

Some Thoughts on Engagement Letters

by Peter Jarvis, David Elkanich, Allison Rhodes and Dayna Underhill

Updated February 2010

Table of Contents

I.	Why Use Engagement Letters?	1
II.	Discussing Engagement Letters with Clients	2
III.	An Engagement Letter Checklist	3
	A. Mandatory Provisions	3
	B. Optional Provisions	4
IV.	Selected Engagement Letters	6
	A. Letter to Insured-Client When No conflicts Are Present, With or Without Deductible	6
	B. “Non-Traditional” Engagement Letter	8
	C. General Long Form Engagement Letter, Form 1	10
	D. Sample Flat Fee Engagement Letter.....	15
	E. General Short Form Engagement Letter	17
	F. Engagement Letter Including Conflicts Waiver for Representation of Two Clients in a Single Business or Litigation Matter and Including Third-Party Payment of Fees	19
	G. Second Opinion/Local Counsel Opinion/Very Limited Scope Engagement Letter	23
V.	Non-engagement and Disengagement Letters	25
	A. General Non-Engagement Letter, Form 1	25
	B. General Non-Engagement Letter, Form 2	25
	C. End of Matter Disengagement Letter.....	25
	D. Mid-Matter Disengagement Letter	26
VI.	Concluding Remarks	26

I. Why Use Engagement Letters?

There are five overlapping reasons for lawyers to use engagement letters:

1. An increasing number of states (including California and Washington) generally require them, and it is probably the “standard of care” to have them.
2. We need written contracts with our clients for the same reason that our clients need them with third parties—to avoid confusion and simplify enforcement.
3. Absent such contracts, we will at times find it unnecessarily difficult or even impossible to collect our fees.
4. Unless we clarify who is not our client, we run the risk of being sued by those we never intended to represent but who believe they are our clients.
5. Unless we clarify what we have and have not agreed to do, we run the risk of being sued for matters that we never thought we undertook.

The balance of this document is divided into five sections. In Section II, we offer some thoughts on how to discuss engagement letters with clients. In Section III, we provide a checklist of mandatory and optional items for inclusion in engagement letters. In Section IV we provide several sample engagement letters. In Section V, we provide sample non-engagement and disengagement letters. Finally, Section VI contains our concluding remarks.

We do not necessarily recommend that each firm or entity use one and only one form of letter for all engagements. Facts, circumstances, client needs and law firm and corporate demands can and do vary. Thus, the best letter for any particular situation may be a combination of portions of several different letters with additional terms added.

II. Discussing Engagement Letters With Clients

A clients' reaction to a lawyer's engagement letter is likely to depend in significant part on what you say about the letter. Please bear the following in mind:

- There is nothing to be ashamed of in providing a client with an engagement letter and insisting that the client sign and return it. This is, in fact, the better practice by firms throughout the country, and it protects the client as well as the lawyer.
- Your fees must be reasonable and so should the terms of your engagement letters. You can and should be proud of your letters and should take a positive approach when discussing them with clients.
- If you have a prospective client who cannot or does not appear to understand the terms of the engagement letter or who hotly debates the terms, you may wish to reconsider both whether you want to represent the client as well as the terms of your letter.
- Often there is something else that a client who won't sign an engagement letter may not sign—checks in payment of bills.

III. An Engagement Letter Checklist

A. Mandatory Provisions

Absent extraordinary circumstances, we recommend that **all** engagement letters expressly address the following issues, albeit not necessarily in this order:

_____ Identification of the client or clients and, if there is any doubt, identification of parties or interested others who will not be clients.

_____ Identification of the specific matter or matters to be undertaken and, if there is any doubt, identification of any limitations on the engagement (e.g., we have been asked to or agreed to handle negotiations but not litigation, trial but not appeal, the business aspects of a matter but not the tax aspects, etc. . .).

_____ If there is reason to believe that there may be additional work in the future, a statement whether additional assignments will be covered by the same letter or must be covered by a separate written acknowledgement or engagement letter.

_____ If you are looking in whole or in part to anyone other than a single client to pay or guarantee payment of part or all of your bill, clear statements to that effect (e.g., joint and several versus proportionate liability of multiple clients, one client pays for all but we have the right to stop work if that client stops paying, we are relying on one or more guarantors, etc. . .).

_____ In all cases in which the client-letter recipient is being asked to pay a part or all of the bill (e.g., not in cases in which we represent an insured or an employee but the insurer or employer is paying the full bill), an explanation of the rate or basis upon which the bill will be computed, as to lawyer time and all other charges.

_____ Unless you are committing yourselves to charge specific rates, costs, etc. . . for the duration of the entire matter, a statement that you reserve the right to make periodic adjustments to rates, costs, etc. . .

_____ If you are to be paid in whole or in part by some means other than cash or check, or if you are to obtain a security or other interest in client or third-party property, a clear description of any rights and obligations in that regard.

_____ If you are working on multiple matters for a client at the same time, a statement that you require that billings on all matters be kept current as a condition of continuing work.

_____ If you intend to charge interest on any past due amounts, the rate or basis on which it will be computed.

_____ If the engagement letter is also intended to serve as a conflicts waiver letter, information sufficient to effect the requested waiver (“informed consent”). Alternatively, include a statement that a separate conflicts waiver letter will be forthcoming.

- _____ In all instances in which you represent multiple clients in the same matter (e.g., co-defendants, joint venturers and—in some states—insurer and insured), a clarification whether you are entitled to convey client confidences from one client to the other (the common law default position) or not. This need not be done in the engagement letter so long as there is a separate conflicts waiver letter that addresses this subject.
- _____ In all states in which it is required to do so, a statement about the firm's insurance coverage and any other state law-mandated provisions.
- _____ A provision identifying the firm's principal client contact for the matter and also a person at the firm whom the client(s) can contact if the principal client contact is unavailable.
- _____ A statement that the client or clients should let you know immediately if they disagree in whole or in part with the description of your rights in the letter.
- _____ Where applicable, a statement that you require an advance deposit or retainer, either to begin or continue work. Or, a statement that you reserve the right to demand an advance deposit or retainer in the future if, for example, the scope of work changes or the client falls behind in payment.
- _____ A request that the client sign an enclosed extra copy of the letter (if sent by traditional mail) or email its acceptance of the terms (if sent by email), plus an assertion that you reserve the right to not begin work until/stop work unless a signed copy is received and any requested conflicts waiver is received as well.

B. Optional Provisions

Where appropriate in the exercise of the letter writer's judgment, an engagement letter **may** also include the following:

- _____ A provision requiring arbitration of fee disputes and selecting particular arbitration rules and/or a location for the arbitration. Care should be taken that any mandatory state bar fee arbitration programs are referenced as required.
- _____ In litigation matters in which a court award of attorney fees is expected, an explanation of how, if at all, any court-awarded fees will affect or become part of the fee arrangements.
- _____ In litigation matters or other matters in which substantial out of pocket costs are anticipated (e.g., expert witness fees, travel expenses, etc. . .), a statement to the effect that the client is obligated to pay these expenses directly to the service provider or to deposit funds in advance that will be held in trust.
- _____ Especially, though not exclusively, in engagements in which the client is not paying the bill (e.g., an insured), a statement that the insured's cooperation is essential to your continuation with the matter.

- _____ A statement that the client reserves the right to terminate you at any time and for any reason, coupled with a statement that you also reserve the right to do so to the extent permitted by the applicable rules of professional conduct and that the client's decision to terminate generally will not excuse the client's obligation to pay for work performed up through the time of termination and necessary to implement the termination.
- _____ A discussion of particular client confidentiality/secretcy concerns in relation to potential "high tech" means of attorney-client communication.
- _____ A statement that you do not assume the obligation to inform a client of developments after the matter on which you have been retained has ended unless the client makes a separate written arrangement for you to do so.
- _____ Acceptance/rejection of any "terms of engagement" document provided by the client.
- _____ A statement that you do not guarantee outcomes.
- _____ A statement that except in fixed fee matters, you do not guarantee a maximum fee.
- _____ Any other reasonably appropriate provisions.

IV. Selected Engagement Letters

The following pages contain potential form engagement letters.

A. Letter to Insured-Client When no Conflicts Are Present, With or Without Deductible

[Note: additional language is needed if multiple insured defendants, especially unrelated defendants, are to be represented or if there is a reservation of rights or a claim in excess of policy limits.]

Dear [Client]:

Your insurance company (the “Company”) has asked my firm to represent you in defense of the litigation identified above (the “Case”). This letter explains what this involves:

My firm’s representation is limited by the insurance policy and only includes the defense of the Case. If you wish to sue anyone else or to make claims back against the plaintiff(s) in the Case, you should promptly consult other counsel before any applicable statute of limitations may run.

Although, as a matter of state law, you will be my firm’s [only {OR} primary] client in the Case, my firm also owes some duties to the Company. My firm will therefore provide periodic status reports to the Company, with copies to you if you wish, concerning our analysis of the case. This means that we will share information that we learn with the Insurer. If there is information that you do not wish us to share with the Company, you must let me know as soon as possible since that may require me to withdraw from the Case or to take special steps in handling the Case.

The Company has told me that under the terms of your insurance policy, [the company cannot not settle the Case without your written consent {OR} the Company generally has the right to settle the Case without your consent.] If you disagree with the Company’s position on this or any other issue, please let me know. Although I cannot take sides between the Company and you, I do need to know when the two of you disagree since that could affect my ability to handle the case.

You must cooperate in the defense of this matter. For example, you must (1) provide complete, truthful and accurate information and documents on a timely basis; (2) attend and participate in meetings, preparation sessions, court proceeding and other requested activities; (3) refrain from discussing the Case or our advice with others, and (4) promptly inform my firm of any change in your street address, e-mail address or telephone number.

