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Conflicts: Waiver Joint Representation

VIA REGULAR MAIL AND VIA ELECTRONIC MAIL

[Client A]

[Client B]

RE: _____
Matter No.: _____
File No.: _____

Dear **[Client A and Client B]:**

We have been asked to represent both of you, Client A ("A") and Client B ("B"), with respect to **[identify nature and scope of the proposed joint engagement]** (the "Joint Engagement").

Although we reasonably believe that the representation of both of you in the Joint Engagement will not adversely affect our representation of either of you, the purpose of this letter is to discuss with each of you the actual and potential risks and consequences of such simultaneous representation, to identify any potential alternative courses of action, and to explain the circumstances under which we would be willing to represent both parties simultaneously if, after full consideration of the consequences, both of you wish us to do so.

Simultaneous representation of parties with potentially adverse interests by the same attorneys involves a number of departures from professional norms and should not be undertaken by any such party without careful consideration. In particular, we want you to be aware of the following.

1. Under applicable rules of professional conduct, a law firm owes each of its clients a duty of loyalty, which would normally preclude any attorney within the firm from undertaking a representation adverse to any client of the firm without the affected client's informed consent. Other rules generally prohibit a firm from undertaking any representation involving an actual or potential conflict of interest without the informed consent of all affected parties. Such a situation may exist when a firm represents two clients simultaneously in a situation in which their interests are actually or potentially adverse.
2. The conflict of interest and the need for informed consent exist no matter how cordial the **[business/family/etc.]** relationship between the two parties currently is or is anticipated to be, and no matter how non-controversial the subject of the engagement is anticipated to be.
3. We recommend that each of you seek the advice of independent counsel of your own choice regarding this written consent. If, however, it is the wish of both clients that we undertake the simultaneous representation of both parties with respect to the **[subject of**

the proposed Joint Engagement], we will undertake to do so under the terms described herein.

4. *[Explain how the Joint Engagement will mean that (1) the clients' interests will be adverse or (2) there is a significant risk that the lawyer's representation of one client will be materially limited by the lawyer's responsibility to the other. For instance, the Joint Engagement will require that information learned from B shall be kept confidential as between the lawyer and B and may not be shared with A. Identify the Rule(s) of Professional Conduct that are implicated and either quote or summarize the applicable Rule(s).]*
5. *[Explain the risks of the foregoing to each of A and B.]*
6. *[Explain alternatives to the foregoing, such as the clients' ability to retain other counsel.]*
7. In light of the foregoing, it may not be possible for a single law firm to represent both of you in the same aggressive manner as would two separate and independent law firms. By giving the consent requested in this letter, you are, in effect, waiving that kind of zealous representation of your individual and conflicting interests with respect to the subject matter of the proposed Joint Engagement. It is possible that each or both of you might be advised by independent counsel to demand or offer different or more favorable terms and conditions with respect to the subject matter of the proposed Joint Engagement than we can or will demand or offer.
5. Moreover, regardless of the terms upon which the matters between the two clients are concluded, the fact that one law firm has been involved in the representation of both parties may give rise to a perception on the part of *[shareholders/investors/third parties/etc.]* that different terms might have been arrived at had each of the joint clients had separate representation by independent law firms.
6. Notwithstanding the foregoing, we believe that we will be able to provide competent and diligent representation to each affected client.
7. If a dispute should arise in the future between the two of you concerning the *[subject of the proposed Joint Engagement]* or any other aspect of your dealings with each other, we believe we may have to withdraw, or would be disqualified, from representing either of you with regard to that dispute or any other relationship you might then have with each other. You would then each have to retain separate counsel, resulting in additional expense and inconvenience that you might not have incurred had you been separately represented from the outset.

We will be pleased to answer any questions you may have concerning this representation or this requested consent. If you do wish to consent, please sign the enclosed extra copy of this letter and return it to us in the enclosed envelope.

Very truly yours,

[Attorney Name]

Acknowledgement and Consent

Despite any actual or potential conflict of interest which exists now or may in the future, as discussed above, we hereby consent to [**the firm's**] simultaneous representation of both [**Client A and Client B**] with respect to the subject matter of the Joint Engagement as described above. We further agree that [**the firm**] may withdraw its representation of either client or both clients without prejudice should it determine that continued representation will or might violate applicable rules of professional conduct.

[Client A]

By:

[Client B]

By:
