by us to enforce payment of our professional invoices, must be filed within one year from the accrual of the cause of action, notwithstanding any statutory provision to the contrary. In the event of litigation brought against us, any judgment you obtain shall be limited in amount, and shall not exceed the amount of the annual fee charged by us, and paid by you, for the services set forth in this engagement letter

This engagement letter is contractual in nature, and includes all of the relevant terms that will govern the engagement for which it has been prepared. The terms of this letter supersede any prior oral or written representations or commitments by or between the parties. Any material changes or additions to the terms set forth in this letter will only become effective if evidenced by a written amendment to this letter, signed by all of the parties.

If, after full consideration and consultation with counsel if so desired, you agree that the foregoing terms shall govern this engagement, please sign the copy of this letter in the space provided and return the original signed letter to me, keeping a fully-executed copy for your records.

Thank you for your attention to this matter, and please contact me with any questions that you may have.

Very truly yours,
[Firm Contact]
[Title]

ACCEPTED AND AGREED:
[CLIENT NAME]

By: [Name of
Signatory]

Date

Its: [Title]

Conflict of Interest “Informed Consent”: Joint Representation Wording

[**Note:** (1) If the engagement/proposed engagement is described in IRC Circular 230 §10.29(a)(2), this letter can be used to meet IRC Circular 230 §10.29(b)(3) requirements if it is carefully tailored for the specific engagement/proposed engagement; (2) if the engagement/proposed engagement is described in IRC Circular 230 §10.29(a)(1), CAMICO recommends that the CPA immediately disengage from one or both clients.]

<Date>

<Client A Name>

<Client A Address>

<Client B Name>

<Client B Address>

Dear <Client A Name> and <Client B Name>:

This letter confirms our mutual understanding with respect to the engagement of [FIRM] [hereinafter “firm”, “us”, or “we”] by [Client One and Client Two] (collectively “Client”) (hereinafter “you”, or the “Client”) to provide professional services. This letter discusses certain ramifications of the proposed joint representation. You have the opportunity to have your own legal representative review and advise you on all matters related to the joint representation, including this letter, prior to signing this letter.

Both of you are engaging our firm to perform the following service(s): <insert CPA services>. [or to perform the professional services described in the [insert date] engagement letter between our firm and [insert both clients names] The Terms and Conditions of the [insert date] engagement letter are specifically incorporated herein. The potential benefits of dual representation include reduced fees, expedited services and negotiations because only one firm is retained.

The dual representation, however, also presents a potential conflict of interest. The potential conflict of interest arises because your respective interests could become actually adverse in the future. Therefore, our firm must perform its services in a manner furthering both of your interests, cannot favor one party to the detriment of the other, and cannot negotiate on behalf of either party with the other party.

Based upon both parties’ current cooperation and the preexisting relationship of the parties, we believe our firm’s joint representation of both parties presents no actual conflict of interest, at this time, and as accountants and advisors, our firm can adequately represent both parties’ interests.

Should an actual conflict of interest arise in the future, our firm will promptly apprise you of any actual conflict so that you can jointly decide how to resolve the conflict and/or whether you wish to obtain separate representation. Further, if either of you becomes aware of an actual conflict of interest, you agree to inform our firm of that actual conflict immediately.

Additionally, because our firm represents both parties, conversations or other communications between either party and our firm are not considered confidential and are available to the other party. In fact, our firm may be required to disclose any oral or written communications between our firm and one party to the other party.

By signing below, you acknowledge that (1) the potential conflict of interest has been fully disclosed to you; (2) you understand and acknowledge the potential conflict of interest as described; (3) you consent to the joint representation subject to the potential conflict of interest as disclosed; and (4) neither party's communications with our firm are protected from disclosure to the other party.

Very truly yours,

<Accountant Name>

<Firm Name>

Approved:

<Client A Name>

Date

<Client B Name>

Date

Sample FBAR Engagement Wording

Please note that any person or entity subject to the jurisdiction of the United States (includes individuals, corporations, partnerships, trusts, and estates) having a financial interest in, or signature or other authority over, bank accounts, securities, or other financial accounts having a **aggregate** value exceeding \$10,000 in a foreign country, shall report such a relationship. Filing requirements also apply to taxpayers that have direct or indirect control over a foreign or domestic entity with foreign financial accounts, even if the taxpayer does not have foreign account(s). For example, a corporate-owned foreign account would require filings by the corporations *and* by the individual corporate officers with signature authority. Failure to disclose the required information to the U.S. Department of the Treasury may result in substantial civil and/or criminal penalties.

If you and/or your entity have a financial interest in any foreign accounts, you are responsible for providing our firm with all the information necessary to prepare Form TD-F-90-22.1 required by the U.S. Department of the Treasury. If you do not provide our firm with information regarding any interest you may have in a foreign account, we will not be able to prepare any of the required disclosure statements.

In addition, the Internal Revenue Service under IRC Section 6038(a) requires information reporting with respect to certain foreign corporations (Form 5471) and describes the information required to be reported on this form, which is due when your income tax return is due, including extensions. Therefore, if you are an officer, director, or shareholder in a foreign corporation, you may be required to file Form 5471. IRC section 6038(b)(1) provides for a monetary penalty of \$10,000 for each Form 5471 that is filed after the due date of the income tax return (including extensions) or that does not include complete and accurate information as defined under the regulations. By your signature below, you accept responsibility for informing us if you are an officer, director, or shareholder in a foreign corporation and you agree to provide us with the information necessary to prepare the appropriate Form 5471(s). ***In the event that you do not provide us with this information, we assume no liability for penalties associated with missing, late or incomplete filing information pursuant to code section 6038(a).***

Example Disengagement Letter

The following letter contains example language that may be used as a guide in documenting withdrawal from a client relationship that included write-up, compilation and tax preparation services for a closely-held corporate client and its three principals due to infighting among the shareholders and lack of cooperation:

[Date]

BY CERTIFIED MAIL/RETURN-RECEIPT REQUESTED

Board of Directors

[Corporate Name]

[Corporate Address]

RE: Termination of Professional Services

Dear Board Members:

I am writing to give you formal notice that as of the date of this letter, the Firm will cease to render any professional services to the Corporation or its individual shareholders, including but not limited to bookkeeping, accounting and tax-related services. I regret that disengagement has become necessary, but conflicts within the Corporation's management and our inability to obtain cooperation from the Corporation on critical engagement issues have led to our decision.

We are not aware of any impending tax or financial reporting deadlines that the Corporation must meet. The shareholders, however, are on extension relative to their federal and state income tax returns. Those returns must be filed by [Date]. We urge that the shareholders promptly retain successor tax professionals in order to meet those filing deadlines.

We are currently in possession of the Corporation's original general ledger, cash journals, and schedules of aged accounts receivable and fixed asset depreciation. We will forward those original documents to you promptly under separate cover. We do not possess any other original documents of the Corporation or the shareholders.

I wish to call your attention to the Corporation's outstanding account with this Firm for past services rendered in the amount of \$5,500.00, which is currently past due. Termination of future services does not discharge the Corporation's obligation to make full payment of that past due balance. I would appreciate your prompt attention to bringing closure to that account.

If you wish this Firm to provide a successor accounting or tax professional with information concerning the Corporation and/or its shareholders, please provide me with a letter informing me of the precise information you wish us to produce. Upon receipt of your written request, we will, at a minimum,

follow the standards of our profession in cooperating with successor professionals. Please be advised that if the Corporation has paid this Firm's fees in full, we will also consider those aspects of your request that exceed the minimum requirements of our professional standards.

Thank you, and please contact me with any questions you may have.

Very truly yours

[Engagement Partner]

cc: Individual Shareholders

Response to Lender's Request for Verification of Client's Self-Employed Status

Date:

Dear Lender,

You have requested that we provide you with certain information regarding [Client] (hereinafter referred to as "our client"). Our client has consented to our provision of the requested information.

We have prepared the income tax returns for our client during the period from ___ through ___. Those income tax returns have each included a Schedule C and Schedule SE, Self-Employment Tax computation.

We prepared the income tax returns noted above based on the documentation and other information provided to us by our client. We did not audit, review, or otherwise verify the accuracy of such documentation or information at any time, and we have not and do not express an opinion or give any other form of assurances regarding the same.

By providing you with this letter, we have not established with you any direct or indirect client, contractual or quasi-contractual relationship. We do not understand or anticipate that you or any third party will rely on the information contained in this letter as a basis for entering into or continuing any contractual or other relationship with our client. We fully expect that before you or any third party decides to enter into any such relationship with our client, that you and/or that third party will exercise an appropriate level of independent due diligence. Accordingly, and use of this information is solely your responsibility and judgment.

By accepting this letter, you acknowledge all of the above, and also that we are under no obligation to provide you or any third party with any additional information at any time, including but not limited to any changes or corrections to any of the information we have provided in this letter concerning our client.

Very Truly Yours,
Certified Public Accountant

The above example would be a perfectly appropriate limited response to a lender or broker's request for credit-worthiness information. However, the most protective thing for the accountant to do, especially in a state like California (with very restrictive law on the ability of third parties to sue accountants), would be to decline to respond to the lender's request. In California, unless the third party can demonstrate that there is close and direct contact between itself and the accountant, it will be difficult to establish the requisite standing to bring a lawsuit alleging detrimental reliance on the accountant's work product or representations. By responding to the lender or broker's request for a credit worthiness letter, the accountant would be helping the lender build its case for close and direct contact. So, unless this is a client that the accountant does not want to lose, and would lose if the accountant didn't provide the requested response, we advise against responding to the request, and advise the accountant to direct the lender or broker to the client for the needed information.

Negative Engagement Letter

A Negative Engagement letter is one that includes wording that indicates even if the client does not sign the letter, certain action taken by the client (submission of tax returns) will be deemed as acceptance of the engagement letter terms.

A signed engagement letter is by far the best course of action in any engagement. By obtaining the client's signature on an engagement letter, the firm creates a clear contract with the client including all of the important terms of the engagement. Most firms, however, have a very difficult time receiving back completed organizers and sufficient source documentation, let alone signed engagement letters in 1040 engagements.

To address that concern, many firms have opted for negative letters, i.e., letters that do not require a signature. They can take many forms. Attorney Picardi clarified that every state recognizes that contracts can be formed by something other than a signed writing. Oral contracts and those formed by actions are examples. In the absence of a state law requiring a signed writing (and you should check this with local counsel), the reasonableness of the communication will probably control the matter if litigation ultimately ensues.

The firm should continue to style its engagement letter to be signed by the client, but should also include language that purports to make the terms of the letter binding even in the absence of a client signature. Example language would be as follows:

If you agree to authorize this firm to prepare your 200_ personal income tax returns pursuant to the terms set forth above, please execute this letter on the line below designated for your signature, and return the original of this executed letter to this office along with a completed copy of the enclosed tax organizer and the supporting documentation requested therein. You should keep a copy of this fully executed letter for your records. If this firm does not receive from you the original of this letter, in fully executed form, but receives from you a completed copy of the enclosed tax organizer and/or supporting documentation requested therein, then such receipt by this office shall be deemed to evidence your acceptance of all of the terms set forth above. If, however, this office receives from you no response to this letter, then this office will not proceed to provide you with any professional services, and will not prepare your 200_ income tax returns.

Negative engagement letters may not be the best, but they are useful and are certainly recommended over no engagement letter at all.

Sample Limitation of Liability and Consequential Damages Disclaimer

A **limitation of liability provision** and a **consequential damage provision** within your engagement letter may not always be enforceable. They none the less offer several benefits. Namely, they are enforceable in many instances and courts are accepting them with more frequency of late. See, Creative Playthings Franchising, Corp v. James A. Reiser, Jr., 463 Mass. 758 (2012).

The Supreme Judicial Court, Suffolk County, Duffly, J., held that limitations period in a contract shortening the time within which claims must be brought was valid and enforceable under Massachusetts law, under certain conditions. A limitations period in a contract shortening the time within which claims must be brought is valid and enforceable under Massachusetts law, if the claim arises under the contract, and the agreed-upon limitations period is subject to negotiation by the parties, is not otherwise limited by controlling statute, is reasonable, is not a statute of repose, and is not contrary to public policy.

In addition, an accepted limitation provision should act as a deterrent in pursuing litigation when a client or plaintiff attorney understands that challenging the enforceability is an obstacle to pursuing a case.

In drafting a limitation of liability provision, it is recommended to limit liability to the amount of fees received (*Sample 1*). If the client objects, a multiple of fees may be negotiated (*Sample 2*). Dependent on the engagement, there may be issues that require the acceptance of no limitation. All of these terms may be negotiable with your client and it is recommended to consult local legal counsel for direction on the specific engagement and State laws.

Sample language 1 – limitation to fees

With respect to any services, work product, or other deliverables hereunder, or this engagement generally, the firm's liability to the Client shall in no event exceed the fees that it receives for the portion of the work giving rise to liability, nor shall the firm's liability include any special, consequential, incidental, or exemplary damages or loss, including any lost profits, savings, or business opportunity.

Sample language 2 – multiple of fees

My liability relating to the performance of the services rendered under this letter is limited solely to direct damage sustained by you. In no event shall I be liable for the consequential, special, incidental, or punitive loss, damage or expense caused to you or to any third party (including without limitation, lost profits, opportunity costs, etc.). Notwithstanding the foregoing, our maximum liability relating to services rendered under this letter (regardless of form of action, whether in contract, negligence or otherwise) shall be limited to (enter multiple of fees) fees received by me for this engagement. The provisions set forth in this paragraph shall survive the completion of the engagement.

Sample language 3 – statute of limitations

Any litigation arising out of this engagement, except actions by us to enforce payment of our professional invoices, must be filed within one year from the completion of the engagement, notwithstanding any statutory provision to the contrary.

Sample Alternative Dispute / Mediation Wording

The following sample provision does not rule out the possibility of litigation, but clearly requires that the parties go through the process of mediation before resorting to litigation. Although a contractual provision cannot assure that a party will participate in such a non-binding process in good faith and with best efforts, experience has shown that once parties become engaged in the mediation process, they tend to become committed to it and the possibility of a negotiated resolution, especially if the mediator is skilled:

You agree that any dispute that may arise regarding the meaning, performance or enforcement of this engagement will, prior to resorting to litigation, be submitted to mediation, and that the parties will engage in the mediation process in good faith once a written request to mediate has been given by any party to the engagement. Any mediation initiated as a result of this engagement shall be administered within the county of [County and State], by [Name of Mediation Organization], according to its mediation rules, and any ensuing litigation shall be conducted within said county, according to [State] law. The results of any such mediation shall be binding only upon agreement of each party to be bound. The costs of any mediation proceeding shall be shared equally by the participating parties.

Sample File-Retention Policy

The following is a sample file-retention policy you may use as a guide as you adopt your own policy. However, it is important to consult with a local attorney and/or your state society to decide whether and to what extent this sample policy should be modified to be consistent with federal and local statutes and regulations that bear on your practice. For purposes of this sample, it is assumed that the statutory limitation period applicable to claims of malpractice against accountants is three years.

1. Existing client files are not subject to purging, except that at the end of each engagement, original client documents are returned to the client copies of key client documents are retained);
2. Former client files will be kept intact for seven years after termination of the client relationship;
3. After seven years have expired from the termination of the client relationship; all engagement files for that former client will be segregated into three categories:
 - Original client records — to be returned to the former client.
 - Essential files and summaries — to be put in a permanent file of reduced size, and retained.
 - All other files – to be destroyed and discarded, preferably shredded.
4. Permanent files for former clients will be held for an additional three years, and then destroyed and discarded, preferably shredded.

Under this sample policy, the most essential portions of your engagement files will be on hand for a period of ten years from the date of termination of your client relationships. The risk of a claim arising out of a client relationship beyond that period of time is remote, and the benefits of purging files at that point would likely outweigh the risks of doing so. Moreover, your engagement files will be entirely intact for seven years after the end of your client relationships, which is the period within which most claims against you would be asserted.