Litigation is by nature a risky process in which there can be no guarantees. I am enclosing a brochure that addresses some frequently asked questions, and I will be happy to answer your specific question at any time.

Although I will be primarily responsible for the Case, others at the firm may assist me. My phone number is noted above, but feel free to call _____, my _____, at _____.

[Your insurer has informed me that your policy has a deductible of \$_____ that you must pay before the insurer will begin to pay for your defense. If you have any questions on this subject, please contact your insurer directly or through other counsel since I cannot take sides on such matters between an insurer and an insured. Your insurer has asked us to bill you directly until payment of the deductible has been made. Until the deductible level has been reached, you will be billed hourly for attorney and paralegal fees at the hourly rates then applicable to the individuals performing the work. The present hourly rates for the two attorneys presently expected to handle the bulk of the work on your matter are \$___ for _____ and \$___ for _____. In addition, you will be billed for costs and other charges we incur on your behalf including but not limited to travel expenses, expert witness fees, photocopy charges and charges for computerized legal research among others. These costs and charges are also subject to change from time to time. Please let me know if you have any question at any time about any of our bills. Although we are not requesting an advance deposit or retainer from you at this time, we reserve the right to do so in the future—up to the full amount of the deductible—if you ever fail to pay any bills for fees or for costs or other charges submitted to you by this firm.]

If you have any other policies of insurance with any other insurers that are or may be applicable to any part of the Case, please notify them promptly.

I am glad to have this opportunity to work with you. If you are willing to accept my firm's representation of you subject to the terms of this letter, please sign the enclosed extra copy and return it to me for my files. If you have any questions or objections, please let me know.

Sincerely yours,

Enclosure

Agreed: _____

By: _____

B. “Non-Traditional” Engagement Letter

[Note: this relatively informal approach to an engagement letter covers the basics in a way that we believe is fairly easy for clients to understand. Several more formal or traditional letters are provided in subsequent sections below.]

Dear [Mr./Ms.] _____:

The purpose of this letter is to document our professional relationship. Since a solid attorney-client relationship is best built on a clear understanding of the terms of that relationship, I ask that you review this letter with care and then either confirm your agreement to these terms or state any different or additional terms that you would like me to consider.

I see six principal terms:

1. Unless and until agreed by all parties in writing, my only client in this engagement will be [you, ABC Corp., etc.]. [In other words, _____ and _____ will not be clients of my firm.]
2. Unless and until agreed by all parties in writing, the only matter that I have agreed to handle for you is the matter of the _____ . Any additional matters that you may ask us to undertake must be covered by separate written agreement.
3. Although I have not required an advance deposit at this time, I may, at my discretion, require a replenishable advance deposit in a sum to be determined by me if you should fall behind in payment or if it appears that the amount of work that I may have to do in the future will increase.
4. _____ will be billed monthly for my time and the time of others who work on this matter on an hourly basis. The presently applicable rates are [as follows/set forth on the enclosed sheet]. These rates are subject to periodic change.
5. You will also be billed monthly for certain out of pocket expenses and other charges, which presently include but are not limited to photocopy charges, charges for computerized legal research, filing fees, expert witness fees, mail/messenger services and travel-related costs. Both the goods and services to be billed and the amounts to be charged for any goods or services are subject to periodic change. We reserve the right to require that you pay the providers of goods and services directly or that you deposit funds with us in advance so that we may assure payment
6. _____ will be the attorney principally responsible for your work on this matter. [He/she/I] can be reached by phone at _____ or by email at _____. If you are ever unable to reach [him/her/me], please contact _____ by phone at _____ or by email at _____.

I look forward to a productive relationship on this matter. If you agree that this letter correctly states the terms of our agreement, please sign the enclosed extra copy and return it to me for my files. If you do not agree, please let me know immediately so that we can further discuss any outstanding issues. If I do not hear from you or receive this letter back signed by you within ten business days of the date of this letter, however, I will assume that you agree to the terms as stated.

Sincerely yours,

Enclosure

Agreed: _____

By: _____

C. General Long Form Engagement Letter, Form 1

[Note: this is intended as a comprehensive long form engagement letter.]

Dear [Client Contact Name]:

Thank you for selecting _____ (the "Firm") to provide legal services to [Client].

The purpose of this letter is to set forth the terms upon which we understand you intend us to proceed. Although this letter is somewhat lengthy, I believe it is better for both attorney and client to address matters up front in order to minimize the likelihood of subsequent misunderstandings or disagreement.

1. Scope of Services

[Client] has engaged the Firm to represent it in connection with *[express in detail the exact description of the matter and the nature of the services to be provided]*.

[As discussed, we do not represent any other entities or any individual clients in this matter.]

