**Engagement Letter Template**

**Infrastructure Investment and Jobs Act—Assistance with the Employee Retention Credit[[1]](#footnote-1)**

<Date>

<Client Representative>

<Client Name>

<Client Address>

Dear <Client Representative>:

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. Please read this letter carefully, as it is important to both <Firm> and <Client> that you understand and accept the terms under which we have agreed to perform our services, as well as Management’s responsibilities under this agreement.

**Services**

It is our understanding that you would like our firm to work with you to assess your company’s eligibility for and/or compliance with the Employee Retention Credit (“ERC”) given the recent legislative changes stemming from the ***Infrastructure Investment and Jobs Act*** enacted November 15, 2021, which amended the previous guidance under the *Consolidated Appropriations Act of 2021* (“COVID-19 Relief Bill”) and updated by the *American Rescue Plan Act of 2021* (“Rescue Plan Act”).

Under the new rules*,* the qualifying timeframe has been shortened, and ERC will no longer apply to the fourth quarter of 2021, unless an employer is considered an eligible *recovery start-up business.[[2]](#footnote-2)* The *Infrastructure Investment and Jobs Act* has revised the definition of, and qualifications for, what is deemed to be a *recovery start-up business*. As you may recall, the ERC is a fully refundable payroll tax credit for eligible employers that, for 2020, was equal to 50% of qualified wages paid beginning March 13, 2020, through December 31, 2020; and for 2021, was equal to 70% of the qualified wages paid beginning January 1, 2021, through originally December 31, 2021, per the *American Rescue Plan Act of 2021*. However, given that the latest round of legislation has eliminated the ERC for fourth quarter 2021, the ERC is now only allowed through September 30, 2021, unless an employer is an eligible recovery start-up business. Employers who received an advance payment of the ERC for wages paid in the fourth quarter of 2021 and are not an eligible recovery start-up business must repay the amount of excess advances by the due date for the applicable employment tax return to avoid imposition of failure to pay penalties.

The rules associated with what constitutes an eligible recovery start-up business as well as qualified wages for purposes of the ERC are complex and require detailed analysis and supporting documentation. Specifically, you have requested assistance from our firm to help you gather and evaluate the information and other documents that may be necessary to assess your company’s compliance with the ERC under these new rules.

<Client> agrees to provide us with all information material to your business we deem necessary in connection with the performance of these services. Such documentation deemed necessary includes, but is not limited to, (1) detailed payroll records, (2) payroll tax filings reported to the Internal Revenue Service; (3) state income, payroll, and unemployment insurance filings; and (4) financial statements or other documentation (e.g., cancelled checks, payment receipts, etc.) verifying payment of debt, lease and utility obligations, and any other additional expenses under the COVID-19 Relief Bill that may be subject to forgiveness.

Our services under the terms of this agreement will be performed based on our professional judgment given the documents and information provided to us by you and the relief provisions promulgated under the *Infrastructure Investment and Jobs Act* at the time our services are rendered. We will rely on the assumptions, representations, and information provided by you. Subsequent developments changing the information you have provided to us, or differences in the final guidance and regulations once they are issued, may affect advice previously provided. These effects may be material.

As our engagement is limited in nature, our services do not contemplate preparation of financial statements, payroll tax returns, or other tax filings that you may be obligated to submit to taxing authorities or other governmental agencies. If you would like to retain us to provide services to assist you with the preparation of financial statements, payroll tax returns, and/or other required filings, the terms and conditions of those services will be covered under a separate engagement letter(s).

**Management Responsibilities and Representations**

[*For attest clients include the following language in your engagement letter:* By your signature below, you acknowledge that you are responsible for Management decisions and functions. That responsibility includes designating a qualified individual, preferably within senior management, with suitable skills, knowledge and/or experience to be responsible and accountable for overseeing all the specific services we perform 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.]

**Given the limited nature of our services, our firm does not act as an “agent” under the legal definition of such term for purposes of this engagement, nor will our firm accept responsibility for or sign documents as an “authorized representative” of your company. By your signature below, you understand and agree Management is responsible for the accuracy and completeness of all information, documents, and representations that are provided to our firm.**

Our engagement cannot be relied upon to disclose errors, fraudulent reporting, misappropriation of assets, or noncompliance with laws and regulations that may have occurred. By your signature below, you acknowledge and agree Management is responsible for preventing and detecting fraud.