A corollary to this file-retention policy is the admonition that once a claim is asserted against you, and you have properly reported the claim to your professional liability insurer, you should segregate and retain all of the files relating to that client engagement, and that client generally. From that point forward, you should follow the direction of your insurer and its appointed defense counsel with respect to maintenance of those files.

Contributors

Ralph G. Picardi, Esq., CPA. – Picardi LLC

Ralph Picardi is the partner in charge of Picardi LLC's litigation practice, which concentrates primarily in the area of defending accountants and other professionals in matters of professional liability, as well as product liability defense and general commercial litigation. In addition to litigation, Mr. Picardi specializes in advising accountants, lawyers, and their insurers in matters of coverage and in matters of loss control through hotlines, seminars, risk management audits and publications.

Mr. Picardi is a former Business Litigation partner in the Boston law firm of Burns & Levinson, LLP, where, in addition to professional liability defense, he handled all of the litigation needs of the firm's business clients, large and small. Specifically, Mr. Picardi handled disputes involving securities, antitrust, intellectual property, minority stockholders, construction, real estate, tax, landlord/tenant, collection and basic contracts.

Before practicing law, Mr. Picardi practiced as a Certified Public Accountant for Ernst & Young in Boston. He is currently a member of the American Institute of Certified Public Accountants, the Massachusetts Society of Certified Public Accountants and the Professional Liability Underwriting Society.

A member of the Massachusetts and District of Columbia bars, he is also admitted to the United State District Courts for Massachusetts and the District of Columbia, the United States Tax Court, and the United States Courts of Appeal for the First, D.C. and Ninth Circuits.

Mr. Picardi served as a law clerk to Judge Melvin T. Brunetti of the United States Court of Appeals for the Ninth Circuit, after having served as a student extern for Judge J. Clifford Wallace of the same court.

He received a J.D. degree, cum laude, from University of San Diego School of Law in 1987 and served on the editorial board of the Law Review. He received a B.S. in Accounting, magna cum laude, from Boston College School of Management in 1981.

Nancy M. Reimer, Esq. – Freeman, Mathis, & Gray

Ms. Reimer focuses on a wide range of complex commercial litigation in federal and state courts, including trials and appeals, alternative dispute venues, grand jury proceedings, state and federal investigations, and SEC investigations. She also appears before professional licensing and disciplinary boards. She devotes the majority of her practice to the defense of professional malpractice claims

against accountants, attorneys, financial advisors, securities brokers and other professionals, as well as breach of fiduciary duty claims and claims against directors and officers of corporations. She also counsels clients in prevention techniques for avoiding litigation and other risk exposures.

Ms. Reimer has represented national, regional and small accounting firms in connection with a variety of claims brought by clients and client successors, including trustees and liquidators in connection with claims involving employee defalcations, going concern disclosures, revenue recognition issues, valuations, accounting for tax liabilities, internal controls issues, balance sheet presentation issues, and wills and trust issues. She is often quoted in leading publications including, the National Law Journal, Accounting Today and The Journal of Accountancy.

Legal Experience

Freeman, Mathis, & Gray, Boston, Massachusetts, 2018 to present

LeClairRyan, Boston, Massachusetts, July 2007 – present

Donovan Hatem LLP, Boston, Massachusetts, 2001 – July 2007

Burns & Levinson, Boston, Massachusetts, 1999 – 2001

Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, Boston, Massachusetts, 1997 – 1999

Day, Berry & Howard, Boston, Massachusetts, 1989 – 1997

Memberships and Affiliations

Boston Bar Association

Massachusetts Bar Association

American Bar Association

Distinctions

Recognized as a "Top Rated Lawyer in Commercial Litigation" in Corporate Counsel and The American Lawyer magazines, 2012

Listed by Boston magazine as a Massachusetts "Super Lawyer" in 2005 and 2007 "AV Preeminent" rated by Martindale-Hubbell

Contact

For more information regarding Risk Management for accounting firms including Professional Liability Insurance, Information Security & Cyber Liability insurance, please contact us:

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