This engagement letter does not engage us to undertake any matter not described above. For example, this letter does not include *[express in detail any limitations, such as trials versus appeals, representation in other transactions, representations of subsidiaries, etc.]*

2. Conflicts of Interest

As we have discussed, your request that we undertake this matter raises certain conflict of interest issues for us. Those will be handled by separate letter. Please note that we will not be able to continue with this representation if we do not receive signed waivers back from all parties whose consent is required.

3. Firm Personnel

I will be primarily responsible for the supervision of [Client's Name]'s matter, but [Client's Name] is/are engaging the firm as a whole and not me individually. As and when necessary, I will draw upon the talent and expertise of other partners and associates within the firm and utilize paralegal staff to handle administrative tasks. [Wherever possible, identify others involved and give name of additional contact person in the firm if writer is unavailable.]

4. Legal Fees

[Client] will pay fees for the services of firm personnel. The presently applicable rates are:

Partners: *[Specify rates/ranges.]*

Associates: *[Specify rates/ranges.]*

Legal Assistants: *[Specify rates/ranges.]*

These rates are subject to periodic change at our discretion but will not change more than once per year. Please understand that time spent will include a broad array of telephone and personal contacts, email and traditional correspondence, legal research, conferences and document drafting and review among other activities. *[If litigation, add references to depositions, motions and trials/hearings.]*

[Optional: *Although we bill primarily on an hourly basis, we reserve the right to adjust our billings to reflect such factors as: (a) the nature of the legal issue, including its novelty, complexity, and importance; (b) preclusion of other employment; (c) the amount or consequence at stake and the result obtained; (d) time limitations imposed by the client or by the situation; (e) the experience, reputation, and ability of our attorneys; and (f) the particular skill or skills necessary to handle the matter correctly.]*

5. Costs and Disbursements

[Client] is responsible for payment of all costs and disbursements reasonably incurred on *[his/her/its]* behalf. Such costs and disbursements may include, but are not limited to, photocopying and facsimile charges, long distance telephone calls, travel expenses (economy class unless otherwise approved in advance), and computer research charges.

Costs or disbursements exceeding \$_____ may, at our discretion, be billed directly to [Client] or we may require that [Client] deposit funds with us in advance to pay such costs or disbursements. , such as expert witness fees and deposition costs, may be billed directly to [Client], for which [Client] will make prompt, direct payments to the vendor. [Law Firm Name] will attempt to notify [Client] prior to advancing any individual item of which the cost is likely to exceed \$[].

6. Billing Arrangements

In general, itemized statements of services and disbursements will be sent monthly, with payment to be made within thirty (30) days of the invoice date. *[Optional: the Firm reserves the right to charge interest, not to exceed __ % per annum, on any bill outstanding for more than thirty (30) days.]*

If you ever have any questions regarding the billing format or any information contained in any invoice or statement, please let me know immediately so that we can attempt to resolve any concerns fairly and without delay.

7. No Guarantees of Fees, Costs or Results

It is difficult to estimate, in advance, the amount of fees and costs or disbursements that we will incur in connection with this matter. Please note that

any statement or estimate about this subject that we have given you is just that—an estimate—and not a commitment to a flat or fixed fee.

[Optional addition 1: If we conclude that the fees and costs or disbursements will exceed \$ _____, we will let you know.]

[Optional addition 2: We will provide you with detailed monthly/quarterly/semiannual budgets as the matter progresses.]

Similarly, and although we will give you our reasoned judgment and advice at all times, we cannot guarantee a particular outcome of any engagement and thus cannot guarantee that the ultimate outcome will be consistent with the client's wishes.

8. Advance Deposit/Retainer

We are requiring an initial advance deposit of \$_____. This retainer is a partial advance against anticipated legal fees and disbursements and must be paid *[before we will begin work on the file/within ___ days of the date of this letter or we will cease work on this file]*.

We reserve the right to request the replenishment of or an increase in the amount of this retainer. In the event of such a request, [Client's Name] agrees to make such replenishment within fourteen (14) days of such request.

Any unused portion of any retainer will be refunded to [Client] when all of our work is completed and all related bills have been paid.

9. Mutual Communication

A solid attorney-client relationship is a two-way street. Lawyers need timely and complete cooperation and assistance from their clients just as clients need timely and complete cooperation and assistance from their lawyers.

We will therefore keep [Client] informed of the progress of this matter as it progresses and would be pleased to discuss the preparation of periodic status reports. If you wish us to make sure that a particular client representative or representatives are kept informed, please let us know so that we may make appropriate arrangements. In addition, please feel free to contact _____ or _____ at any time if you ever have questions about any aspect of our work on this matter.

We must also require, however, that [Client] provide us with timely responses to requests for documentation and information that we may need to carry out our function as counsel and that client personnel be made available to meet with us notwithstanding their other duties. Please bear in mind that if we do not obtain such cooperation, the quality of our representation may suffer and we may, in fact, feel constrained to withdraw from any further work.

10. Withdrawal

[Client] may terminate the attorney-client relationship at any time and for any reason. Such a termination does not, however, absolve [Client] of responsibility to pay for services or costs and disbursements incurred prior to our receipt of notice of termination or incurred subsequent to notice but, in our view, reasonably necessary to protect [Client's] interests.

To the extent permitted by the applicable rules of professional conduct, we also reserve the right to terminate the attorney-client relationship. Similarly, and again to the extent permitted by the applicable rules of professional conduct, Client will remain liable for services or costs and disbursements incurred prior to our decision to withdraw or incurred subsequent to our decision but, in our view, reasonably necessary to protect [Client's] interests.

We do not ordinarily undertake to keep clients informed about subsequent developments once the matter in question is at an end. If you would like us to do so, please so inform us in writing so that special arrangements therefore can be made.

11. Arbitration of Fee Disputes

Any and all fee disputes that the parties are unable to resolve between themselves shall be arbitrated in accordance with applicable state or county bar fee arbitration procedures or, if no such procedures exist, in accordance with the commercial arbitration rules of the American Arbitration Association, and any award issued in any such arbitration shall be enforceable in any court with jurisdiction. To the extent permitted by applicable law, the arbitration proceedings shall be confidential. Unless otherwise agreed by the parties in writing, the arbitration shall occur in _____.

12. Binding and Entire Agreement

This letter represents the entire agreement between the parties, and no party is relying or is entitled to rely on any representations not expressly contained herein. In addition, no changes may be made to this letter without the written consent of all of the parties hereto.

If this letter reflects your understanding of our relationship, please sign and return the enclosed duplicate copy. Please note that unless and until we hear from you to the contrary, we will assume that we are entitled to proceed under the terms of this letter. Consistent with firm policy, however, we reserve the right to *[delay commencement of work on this matter until you have signed and returned the letter to us; cease work on this matter if you do not sign and return a copy to us within __ days]*.

13 **[Optional]** Confidentiality of Communications

In light of the work we propose to do, we would like to reach agreement with you regarding the kinds of communications technology we may employ. For instance,

depending on the degree of security that you wish to maintain, it may not be appropriate to speak using cellular telephones (or at least not to do so where substantive information is being discussed). Similarly, the exchange of documents using the Internet, or even direct computer-to-computer data transfer, may involve some risk that information will be retrieved by third parties with no right to see it. In fact, even the use of fax machines can cause problems if documents are sent to numbers where the documents sit in open view.

We therefore request that you address the questions below concerning your thoughts on this subject. We will then send you a separate memorandum for your signature detailing the agreed-upon communication methodology, the nature and level of security to be employed and the attendant risks.

a. *Do you intend to communicate with us by email and, if so, are you willing to communicate by unencrypted email? ___ Yes. ___ No.*

b. *Are there other communications and confidentiality issues of which we should be aware? ___ Yes. ___ No. If "yes," please explain.]*

[13/14]. Conclusion

Again, we thank you for your trust in us and look forward to a mutually satisfactory and productive relationship.

Sincerely,

Accepted and agreed to:

By _____

Date: _____

D. Sample Flat Fee Engagement Letter

Dear _____:

This letter confirms that you have engaged _____ to represent you in _____. This letter will set out the terms of my engagement. Because a successful attorney client relationship is based on clear communication, I would like to review with you the terms under which we have agreed to undertake this representation and you have agreed to hire us.

I see the following principal terms:

Unless and until agreed by all parties in writing, my only client in this engagement will be _____. In other words, _____ is not my client.

The only matter that we have agreed to handle for you is _____. Any additional matters that you may ask us to undertake must be covered by a separate written agreement.

Although we will give you our reasoned judgment and advice at all times, we cannot guarantee a particular outcome of any engagement and thus cannot guarantee that the ultimate outcome will be consistent with the client's wishes.

Flat Fee: We have agreed to perform the above described services for a flat fee of _____. [*if appropriate:* Attached and incorporated by reference is our agreed upon schedule for such fees]. Flat fees are determined based on our experience with this type of matter and are not based on the number of hours that we expect to work, rather the relative value of the service. These fees are earned upon receipt and will be deposited into the firm's general fund and not a trust account – **note, check state rules on accounting requirements**. These fees are only refundable in the event that we are entirely unable to perform the described service.

You will also be billed monthly for certain out of pocket expenses and other charges, which presently include but are not limited to photocopy charges, charges for computerized legal research, filing fees, mail/messenger services, prosecution expenses and travel-related costs. Both the goods and services to be billed and the amounts to be charged for any goods or services are subject to periodic change.

_____ will be the attorney principally responsible for your work on this matter. [He/she/I] can be reached by phone at _____ or by email at _____. If you are ever unable to reach [him/her/me], please contact _____ by phone at _____ or by email at _____. The billing attorney on your matter has the discretion to assign work to any lawyer or professional within the firm pursuant to his or her judgment.

I look forward to a productive relationship on this matter. If you agree that this letter correctly states the terms of our agreement, please sign the enclosed extra

copy and return it to me for my files. If you do not agree, please let me know immediately so that we can further discuss any outstanding issues.

If you have any questions about the terms of this engagement, please contact me via telephone at _____ or e-mail at _____.

We look forward to working with you.

E. General Short Form Engagement Agreement

[Note: this form can be thought of as a compromise between the full-bore and non-traditional approaches presented above. It probably is best used for clients for whom the lawyer doesn't expect to have complex multi-matter relationships.]

1. Engagement and Scope of Legal Services to be Performed

_____ (“Client”) retains _____ (“Firm”) to represent it in connection with _____ and such other matters as Client may from time to time request and the Firm may agree in writing to perform.

2. Compensation, Billing and Expenses

Client agrees to pay the Firm's fees on the basis set forth herein. Client is responsible for the entire amount of the legal fees for services rendered. Firm will charge by the hour at the prevailing rates charged by Firm for time that its legal personnel devote to the representation of Client. _____ and _____ will be principally involved in providing such legal services. The hourly rate for our services in matters of this type is currently \$_____ to \$_____, and is subject to periodic adjustment. From time to time, other legal personnel may render services for Client in connection with this agreement.

Firm is authorized to incur on behalf of Client, costs and expenses deemed necessary by Firm to perform legal services under this agreement. Client agrees to pay for those costs and expenses as they are charged to Client. Examples of such costs and expenses include court and filing fees telephone charges, postage, copying charges, facsimile charges, delivery charges and mileage. These costs and expenses are also subject to periodic adjustment.

If Client fails to pay Firm's statement within 30 days of billing, Firm may withdraw from representation by giving Client written notice of withdrawal. Acceptance of late payment by Firm shall not be a waiver of Client's obligation to make timely payments. All obligations for Firm's fees and costs that are outstanding for a period of 30 days shall bear interest at the rate of ___ per month from the date of the original billing, for an annual interest charge of ___ per annum.

3. Advance Deposit

Client shall pay Firm an advance deposit of _____ to be applied against fees and costs. The retainer is due now and shall be deposited into Firm's trust account to withdraw funds from the trust account fund to pay such fees and costs. Any unused deposit at the conclusion of Firm's services will be refunded to Client. Firm reserves the right to require Client to replenish or increase the deposit at any time.

4. Disclaimer of Guarantee

Firm has made no promise or guarantees to Client about the outcome of the representation undertaken by Firm. Estimates of fees are precisely that, estimates only and are not an agreement to perform services for a fixed fee. Firm's fees, costs and expenses are on the basis described herein. Legal fees can exceed Firm's estimates as the scope of services required and/or the time necessary to complete them may exceed Firm's best estimates.

5. Client Duties

Client shall cooperate with Firm, shall pay the Firm's bills in a timely manner and shall keep the Firm informed of the Client's address and whereabouts. Client shall not unreasonably withhold the waiver of a conflict as to unrelated matters.

[Name of Firm]

[Client's Name]

By: _____

By: _____

F. Engagement Letter Including Conflicts Waiver for Representation of Two Clients in a Single Business or Litigation Matter and Including Third-Party Payment of Fees

[Note: This is in some senses a more complex form because it addresses conflicts and payment questions not found in the other forms. Please note that whether a conflicts waiver is necessary and what is required for a legally sufficient waiver are subjects beyond the scope of this document. We are, however, happy to discuss these matters with you at your convenience

Dear A and B,

Thank you much for considering _____ (the "Firm") to represent [*the two of you as defendants in the _____ litigation/the two of you and AB, Inc., the entity that you have asked me to form for you*]. This letter will outline the terms and conditions of the initial engagement of this firm and will also describe our responsibilities and duties to each other. In our opinion, a mutually beneficial attorney-client relationship is most likely to exist when attorneys and clients clearly understand their respective rights and obligations. We ask, therefore, that you review this letter with care and then either raise any questions or objections that you may have with us or sign the enclosed extra copy of this letter and return it to us for our files.

1. Scope of Engagement

[Options, depending upon the nature of the work we will perform:]

[Litigation option:] [The only matter that we have undertaken for you is the defense of the _____ litigation. In other words, we are not obligated to pursue other matters or claims for Business option:] you, including but not limited to potential third-party claims, counterclaims or cross-claims relating to this matter, unless we first enter into a separate written engagement letter or a written modification to this letter signed by both of us to cover such work.]

[Business option:] [As of this date, the only projects on which you have asked for our assistance are the formation of AB, Inc., and the preparation of certain forms for use by AB, Inc., in the use of its business. In addition, you have informed us that you expect to obtain advice about the tax aspects of this matter from the XYZ CPA firm. Consequently, our assignment does not and will include tax advice unless and until you ask us to do so in writing. On the other hand, I would also like to think that once AB, Inc., is up and running, you may request that we handle additional matters for AB, Inc. Conflicts and time permitting, we will be happy to take on additional matters but ask that you place any such requests in writing so that we can avoid potential misunderstandings.]

