

## TAX RETURN SERVICES AGREEMENT

### 1. Introduction

1.1. THIS TAX RETURN SERVICES AGREEMENT IS A CONTRACT BETWEEN YOU AND OUR COMPANY. THIS AGREEMENT GOVERNS OUR PROVISION OF TAX RETURN SERVICES AND YOUR USE OF OUR ONLINE SERVICES.

1.2. WE PROVIDE TAX RETURN SERVICES ONLY IF YOU AGREE TO ALL THE TERMS OF THE AGREEMENT. YOU

1.3. YOU ARE CONSIDERED TO HAVE AGREED AND ACCEPTED ALL OF THE TERMS OF THIS AGREEMENT IF YOU ACCEPT TAX RETURN SERVICES.

1.4. YOU DO NOT HAVE THE RIGHT TO ACCESS AND USE THE ONLINE TAX RETURN SERVICES UNLESS YOU AGREE TO ALL OF THE TERMS OF THIS AGREEMENT.

1.5. **THIS AGREEMENT INCLUDES A BINDING ARBITRATION AGREEMENT IN SECTION 11 THAT REQUIRES RESOLUTIONS OF DISPUTES BY INDIVIDUAL ARBITRATION.**

1.6. **THIS AGREEMENT INCLUDES YOUR CONSENT TO ELECTRONIC COMMUNICATIONS AS PROVIDED IN SECTION 12.**

### 2. Online Tax Return Services

2.1. Your licensed and permitted use. The Company grants you a non-exclusive, non- transferrable, non-sub-licensable, and limited license to access and use the Online Tax Return Services for your individual personal and/ or internal business purposes under the terms, conditions, and limitations set forth in this Agreement and payment of all applicable fees. The Company reserves any and all rights not expressly granted to you in this Agreement.

2.2. Your online account. To access the Online Tax Return Services, you are required to create an online account with the Company. By so doing, you are deemed to consent to the terms of this Agreement and to receive e-mail correspondence from us regarding your account and your use of the Online Tax Return Services.

A. Accurate information. You represent and warrant that the information you provide to us is true and accurate to the best of your Knowledge. You agree not to submit false information to us.

B. Business Users. You represent and warrant that you actually have the authority required to act on behalf of legal or natural person for which you create an account. Thus, you and your principal are responsible for all activity occurring under your account.

C. Maintaining the security of your online account. You are responsible for all activity occurring through your account.

D. Account protection. You are responsible for setting up and keeping confidential your online account, username, password, and other sensitive information. You must take security precautions with at least reasonable and prudent care.

E. Unauthorized use. You agree to notify us immediately of any unauthorized use of the Online Tax Return Services including use of your account, username, password, or other security breach of which you are aware.

F. Notification of unauthorized use. We have no liability to you for any unauthorized access or transaction made using your account, username, password, or sensitive information that occurs before you have notified us of possible unauthorized use and we have had a reasonable opportunity to act on that notice.

G. Suspension of your account. If we suspect any unauthorized or fraudulent use, we may suspend or cancel your account, username, or password, even without receiving notice from you.

H. Your equipment. You are solely responsible for all device and network security for devices used to access and use the Tax Return Services, including but not limited to any active firewall, anti-virus software, and anti-spyware software necessary to secure and protect any proprietary or confidential information that you provide, store, submit, send, or disclose directly or indirectly with your use of the Tax Return Services.

2.3. Tax Return Services. Your acceptance of any of the Tax Return Services is subject to this Agreement.

A. Minimum Age. You must be 18 years of age or older to use our Tax Return Services. By requesting Tax Return Services, you represent to us that you are 18 years of age or older.

B. Payment of Applicable Fee. Your receipt of Tax Return Services obligates you to pay all applicable fees therefor. If we process your payments using a third-party payment processor, such payments will be governed by the third-party payment processor's terms of use and privacy policy. If you obtain financing in anticipation of a tax refund, your fees are not due until after all services are complete, which is typically when your refund is received and your authorized payments are disbursed, but in any event, no more than 30 days after your tax return is e-filed.

C. Prohibited use. You must not, directly or indirectly use the Tax Return Services in a way that is a Prohibited Use.

D. Additional limitations. Specific limitations to each of our Tax Return Services are explained further in Section 6.

E. You are responsible for the accuracy and completeness of information for the purpose of receiving and using our Tax Return Services;

F. You represent that all information you provide is true and accurate and that you have the right to provide the information to us. You grant our Company a perpetual and royalty-free license to reproduce, use, store, and process any information that you provide, including Personal Information, (1) to the extent appropriate or necessary for us to provide the Tax Return Services, and (2) in a deidentified and aggregated format for any other purpose throughout the world. If you provide, or we reasonably believe you have provided, information that is false, incorrect, incomplete, pornographic, or improper, we have the right to delete the information, suspend any of your accounts, and refuse all current or future use of the Tax Return Services.

2.4 Your export restrictions. You will not export Tax Return Services or other materials provided by us without obtaining our prior written consent.

2.5 Compliance with applicable laws. You are solely responsible for compliance with all applicable laws, statutes, ordinances, and governmental authority rules, including those related to data privacy, international communications and the transmission of personal data.

2.6 Unauthorized use. You are responsible for all use of the Tax Return Services and compliance with this Agreement. You have all responsibility and liability for any breach of this Agreement by you or any user under your account.

3. Intellectual property rights. The Tax Return Services, modifications, copyrights, patents, trade secrets, trademarks, and other intellectual property rights pertaining to any aspect of the Tax Return Services are our exclusive property. You acquire no ownership interest, derivative work, or component of the Tax Return Services

through your use thereof. You are not granted right, title, or interest to any trademark, service mark, logo, or trade name of Company under this Agreement.

#### 4. Your Privacy

4.1 Our Privacy Policy. Your use of the Tax Return Services is subject to our Privacy Policy, which is available upon request.

4.2 Changes to our Privacy Policy. Consistent with applicable law, we reserve the right to change the Privacy Policy at any time. If we make a material change to the Privacy Policy, we will post a notice on our web site describing the change or send you paper or electronic notification of the change.

#### 5. Your Access to the Tax Return Services

5.1 Cancellation or modification of Tax Return Services. We reserve the right to change Tax Return Services at any time, without notice, and for any reason; or cancel or terminate your use of the Tax Return Services if you violate this Agreement. We shall not be liable to you or any third party for any modification or discontinuance of Tax Return Services.

5.2 Technical difficulties. We cannot always anticipate technical or other difficulties. These difficulties may result in loss of your data, personal settings, or other interruptions to Tax Return Services. We have no responsibility for the timeliness, mis- delivery, or interruption of the Tax Return Services.

#### 6. Included Tax Return Services

6.1 Preparation of Returns Tax Return Services include the following tax return preparation services:

(i) preparation of federal tax returns for individuals, estates, trusts, partnerships, S corporations, regular corporations, and exempt organizations;

(ii) preparation of state tax returns for individuals, estates, trusts, partnerships, S corporations, and regular corporations; (iii) preparation of FBAR (Foreign Bank Account Report) Form 114 Fincen; (iv) determinations of whether a tax position falls within the scope of the Excluded Positions as defined herein; (v) determinations of whether a claim is attributable to an error or omission by the Company; and (iv) preparation of amendments to any of the foregoing returns and filing of claims for refund. The Tax Return Services do not include preparation of tax returns reflecting the Excluded Positions.

6.2 Electronic Filing (E-file). Tax Return Services include authorized e-filing or, if e-filing is unavailable, filing by mail any tax returns prepared by the Company. You hereby consent to electronic filing whenever available. For the purpose of e-filing your tax returns, Company will transmit your returns to the applicable revenue authorities if those authorities accept e-filing. Company cannot control state laws that do not permit e-filing in certain situations. Company cannot control when or whether a transmitted return is accepted by those authorities after receipt. You are responsible for paying all applicable fees to Company before your return is e-filed. Under federal law, employing Company to prepare and e-file your tax return does not relieve you of the legal responsibility to file your return on time. Therefore, you are responsible for taking appropriate alternative actions, if necessary, to ensure the revenue authorities receive your return on time.

6.3 Health Care Information. Tax Return Services also include the calculation of any healthcare subsidy reconciliation.

6.4 Limitations. You understand and agree that the Tax Return Services do not include legal services or advice. You agree that the preparation of your return or claim for refund does not constitute the practice of law. You understand that the purchase of Tax Return Services does not create an attorney-client relationship with your

tax preparer unless you enter into a separate engagement agreement with the tax preparer to provide legal services.

6.5 Excluded Services. Notwithstanding any other provision of this Agreement, the Company shall have no obligation to perform any Excluded Services.

7. Eligibility for Services. You become eligible to receive Tax Return Services when you take any of the following steps:

(1) Request tax return services in person, online, by email, or by telephone; and

(2) Accept the terms of this Tax Return Services Agreement.

7.1 Advertised Flat Fees. Whether services are available at the advertised flat fee rate is determined by the Company in its sole discretion based on internal parameters. In addition to the advertised flat fee for a particular tax return, the aggregate amount of the flat fees charged for a return also includes separately billed schedules and forms that are required to be prepared or filed with the return.

8. Your Duties.

8.1 You must provide the requested tax information necessary to file your tax return. If you do not provide the requested tax information to the Company, the Tax Return Services may be unavailable, limited, or reduced.

8.2 Before our Company can provide e-filing services, you are required to approve your returns as prepared by signing the required e-file authorization.

8.3 Our Company will not file any return on your behalf until we receive full payment of any and all applicable fees and your approval by signing the e-file authorization.

**8.4 YOU HAVE THE OBLIGATION TO PAY ALL YOUR TAX LIABILITY FOR CURRENT AND FUTURE TAX YEARS, INCLUDING PAYMENT OF THE WITHHOLDINGS AND QUARTERLY ESTIMATED TAX PAYMENTS, AND TO COMPLY WITH ALL FILING REQUIREMENTS.**

**9. EXCLUSIVE REMEDY. THIS STATES OUR ENTIRE OBLIGATION AND LIABILITY AND CONSTITUTES YOUR EXCLUSIVE REMEDY FOR ERRORS OR OMISSIONS THAT ARE THE FAULT OR RESPONSIBILITY OF OUR COMPANY.**

9.1 Exclusive Remedy. If the Company makes a Qualified Error on a federal or

state return prepared and filed by the Company on your behalf, you may file a claim for a remedy in accordance with Section 9.3 below. An Eligible Claim presenting a Qualified Error, as determined by the Company in its sole discretion, entitles you to receive (A) representation by a licensed attorney before the IRS in connection with the Qualified Error; and (B) a payment from the Company equal to (1) the amount of any accuracy-related penalty assessed with respect to any underpayment of tax that is attributable to the Qualified Error or (2) the aggregate amount paid by the Claimant for the Tax Return Services that resulted in the Qualified Error in question, whichever is less.

9.2. Qualified Errors. With respect to a tax return prepared by the Company,

a Qualified Error means an error or omission satisfying all of the following requirements, as determined by Company in its sole discretion:

- A. The error or omission is wholly the fault or responsibility of Company;
- B. The error or omission is not attributable to information supplied or positions taken by you;
- C. The error or omission is not the result of your failure to provide all relevant information to the Company;
- D. The error or omission is not the result of your decision not to claim a deduction or credit to which you are entitled;
- E. The error or omission is not attributable to a deduction or credit for which you are otherwise ineligible or to your failure to provide the Company with adequate substantiation required to claim a tax benefit.
- F. The error or omission is not the result of a change in federal or state tax laws made after the end of the tax year in question; and
- G. The error or omission is not attributable to an Excluded Position.

9.3 Eligible Claim. An Eligible Claim must meet all of the following requirements as determined by the Company in its sole discretion:

- A. The claim must be post-marked within 60 days of the date of receipt by the taxpayer of correspondence from a federal or state tax authority relating in whole or in part to a Qualified Error;
- B. The claim must be asserted by the taxpayer (or the person's legal successor or representative acting as such) named on the tax return(s);
- C. The claim must be mailed by **certified mail, return receipt requested**, postage paid, and properly addressed to Eligible Claims, Spur Law & Tax, PO Box 420, Spur, Texas 79370;
- D. The claim must include copies of all correspondence from state and federal tax authorities relating to the affected tax return; and
- E. Within 10 days of tender to the claimant, he or she must execute Form 2848, authorizing Elaine Harris, Attorney at Law, to represent the claimant before the IRS in connection with the subject matter of the Eligible Claim in all years at issue and to receive all associated correspondence and tax notices.