**Other Matters**

**In accordance with the terms and conditions of this agreement, <Client> shall be responsible for the accuracy and completeness of all data, information, and representations, including significant assumptions, provided to us for purposes of this engagement. Because of the importance of oral and written management representations to the effective performance of our services, <Client> releases and indemnifies our firm and its personnel from any and all claims, liabilities, costs and expenses attributable to any misrepresentation by Management and its representatives.**

Our fees for this work will be at our regular hourly rates for the individuals involved plus out-of-pocket expenses. Payment for services 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 past due in excess of <number> days, at our election, we may stop all work until your account is brought current or 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 for any damages that occur as a result of our ceasing to render services.

In connection with this engagement, we may communicate with you or others via email transmission. We take reasonable measures to secure your confidential information in our email transmissions. However, 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 emails from us will be properly delivered to and read only by the addressee. Therefore, we specifically disclaim and waive any liability or responsibility whatsoever for interception or unintentional disclosure or communication of email transmissions, or for the unauthorized use or failed delivery 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 sales or anticipated profits, or disclosure or communication of confidential or proprietary information.

We may from time to time and depending on the circumstances and nature of the services we are providing, share your confidential information with third-party service providers, some of whom may be cloud-based, but we remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality terms with all service providers to maintain the confidentiality of your information and will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event we are unable to secure appropriate confidentiality terms with a third-party service provider, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Although we will use our best efforts to make the sharing of your information with such third parties secure from unauthorized access, no completely secure system for electronic data transfer exists. As such, by your signature below, you understand that the firm makes no warranty, expressed or implied, on the security of electronic data transfers.

It is our policy to keep records related to this engagement for <number> years. However, <Firm> does not keep any original client records, so we will return those to you at the completion of the services rendered under this engagement. It is your responsibility to retain and protect your records (which includes any work product we provide to you as well as any records that we return) for possible future use, including potential examination by any government or regulatory agencies. <Firm> does not accept responsibility for hosting client information; therefore, you have the sole responsibility for ensuring you retain and maintain in your possession all your financial and non-financial information, data and records.

By your signature below, you acknowledge and agree that upon the expiration of the <number>-year period, <Firm> shall be free to destroy our records related to this engagement.

If any dispute arises among the parties hereto, the parties agree to first try in good faith to settle the dispute by mediation administered by the <Name of Association> under its applicable rules for resolving professional accounting and related services disputes before resorting to litigation. The costs of any mediation proceeding shall be shared equally by all parties.

Client and accountant both agree that any dispute over fees charged by the accountant to the client will be submitted for resolution by arbitration in accordance with the applicable rules for resolving professional accounting and related services disputes of the <Name of Association>, except that under all circumstances the arbitrator must follow the laws of <Name of State>. Such arbitration shall be binding and final. IN AGREEING TO ARBITRATION, WE BOTH ACKNOWLEDGE THAT IN THE EVENT OF A DISPUTE OVER FEES CHARGED BY THE ACCOUNTANT, EACH OF US IS GIVING UP THE RIGHT TO HAVE THE DISPUTE DECIDED IN A COURT OF LAW BEFORE A JUDGE OR JURY AND INSTEAD WE ARE ACCEPTING THE USE OF ARBITRATION FOR RESOLUTION. The prevailing party shall be entitled to an award of reasonable attorneys’ fees and costs incurred in connection with the arbitration of the dispute in an amount to be determined by the arbitrator.

We shall be pleased to discuss this letter with you at any time. If the foregoing is in accordance with your understanding, please sign the copy of this letter and return it to us.

Sincerely,

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

<Accountant Name>

<Firm Name>

The above letter sets forth my understanding of the terms and objectives of the engagement.

**AGREED AND ACCEPTED:**

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

<Client Representative>

<Client Name>

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

Date

1. This engagement letter has been updated to incorporate the changes promulgated by the ***Infrastructure Investment and Jobs Act*** (enacted November 15, 2021), which amended the previous guidance under the ***Consolidated Appropriations Act of 2021*** (“Covid-19 Relief Bill”) and updated by the ***American Rescue Plan Act of 2021*** (“Rescue Plan Act”). [↑](#footnote-ref-1)
2. The *Infrastructure Investment and Jobs Act* amended the law so that the Employee Retention Credit applies only to wages paid before October 1, 2021, unless the employer is a “recovery start-up business.” [↑](#footnote-ref-2)