2. Compensation

Hinshaw will bill _____ monthly for services performed under this letter agreement in accordance with the hourly rate schedule set forth in Schedule B. The present hourly rates for the principal attorneys expected to work

on this matter are \$____ for _____ and \$____ for _____. Time will be accounted for in increments of one-tenth of an hour and invoices will reflect the time spent and a brief description of the services performed. Please note that our rates are subject to periodic adjustment (usually no more than once per year).

Hinshaw will also submit monthly bills for its out of pocket costs and other charges including but not limited to photocopy charges, mail/messenger charges, computerized legal research charges, expert witness/consultant fees, travel expenses and others. If you would like additional information about these costs or charges at any time, please let me know. These costs and charges are also subject to periodic adjustment.

All bills are due and payable within 30 days of the date appearing on the bill. We reserve the right to charge interest at a rate of ___ % per annum if bills are not paid on time. If you ever have any questions or concerns about any of our bills, we request that you let us know at your earliest convenience. We cannot resolve matters of which we are unaware.

[Options depending upon specific arrangements:]

[#1:] [We will submit all bills simultaneously to both of you and are entitled to look to both of you for full payment. In other words, each of you will be jointly and severally liable to us for all bills.]

[#2:] [We have agreed to submit all bills only to A for the time being. Please be advised, however, that if A should ever fall behind in payment, we will be entitled to look to B for payment as well.]

[#3:] [As we have discussed, our bills for this matter are to be submitted to Rich Uncle C. We will confirm Rich Uncle C's obligation to make those payments by separate letter. Please be advised, however, that if Rich Uncle C should ever seek to withdraw or fall behind in his obligation to make payments, we will be entitled to look to each of you for full payment of all sums due.]

3. Advance Deposit/Retainer

You have agreed to provide us with an advance deposit or retainer in the sum of \$ _____. Please note that we *[will not begin work until that sum is received/reserve the right to cease all work if that sum is not received in ___ days.]* We also reserve the right, at our discretion, to require that you replenish or increase this sum. By signing this letter, you authorize us to withdraw funds to pay our firm's bills when copies of the bills are sent to you. Any unused funds remaining at the conclusion of our work and after the payment of all bills will be refunded to you.

4. Conflicts of Interest

As we have discussed, the ability of attorneys to represent multiple clients in a single matter is limited by the attorney conflict of interest rules. At the risk of

oversimplification, these rules generally provide that a single lawyer or firm may not represent multiple current clients whose interests do or may diverge unless each client consents after full disclosure. In fact, these rules also provide that if the interests of the clients are too divergent, a single lawyer or firm may not represent multiple clients even if they do wish to be jointly represented.

[Options depending, inter alia, on litigation versus business, nature of specific matter, etc.; please note that the following "generic" conflict waiver language may need to be modified or adjusted to meet particular factual or legal circumstances.]

5. Termination

You may terminate our representation of you at your discretion. To the extent permitted by the applicable rules of attorney conduct, we also reserve the right to terminate our representation of you at our discretion. Please be advised, however, that any such termination does not prohibit this firm, to the extent permitted by the applicable rules of attorney conduct, from collecting fees, costs and charges incurred prior to termination or from collecting fees, costs and charges incurred subsequent to termination that are, in our view, necessary for the protection of client interests.

6. Disclaimer of Guarantee

The Firm makes no promise or guarantee about the outcome or cost of our work for you . Hinshaw. Statements about possible outcomes or possible fees, costs or charges should be understood to be estimates and not guarantees. If you would like to discuss whether a fixed fee alternative appears to us to be either desirable or practicable, please let me know.

7. Client Duties

You are obligated to comply on a timely basis with our reasonable requests for information and to keep us aware of how and where we may reach you. To the extent noted above, you are also obligated to see to it that our bills are paid in full.

8. Conclusion

You are a valued client, we look forward to working with you. If the terms and conditions of this letter are acceptable to you, please sign the enclosed extra copies and return them to us for our files. If you have any questions or objections to this letter, please do not sign but let us know immediately so that all such matters can be addressed. We *[reserve the right to stop work/wait to begin work]* if we do not receive a signed copy of this letter or have not otherwise heard from you about its contents within ___ days of the date of this letter. If you do not respond and if we do elect to provide work for you, we reserve the right to hold you to the terms of this letter even if you have not signed it.

Please note as well that we do not generally undertake to inform clients about subsequent related developments that may be of interest to them once our work is completed. If you would like us to make such arrangements, please let us know in writing so that we can plan appropriately.

If you ever cannot reach me about your matter and its handling, please feel free to contact _____ or any of the other attorney or non-attorney staff with whom you may come into contact.

Very truly yours,

Enclosures

I have read and agree to the terms of this letter:

A

Date: _____

B

Date: _____

[Note: For business option add consent block for AB, Inc., too.]

G. Second Opinion/Local Counsel Opinion/Very Limited Scope Engagement Letter

[Note: the purpose of this letter is to suggest a means to document a very limited relationship.]

Dear _____:

As discussed, my firm and I are pleased to accept this opportunity to provide [a *second opinion/ a local counsel opinion/ etc.*] for the benefit of our client, _____. As we have also discussed, our role as counsel in this matter is extremely limited. For example, [you have not asked us to undertake any factual research or to assess any issues other than _____/ you have not asked us to take any responsibility for the _____ transaction as a whole/ etc.]. We assume that the client will look to [you/other counsel/_____] for all other related and unrelated matters.]

_____ [and _____] will [jointly and severally] be liable to pay my firm's bill. Fees for legal, paralegal and related services will be billed at the firm's normal hourly rates as they may be in force from time to time. The present hourly rate for _____ [and _____], the attorney[s] expected to have principal responsibility for this matter [is/are] \$_____ [and \$_____]. If you have any questions at any time about the rates applicable to any attorney or non-attorney, please let me know.

In addition to bills for legal, paralegal and related services, we will also submit bills for costs and other charges incurred on the client's behalf including but not limited to reasonable copying charges, facsimile charges, travel charges, charges for computerized legal services and other charges. These costs and charges are also subject to periodic change. Again, please let me know if you have any questions at any time about this matter.

All bills are due and payable within 30 days of the billing date, and we reserve the right to charge interest at a rate of ___ % per annum for late payments. We also reserve the right to withdraw for late payment or for any other reason to the extent permitted by the applicable rules of professional responsibility.

[Before we begin work on this matter/within ___ days of the date of this letter], _____ must provide this firm with an advance deposit or retainer in the sum of \$ _____ to be applied against fees, costs and other charges as and when we bill them. We reserve the right to require that this sum be replenished or increased at any time. Any funds left over after our work is completed and all bills have been paid shall be refunded to the client.

Please bear in mind that this firm cannot and does not guarantee either the outcome of this matter or the total amount of fees, costs and other charges.

If you agree that the terms of this letter correctly describe our attorney-client relationship, please sign and return the enclosed extra copy of this letter for my files. If you have any questions about or objections to the terms stated in this

letter, please let me know immediately. We [*cannot begin/reserve the right to suspend*] work [*until/unless*] a signed letter is returned to us.

V. Non-engagement and Disengagement Letters

Unlike the prior letters, the following letters are encouraged solely to negate the existence of an attorney client relationship or to bring a prior relationship to a clear end. Sending such a letter can be the best way to avoid potential conflicts and other problems with “would-be” clients.

A. General Non-Engagement Letter, Form 1

Dear _____:

I appreciated the opportunity to [meet/speak] with you on _____. As I have explained, however, my firm and I have decided not to represent you. This does not mean that your matter is not worth pursuing. It just means that we decline to pursue it for you. I encourage you to continue to your search for counsel [*in order to avoid statute of limitations problems, etc.*].

[If you wish me to retain or return to you the documents that you sent/left with me, please let me know. Otherwise, I will feel free to dispose of them one month after the date of this letter.]

Good luck in your future endeavors.

Very truly yours,

B. General Non-Engagement Letter, Form 2

Dear _____:

I appreciated the opportunity to [meet/speak] with you on _____. I understand, however, that you have selected another [lawyer/firm] to represent you. As a result, I will not be opening a file for you.

[If you wish me to retain or return to you the documents that you sent/left with me, please let me know. Otherwise, I will feel free to dispose of them one month after the date of this letter.]

Good luck in your future endeavors.

Very truly yours,

C. End of Matter Disengagement Letter

Dear _____,

As you know, the work that you retained us to do on the _____ matter has now been completed. We are therefore closing our file at this time and will not be taking further actions on your behalf.

It has been a pleasure to provide legal services to you. If you decide that you might like to hire my firm and me again in the future, please feel free to give me a call.

Very truly yours,

D. Mid-Matter Disengagement Letter

Dear _____,

As you know, [*we have resigned/you have terminated us from*] our representation of _____ in [*all matters/identify specific matters*]. As a result, we have no further or continuing responsibilities to protect or advance your interests. We assume that you will look to successor counsel, and not to us, for assistance. Subject to the permissible assertion of any lien rights that this firm may have, we wish to inform you that we will cooperate with successor counsel in transferring files or information that may be helpful to successor counsel or you.

Very truly yours,

VI. Concluding Remarks

The use of appropriate and well-written engagement letters is not a mere matter of technicalities or form. To the contrary, their use is required to protect the clients, the firm and non-clients as well. If you would like assistance, please let us know.