**10. DISCLAIMER OF WARRANTIES. THE COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING COMPANY'S PRODUCTS OR SERVICES, OTHER THAN THOSE EXPRESSLY STATED IN THIS AGREEMENT.**

10.1 Disclaimer of implied warranty. WITHOUT LIMITING THE PRECEDING SENTENCE AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE THAT ANY IMPLIED WARRANTIES SUCH AS THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED FROM YOUR LICENSE AND USE OF Tax Return Services. SOME STATES, INCLUDING NEW JERSEY, DO NOT ALLOW EXCLUSIONS OR LIMITATIONS OF IMPLIED WARRANTIES. IF YOU LIVE IN ONE OF THESE STATES, THE ABOVE LIMITATIONS DO NOT APPLY TO YOU AND IN SUCH CASE, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE MINIMUM PERMISSIBLE UNDER APPLICABLE LAW FROM THE DATE YOU FIRST ACCESSED, USED OR ACQUIRED TAX RETYRN SERVICES.

10.2 Disclaimer of express warranty. OTHER THAN EXPRESSLY PROVIDED IN THIS AGREEMENT, COMPANY DOES NOT WARRANT OR PROMISE THAT TAX RETURN SERVICES WILL BE UNINTERRUPTED OR OTHERWISE FREE FROM BUGS OR ERRORS. OTHER THAN EXPRESSLY PROVIDED IN THIS AGREEMENT, COMPANY MAKES NO OTHER PROMISES ABOUT THE PERFORMANCE, ACCURACY, OR RELIABILITY OF TAX RETURN SERVICES OR THEIR ABILITY TO MEET YOUR REQUIREMENTS. TAX RETURN SERVICES DO NOT REPLACE YOUR OBLIGATION TO EXERCISE YOUR INDEPENDENT JUDGMENT IN REVIEWING YOUR TAX RETURNS.

**10.3 YOU ACKNOWLEDGE THAT THE PREPARATION AND FILING OF TAX**

**RETURNS DOES NOT CONSTITUTE THE PRACTICE OF LAW. YOU ALSO ACKNOWLEDGE AND AGREE THAT THE TAX RETURN SERVICES ARE NOT OBTAINED AS A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY.**

10.4 Limitations on Liability and Damages. THE EXCLUSIVE REMEDY EXPRESSLY PERMITTED BY SECTION 9 CONSTITUTES THE ENTIRE LIABILITY OF OUR

COMPANY WITH RESPECT TO THE TAX RETURN SERVICES. IN NO EVENT WILL THE COMPANY BE LIABLE TO YOU, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, FOR ANY TAX, PENALTY, OR INTEREST OR ANY ASSOCIATED INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, TAXES, PENALTIES, INTEREST, ATTORNEY'S FEES, ACCOUNTANT'S FEES, LOST DATA, LOST PROFITS OR BUSINESS, LOSS OF USE, OR FOR ANY CLAIM OR DEMAND AGAINST YOU BY ANY OTHER PARTY, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.5 No additional liability. You agree that Company will not at any time have any additional liability for any claim, cause of action or injury that you or any other person may have as a result of: (1) your use of, or inability to use the Tax Return Services; (2) your use of any documents generated by the Company; (3) your retention of, or your failure to consult or retain, an attorney or other competent professional with respect to any contract, document or legal matter; (4) any connection or toll charges for using Online Tax Return Services or obtaining updates therefor; or (5) any fees, costs or expenses arising out of troubleshooting or technical support for those Online Tax Return Services.

10.6 Essential purpose of this agreement. You agree that the essential purposes of this Agreement may be fulfilled despite these limitations on liabilities. You acknowledge that the Company would not be able to offer the Tax Return Services on an economical basis without these limitations.

10.7 Indemnification. You agree to defend and hold harmless the Company and its current and former successors, assigns, officers, directors, representatives, employees, and agents, acting as such, from and against any and all claims, suits, settlements, losses, liabilities, penalties, damages (including incidental and consequential damages), costs, and expenses (including reasonable attorneys' fees and expenses) resulting from or arising out of your breach of this Agreement.

**11. ARBITRATION AGREEMENT.**

**ANY CLAIM OR CONTROVERSY ARISING OUT OF THIS AGREEMENT SHALL BE SUBMITTED TO ARBITRATION UNDER THE AUTHORITY OF THE TEXAS ARBITRATION ACT, TEXAS PRACTICE AND REMEDIES CODE § 171.001 ET SEQ. THE ARBITRATOR SHALL HAVE THE POWER TO RULE ON HIS OR HER OWN JURISDICTION, INCLUDING ANY OBJECTIONS WITH RESPECT TO THE EXISTENCE, SCOPE, OR VALIDITY OF THE ARBITRATION AGREEMENT OR TO THE ARBITRABILITY OF ANY CLAIM OR COUNTERCLAIM. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT OF COMPETENT JURISDICTION. THE APPLICABLE LAW IN ALL CASES ARISING UNDER THIS AGREEMENT SHALL BE THE SUBSTANTIVE, ADMINISTRATIVE, AND PROCEDURAL LAWS OF THE STATE OF TEXAS, EXCEPT FOR THE CONFLICT OF LAW PROVISIONS THEREOF.**

**11.1 VENUE. THE PARTIES AGREE THAT VENUE FOR ALL DISPUTES ARISING OUT OF THIS AGREEMENT IS PROPER IN DICKENS COUNTY, TEXAS.**

**11.2 Waiver of right to bring class action and representative claims.** All arbitrations will proceed on an individual basis. The arbitrator is empowered to resolve the dispute with the same remedies available in court, including compensatory, statutory, and punitive damages; attorneys' fees; and declaratory, injunctive, and equitable relief. However, any relief must be individualized to you and will not affect any other client. The arbitrator is also empowered to resolve the dispute with the same defenses available in court, including but not limited to statutes of limitation. You and the Company also agree that each may bring claims against the other in arbitration only in your or their respective individual capacities and in so doing you and the Company hereby waive the right to a trial by jury, to assert or participate in a class action lawsuit or class action arbitration, to assert or participate in a private attorney general lawsuit or private attorney general arbitration, and to assert or participate in any joint or consolidated lawsuit or joint or consolidated arbitration of any kind. If a court decides that applicable law precludes enforcement of any of this paragraph's limitations as to a particular claim for relief, then that claim for relief (and only that claim for relief) must remain in court and be severed from any arbitration. The Company does not consent to, and the arbitrator will not have authority to conduct, any class action arbitration, private attorney general arbitration, or arbitration involving joint or consolidated claims, under any circumstance.

**12. Consent to electronic communication.** This consent to electronic communications provides important information required by the Electronic Signatures in Global and National Commerce Act (E-SIGN Act) and your consent to electronic delivery of any Communications relating to your use of Tax Return Services or your relationship with us.

**12.1 Scope of consent.** You agree that any communication we provide you may be in electronic form, and that all communications in electronic format from us to you will be considered "in writing." Your consent to receive communications electronically applies to all communications relating to your use of the Tax Return Services or your relationship with us. You also agree that we do not need to provide you with an additional paper (non-electronic) copy of the communications unless specifically requested as described below. This consent does not require us to deliver Communications electronically, and we may provide paper copies of Communications at our discretion.

**12.2 Method of delivery.** We may provide electronic Communications to you in at least one of the following methods:

- A. via e-mail at the e-mail address you provide to us;
- B. by access to a designated area of Company Websites; or
- C. during your use of the Tax Return Services, including, without limitation, via a screen or page the Company Websites or via a link from within the Company Websites to a web page with such communications.

**12.3 Hardware and software requirements.** To access communications, you must have the following:

- A. a current version of Microsoft Edge, Chrome, Safari, or Firefox;
- B. an internet connection;
- C. an email account and related software for accessing the email account;
- D. a current version of a program that accurately reads and displays PDF files; and
- E. a device with an operating system capable of supporting all the above.

#### 12.4 Other Charges.

If any return is filed by the Company on your behalf by mail, you agree to reimburse the Company for certified mail, return receipt requested, first class USPS postage charges paid or incurred by the Company in addition to any other charges due.

12.5 Printer. If you wish to print and retain paper records, you will need a printer capable of doing so.

12.6 Obtaining paper copies. You have the right to receive a paper copy of our communications. You may request a paper copy of our communications by calling 1- 833-802-1040. We must receive your request within 30 days after we first provided the communication to you.

12.7 Withdrawing consent and updating information. If you wish to withdraw your consent to receive communications electronically or your e-mail address changes, you must notify us by certified mail, return receipt requested, postage paid envelope properly addressed to: Consent Revocations, Spur Law & Tax, PO Box 420, Spur, Texas 79370. Please provide the last 5 digits of your social security number, your full name, the old and new e-mail addresses, and your phone number to request the change. Any communications sent via e-mail before the Company receives actual notice of the change will be deemed to have been provided or made available to you in electronic form.

12.8 Result of withdrawing consent. If you choose to withdraw your consent to receive communications electronically, you may be unable to receive certain Tax Return Services. In some cases, your decision to withdraw your consent to receive communications electronically may impede the functionality and features to the extent that your license to use the Tax Return Services is effectively terminated. You acknowledge that some notices may be "one-time" notices for which your consent may not practically be withdrawn after receiving the initial electronic notice.

12.9 Termination of this Agreement. Without prejudice to any other rights, we may immediately terminate this Agreement if you fail to comply with these terms and conditions. The Company shall have no liability for the termination of services in that event. All provisions of this Agreement that are intended to survive or that must survive in order to give effect to its meaning shall survive the termination or expiration of this Agreement.

#### 13. Definitions.

13.1 Governing law. This Agreement is governed by, interpreted, construed, and enforced in accordance with the laws of the State of Texas except to the extent inconsistent with or preempted by federal law.

13.2 Entire agreement. This Agreement is the entire and exclusive agreement between the parties with respect to the subject matter hereof and it supersedes all previous communications, representations, or agreements, either oral or written, between them. A representation or statement of any kind made by any representative of the Company, but not included in this Agreement, is not binding on Company.

13.3 Amendments. We have the sole discretion to change the terms of this Agreement or make changes related to any aspect of the Tax Return Services. If this occurs, we will provide notice to you via any means we consider reasonable including, without limitation, e-mail, posting on our website, or updates to us. After we provide notice, continued use of the Tax Return Services constitutes your acceptance of the changes and the Agreement (as amended).

13.4 Waiver. No waiver of any provision or condition herein is valid unless in writing and signed by you and an authorized representative of us. Our failure to insist on or enforce strict performance of any provision of this Agreement or any right is not to be construed as a waiver of any provision or right.

13.5 Severability. Any provision of this Agreement determined to be illegal or unenforceable is automatically reformed and construed to be valid, operative, and enforceable to the maximum extent permitted by law or equity.



while preserving its original intent. The invalidity of any part of this Agreement will not render invalid the remainder of this Agreement.

13.6 Notices. Except as otherwise indicated, any notices under this Agreement to us must be delivered by certified mail, return receipt requested, postage paid, and properly addressed to that address. Notices shall be effective upon receipt.

13.7 Company. All references in this Agreement to the “Company” are to Elaine Harris Attorney at Law PC, DBA Spur Law & Tax and Your Online Tax Pro, their successors and assigns, and their agents acting as such.

13.8 Agreement headings. The headings contained herein are for the convenience of the parties only and shall not be used to interpret or construe any of the terms of this Agreement.

13.9 Third party beneficiaries and assignment. This Agreement is solely between you and our Company. All rights and benefits of this Agreement from us are intended solely for the original purchaser of the Tax Return Services. You must not assign, delegate or otherwise transfer this Agreement or any of your rights under this Agreement. The remedies and all other rights and benefits provided under this Agreement are personal to the original purchaser of the Tax Return Services, and such rights and benefits must not be assigned or otherwise transferred to any other party. This Agreement inures to the benefit of Company and its respective permitted successors and assigns.

13.10 The term “communications” means all notices, disclosures (including those required by law), agreements, fee schedules, tax returns, records, documents, or other information we provide to you or that you sign or agree to relating to your use of Tax Return Services or your relationship with us.

13.11 The term “Tax Return Services” means all Tax Return Services that you purchase or receive from Company.

13.12 The term “prohibited use” includes any of the following activities when using the Tax Return Services:

- A. redistribute, sell, rent, loan, or otherwise transfer any products, any rights or benefits in or to the Tax Return Services to any other person or entity;
- B. share your username or password with any third party;
- C. use the Tax Return Services in any unintended manner;
- D. use the Tax Return Services for the benefit of any third parties;
- E. make the Tax Return Services available on a file-sharing service, application service provider, outsourcing basis, or service bureau basis;
- F. use the Tax Return Services to provide services for third parties, including but not limited to tax-related advice or consulting services, and preparation of any documents for a third party;
- G. duplicate our Tax Return Services by any means;
- H. remove any proprietary notice, labels, documentation, advice, or any work product generated from your use of the Tax Return Services;
- I. derive or attempt to derive the source code of our Tax Return Services;
- J. disable or circumvent any access control or related device, process, or procedure established with respect to the Tax Return Services;

- K. disassemble, modify, or reverse engineer the Tax Return Services;
- L. seek to derive the source code from any executable object code provided to you;
- M. modify, translate, or otherwise create derivative works based on any part of our Tax Return Services;
- N. use the Tax Return Services in any unlawful manner or in any other manner that could damage, disable, overburden, or impair Company;
- O. upload, post, transmit, share, store, or otherwise make available any content that we deem to be harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically, or otherwise objectionable;
- P. upload, post, transmit, share, or otherwise make available any unsolicited or unauthorized advertising, solicitations, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
- Q. upload, post, transmit, share, or otherwise make available any material that contains software viruses or any other code, files, or programs designed to interrupt, destroy, or limit the functionality of any software or hardware or telecommunications equipment; and
- R. upload, post, transmit, share, store, or otherwise make available content that would constitute, encourage, or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, national, or international law.

13.13 The term "revenue authority" means the IRS and any applicable state revenue authorities.

13.14 The term "personal information" means personally identifiable information including but not limited to details of your identity, contact information, your location, healthcare information, financial products information, your communications to us, our responses to your communications, taxpayer return information relating to current or prior tax years, and any other information you add about yourself and store for future use subject to this Agreement.

13.15 The term "Excluded Services" means the preparation and/or e-filing of any return reflecting an unreasonable tax position, a tax position lacking substantial authority, any undisclosed tax position lacking a reasonable basis, certain tax positions with respect to a tax shelter item or reportable transaction, or any tax position for which a principal purpose is the evasion or avoidance of tax (all together referred to as "Excluded Positions"). See IRC § 6694(a)(2). Whether a tax position is considered to be an Excluded Position shall be determined by the Company in its sole discretion, which determination is final. If the Company determines that your return reflects an Excluded Position, the Company shall prepare the tax return by omitting the Excluded Position. If authorization to file without the Excluded Position is withheld, you may obtain refund of the entire amount of any e-filing fee previously paid. In no event shall the taxpayer be entitled to any refund for services rendered on account of our determination not to present the Excluded Position on the tax return.

By way of further explanation, the term "Excluded Position" includes any unreasonable position within the meaning of IRC § 6694(a)(2). The Company is a tax return preparer identified and registered as such with the IRS. See IRC § 7701(15). The IRS may impose a penalty against a tax return preparer for any return or claim for refund that contains an understatement of liability due to an unreasonable position. There are three different standards of conduct that tax return preparers must meet in order to transcend the "unreasonableness" of a position and avoid the imposition of the IRC § 6694(a) penalty for positions related to tax shelters, undisclosed positions, and disclosed positions (other than tax shelter or reportable transactions to which IRC § 6662A applies. All positions

are subject to the “substantial authority” standard unless they fall into one of two exceptions: (1) the position is with regards to a tax shelter; or (2) the position is adequately disclosed.

#### More Likely Than Not Standard —

IRC § 6694(a)(2)(C) provides that if the position is with respect to a tax shelter (as defined in IRC § 6662(d)(2)(C)(ii)) or is a reportable transaction to which IRC § 6662A applies, the position is considered unreasonable unless it is reasonable to believe that the position would more likely than not be sustained on its merits. The “reasonable to believe that the position would more likely than not be sustained on its merits” standard is satisfied if the tax return preparer analyzes the pertinent facts and authorities and, in reliance upon that analysis, reasonably concludes in good faith that the position has a greater than 50% likelihood of being sustained on its merits. Treas. Reg. § 1.6694-2(b)(1). This is the highest of the three standards to meet.

Whether or not a preparer meets the standard is determined taking into consideration all the facts and circumstances, including the preparer's diligence, which is determined taking into account the preparer's experience with the area of tax law and familiarity with the taxpayer's affairs, as well as the complexity of the issues and facts in the case. It is reasonable for the tax preparer to rely in good faith without further verification upon information provided by the taxpayer, and advice furnished by another advisor, another tax return preparer or other party. See Treas. Reg. § 1.6694-2(b)(1).

The same analysis of the “substantial authority” standard applies to the “more likely than not” standard. The weight accorded an authority depends on its relevance and persuasiveness and the type of document providing the authority. For example, a case or revenue ruling having some similar facts does not weigh very heavily if the material facts are distinguishable from the case at hand. In addition, a revenue ruling is accorded more weight than a private letter ruling addressing the same issue. See Treas. Reg. § 1.6662-4(d)(3)(iii) for a list of the types of authorities, other than written authorities, that are acceptable in the analysis of the substantial authority standard and that also apply to the more likely than not standard. See Treas. Reg. § 1.6694-2(b)(2).

A tax return preparer can avoid the Treas. Reg. § 6694(a) penalty by taking the position that he reasonably believed that the position satisfied the more likely than not standard based on the fact that the position was supported by the conclusion of a ruling or a determination letter issued to the taxpayer, by the conclusion of a technical advice memorandum in which the taxpayer is named, or by an affirmative statement in a revenue agent's report with respect to a prior tax year of the taxpayer. See Treas. Reg. §§ 1.6694-2(b)(3), 1.6662-4(d)(3)(iv)(A).

#### Substantial Authority Standard —

There is “substantial authority” for the tax treatment of an item only if the weight of the authorities supporting the treatment is substantial in relation to the weight of authorities supporting contrary treatment. All authorities relevant to the tax treatment of an item, including contrary authority, will be taken into account in determining whether substantial authority exists. This is an objective standard, so the belief that there is substantial authority is not relevant. See Notice 2009-5 (Paragraph B), 2009-3 I.R.B. 309; Treas. Reg. § 1.6662-4(d)(3)(i). This standard is less stringent than the “more likely than not” standard, but more stringent than the “reasonable basis” standard.

The weight accorded an authority depends on its relevance and persuasiveness and the type of document providing the authority. For example, a case or revenue ruling having some similar facts does not weigh very heavily if the material facts are distinguishable from the case at hand. In addition, a revenue ruling is accorded more weight than a private letter ruling addressing the same issue. Treas. Reg. § 1.6662-4(d)(3)(iii) lists certain types of non-written authorities considered acceptable in the analysis of the substantial authority standard.

In addition to the list of authorities mentioned above, there is also substantial authority for the tax treatment of an item if the treatment is supported by the conclusion of a ruling or a determination letter issued to the taxpayer, by

the conclusion of a technical advice memorandum in which the taxpayer is named, or by an affirmative statement in a revenue agent's report with respect to a prior tax year of the taxpayer. See Treas. Reg. § 1.6662-4(d)(3)(iv)(A).

Until further guidance, solely for the purposes of IRC § 6694(a), a position with respect to a tax shelter will not be deemed an “unreasonable position” if there is substantial authority for the position and the tax return preparer advises the taxpayer of the penalty standards applicable to the taxpayer in the event the transaction is deemed to have a significant purpose of Federal tax avoidance or evasion. The advice to the taxpayer must explain that, if the position has a significant purpose of tax avoidance or evasion, then there needs to be at a minimum substantial authority for the position, the taxpayer must possess a reasonable belief that the tax treatment was more likely than not the proper treatment in order to avoid a penalty under IRC § 6662(d) as applicable and that disclosure in accordance with Treas. Reg. § 6662-4(f) will not protect the taxpayer from assessment of an accuracy-related penalty if IRC § 6662(d)(2)(C) applies to the position. The tax return preparer must contemporaneously document the advice in his files. See Notice 2009-5 (Paragraph C), 2009-3 I.R.B. 309.

#### Reasonable Basis Standard--

This standard is a relatively high standard of tax reporting, that is, significantly higher than the previously used “not frivolous” standard. The reasonable basis standard is not satisfied by a position that is merely arguable or that is merely a colorable claim. The standard will generally be satisfied if the return preparer's position is reasonably based on one or more of the authorities listed in Treas. Reg. § 1.6662-4(d)(3)(iii). The return position will generally satisfy the reasonable basis standard even though it may not satisfy the substantial authority standard. See Treas. Reg. 1.6662-3(b)(3). This is the lowest standard of the three for the tax preparer to meet.

The second prong of the reasonable basis standard is that the position must be adequately disclosed. As applied to the IRC § 6694 penalties, “disclosure” means disclosure from the tax return preparer to the taxpayer, not disclosure from the tax return preparer to the IRS. There are different standards for meeting this requirement for signing and non-signing tax return preparers:

#### Signing Tax Return Preparer –

The signing tax return preparer must meet one of the following standards in order to meet the disclosure requirement:

1. The position must be disclosed on Form 8275, Disclosure Statement, or Form 8275-R, Regulation Disclosure Statement, as appropriate or on the tax return in accordance with the annual revenue procedure described in Treas. Reg. § 1.6662-4(f)(2);
2. The tax return preparer provides the taxpayer with the prepared tax return including disclosure in accordance with Treas. Reg. § 1.6662-4(f)(2), which states that the position must be disclosed on a return in accordance with the IRS's annual disclosure revenue procedure or on a properly completed Form 8275 or 8275-R as appropriate; or,
3. If the taxpayer's return is subject to IRC § 6662 penalties, other than accuracy-related penalties under IRC § 6662(b)(2) and (d), the tax return preparer advises the taxpayer of the penalty standards applicable to the taxpayer under IRC § 6662. The tax return preparer must contemporaneously document the advice in the tax return preparer's files. Treas. Reg. § 1.6694-2(d)(3)(i).

Note: The advice given to the taxpayer must be particular for that taxpayer and tailored to the taxpayer's specific facts and circumstances. A general disclaimer will not satisfy this requirement, but the tax return preparer may use established forms or templates in advising the taxpayer of the relevant penalty provisions. See Treas. Reg. § 1.6694-2(d)(3)(iii).

Disclosure in the Case of Passthrough Entities—Disclosure in the case of items attributable to a passthrough entity is adequate if made at the entity level in accordance with the rules of Treas. Reg. § 1.6662-4(f)(5) or at the entity level in accordance with the rules listed in Treas. Reg. § 1.6694-2(d)(3)(i) or (ii) outlined above.

#### Exceptions for Reasonable Cause and Good Faith —

No penalty for underpayment due to an unreasonable position will be imposed against a tax return preparer if, after considering all the facts and circumstances, it is determined that the understatement was due to reasonable cause and the tax return preparer acted in good faith. Several factors are taken into consideration when determining whether or not the preparer's actions fall into this exception. Among the considerations are:

**The Nature of the Error Causing the Understatement**—If the error resulted from a particularly complex, uncommon or highly technical provision of the code and a competent tax return preparer of a return or claim for refund of that type could have made that same error. The exception will not, however, be available in the case where a general review of the return or claim would have uncovered the error. See Treas. Reg. § 1.6694-2(e)(1).

**Frequency of Errors**—If the understatement was the result of an isolated error, such as a clerical or inadvertent mathematical error, so long as the error is not so obvious, flagrant or material that it should have been discovered during a review of the return or claim for refund. Furthermore, the exception will not apply in cases where there is a pattern of errors on a return or claim for refund, even if any one of the errors would on its own qualify for the exception. See Treas. Reg.

§ 1.6694-2(e)(2); Rev. Rul. 80-262, 1980-2 C.B. 375 (inadvertent error made by a return preparer that does not result in substantial understatement and is the only error on the return does not subject the preparer to the negligence penalty of IRC § 6694(a)).

**Materiality of Errors**—Provided the error(s) creating the understatement are not sufficiently obvious or numerous, and the result is a relatively immaterial understatement, the error(s) will generally fall within the reasonable cause or good faith exception. See Treas. Reg. § 1.6694- 2(e)(3).

**Tax Return Preparer's Normal Office Practice**—When the normal office practice of the return preparer, considered together with other facts and circumstances such as his knowledge, indicate that the error at issue would rarely occur. A qualifying normal office practice includes a system for promoting accuracy and consistency in tax returns prepared by the office, including checklists; methods of obtaining information from taxpayers; a review of the prior year's return; and other review procedures. This exception will not apply, however, in the case where there is a flagrant error, a pattern of errors, or a repetition of the same or similar errors on numerous returns or claims for refund. See Treas. Reg. § 1.6694-2(d)(4).

**Reliance on Advice from Others**—A tax return preparer may rely without further verification on information provided by the taxpayer or on advice furnished by another advisor, tax return preparer or other party, so long as the tax return preparer has reason to believe that the other party was competent to render the advice or provide the information. See Treas. Reg. § 1.6694- 2(e)(5). The tax return preparer will not be considered to have relied in good faith if:

1. The advice or information is unreasonable on its face;
2. The tax return preparer knew, or should have known, that the other party providing the advice or information was not aware of all the relevant facts; or
3. The tax return preparer knew, or should have known, given the nature of his practice, that there had been changes in the law since the time the advice or information was given, such that it was no longer reliable. See Treas. Reg. § 1.6694-2(e)(5)(i)—(iii).

A tax return preparer who reasonably relies on information provided by previous tax return preparer is not liable for the IRC § 6694(a) penalty when it is determined that previous preparer intentionally overstated the previous tax year's expenses that resulted in an understatement of tax that was carried forward to current year. The previous preparer is, however, subject to IRC § 6694(a) and, potentially, IRC § 6694(b) penalties. See Rev. Rul. 81-171, 1981-1 C.B. 589.

**Reliance on Generally Accepted Administrative or Industry Practice**—The tax return preparer may rely in good faith on generally accepted administrative or industry practices in taking a position unless the tax return preparer knew or should have known that developments in the law or IRS administrative practices has rendered the generally accepted administrative or industry practice unreliable.

#### Understatements Due to Willful or Reckless Conduct —

**Willful Attempt to Understate**—A tax return preparer is considered to willfully understate a taxpayer's liability if the preparer disregards information furnished by the taxpayer or others in an attempt to intentionally reduce the tax liability of the taxpayer. For example, if a taxpayer states to a preparer that he has only two dependents, and the tax return preparer reports six dependents, the tax return preparer is subject to the penalty.

**Reckless or Intentional Disregard**—A tax return preparer is considered to have intentionally disregarded a rule or regulation if he knew, or is reckless in not knowing of, a relevant rule or regulation. A tax return preparer is reckless in not knowing of a rule or regulation, if he makes little or no effort to determine if such a rule or regulation exists, thereby deviating from the standard of conduct which a reasonable preparer would observe. Treas. Reg. § 1.6694-3(c)(1).

If any return or refund claim consists of an understatement of liability due to willful or reckless conduct, the IRC § 6694(b) penalty can be assessed against the tax return preparer without the IRS first determining the taxpayer's liability. See CCA 201519029.

A tax return preparer will not be considered to have recklessly or intentionally disregarded a rule or regulation as to a position to which there is a reasonable basis as defined in Treas. Reg. § 1.6694-2(d)(2) and the position is adequately disclosed in accordance with Treas. Reg. § 1.6694-2(d)(3)(i)(A) or (C) or Treas. Reg. § 1.6694-2(d)(3)(ii). Any position contrary to a regulation must represent a good faith challenge to the validity of the regulation and, when disclosed, the tax return preparer must identify the regulation being challenged.

Preparer V prepares a taxpayer's return in Year 1 and encounters certain expenses incurred in the purchase of a business. Final regulations provide that such expenses incurred in the purchase of a business must be capitalized. One 2008 U.S. Tax Court case has expressly invalidated that portion of the regulations. There are no courts that ruled favorably on the validity of that portion of the regulations and there are no other authorities existing on the issue. Under these facts, V will have a reasonable basis for the position as defined in Treas. Reg. § 1.6694-2(d)(2) and will not be subject to the IRC § 6694(b) penalty if the position is adequately disclosed in accordance with Treas. Reg. § 1.6694-2(c)(2) because the position represents a good faith challenge to the validity of the regulations.

In the case of a position (that does not represent a reportable transaction to which IRC § 6662A applies) that is contrary to a revenue ruling or notice (other than a notice of proposed rulemaking) the tax return preparer is not considered to have recklessly or intentionally disregarded the ruling or notice if the position meets the “substantial authority” standard outlined in Treas. Reg. § 1.6662-4(d).

Merely filing a refund claim after the statute of limitations has expired does not automatically invoke the IRC § 6694(b) penalty, because an “understatement of liability” does not include refund claims that are barred by the statute of limitations. See CCA 201519029.

## Verification of Information Furnished by Taxpayer or Other Parties

For the purpose of IRC § 6694(a) and (b) penalties (including meeting the highest standard of “more likely than not” and demonstrating “reasonable cause and good faith”), a tax return preparer can rely in good faith, without verification, upon information provided to him by the taxpayer or another tax return preparer, including relying on a tax return that has been previously prepared by a taxpayer or another tax return preparer and filed with the IRS, so long as he doesn't ignore the implications of any information he knows about or receives from the taxpayer that could affect the position. The preparer is not required to audit, examine or review books and records, business operations, documents, or other evidence to verify independently information provided by the taxpayer, advisor, other tax return preparer or other party. Nevertheless, the preparer cannot ignore the implications of information furnished by either the taxpayer or others. If the information provided seems incorrect or incomplete, the tax return preparer must make reasonable inquiries to obtain correct and complete information. Some Code provisions require that the taxpayer have specific documentation when claiming a deduction—in that case, the return preparer should determine whether such documents exist as a condition to claiming the deduction. Treas. Reg. § 1.6694-1(e)(1). See *Schneider v. United States*, 257 F. Supp. 2d 1154 (S.D. Ind. 2003) (return preparer had duty to inquire of client as to nature of a claimed deduction and seek assurance that deducted artwork was given as in-kind compensation and that documentation existed); See Notice 2006-31, 2006-15 I.R.B. 751 (listing commonly used tax avoidance schemes based on frivolous arguments that may subject a preparer to IRC § 6694(a) penalty).

In order to protect himself against the preparer penalties, the tax return preparer should confirm that any position he is relying upon in a previously filed return or claim has not been adjusted by examination or otherwise. During an interview conducted by Preparer E, a taxpayer stated that he had made a charitable contribution of real estate in the amount of \$50,000 during the tax year, when in fact he had not made this charitable contribution. E did not inquire about the existence of a qualified appraisal or complete a Form 8283, Noncash Charitable Contributions, in accordance with the reporting and substantiation requirements under §170(f)(11). E reported a deduction on the tax return for the charitable contribution, which resulted in an understatement of liability for tax, and signed the tax return as the tax return preparer. E is subject to a penalty under IRC § 6694.

While preparing the 2015 tax return for an individual taxpayer, Preparer F realizes that the taxpayer did not provide a Form 1099-INT, Interest Income, for a bank account that produced significant taxable income in 2014. When F inquired about any other income, the taxpayer furnished the Form 1099-INT to F for use in preparation of the 2015 tax return. F did not know that the taxpayer owned an additional bank account that generated taxable income and the taxpayer did not reveal this information to the tax return preparer notwithstanding F's general inquiry about any other income. F signed the taxpayer's return as the tax return preparer. F is not subject to a penalty under IRC § 6694.

In preparing a tax return, for purposes of determining the deductibility of a contribution by an employer for a qualified pension plan, Accountant G relies on a computation of the IRC § 404 limit on deductible amounts made by the enrolled actuary for the plan. On the basis of this calculation, G completed and signed the tax return. It is later determined that there is an understatement of liability for tax that resulted from the overstatement of the IRC § 404 limit on deductible amounts made by the actuary. G had no reason to believe that the actuary's calculation of the limit on deductible contributions was incorrect or incomplete, and the calculation appeared reasonable on its face. G was also not aware at the time the return was prepared that the actuary did not know all of the relevant facts or that the calculation of the limit on deductible contributions was no longer reliable due to developments in the law since the time the calculation was given. G is not subject to a penalty under IRC § 6694. The actuary, however, may be subject to penalty under IRC § 6694 if the calculation provided by the actuary constitutes a substantial portion of the tax return within the meaning of Treas. Reg. § 301.7701-15(b)(3).

Treas. Reg. §1.6694-1(e)(3).

## Income Derived or To Be Derived —

**Signing Preparer Defined (1):** Law firm X employs L, a lawyer to prepare for compensation estate tax returns and claims for refund of estate taxes. When a taxpayer hires X to prepare a return, the firm assigns the return to L, who obtains the information necessary to complete the return and determines the proper application of the tax laws to the information. L then forwards the information to a service bureau, which performs the mathematical computations and prints the return form. The completed return is then transferred to the law firm where L reviews its accuracy. Given these facts, L is the individual responsible for the overall accuracy of the taxpayer's return, and, therefore, L must sign the return as the tax return preparer. Treas. Reg. § 1.6695-1(b)(4), Ex. 1.

## 5. Due Diligence in Determining Head of Household Status and Eligibility for Earned Income Credit, Child Tax Credit, and American Opportunity Tax Credit —

A tax return preparer who fails to comply with the due diligence requirements for determining a taxpayer's eligibility to file a return as head of household or eligibility for, or amount of, the IRC

§ 32 earned income credit, IRC § 24 child tax credit, or IRC § 25A(a)(1) American opportunity tax credit, is subject to a penalty for each such failure. IRC § 6695(g), as amended by the 2017 tax act, Pub. L. No. 115-97, §11001, effective for tax years beginning after December 31, 2017.

To comply with the due diligence requirements, the tax return preparer must complete Form 8867, Paid Preparer's Due Diligence Checklist or other such form and other such information as prescribed by the IRS. Treas. Reg. § 6695-2(b)(1)(i). The preparer's completion of Form 8867 must be based on information provided by the taxpayer to the preparer or otherwise reasonably obtained by the preparer. Treas. Reg. § 1.6695-2(b)(1)(ii). See Publication 4687, Refundable Credits Due Diligence.

Additionally, a tax return preparer must either: (1) complete the applicable credit worksheet(s) in the Form 1040 and/or Form 8863 instructions; or (2) otherwise record in one or more documents in the preparer's paper or electronic files the preparer's credit computation(s), including the method and information used to make the computation(s). Treas. Reg. § 1.6695-2(b)(2)(i). The preparer's completion of the applicable credit worksheet or other record of the preparer's credit computation must be based on information provided by the taxpayer or otherwise reasonably obtained by the preparer. Treas. Reg. § 1.6695-2(b)(2)(ii).

Further, a tax return preparer must not know, or have reason to know, that any information used by the tax return preparer in determining the taxpayer's eligibility to file as head of household or in determining the taxpayer's eligibility for, or the amount of, the child tax credit, the earned income tax credit, or the American Opportunity Tax Credit and claimed on the return or claim for refund is incorrect. Treas. Reg. § 1.6695-2(b)(3).

Due diligence also requires that the tax return preparer maintain a paper or electronic copy of the completed Form 8867, Paid Preparer's Due Diligence Checklist, a copy of the applicable credit worksheet or the preparer's credit computation, and a record of how and when the information used to complete Form 8867 and the credit worksheet was obtained by the tax return preparer (including the identity of any person providing the information as well as a copy of any document that was provided by the taxpayer and on which the tax return preparer relied to complete the form, worksheet, or computation, etc.). The preparer must keep the records described above for three years from the latest of the following dates, as applicable:



If you have any questions about the terms, conditions, and limitations of this Tax Return Services Agreement, please contact us at 806-271-4483.