21b

Gmail

Cindy Dalrymple <cdalrymple@burnetcountytexas.org>

Fwd: Draft Burnet County, Texas - Engagement Letter.pdf

1 message

Karin Smith <ksmith@burnetcountytexas.org> Wed, Sep 20, 2023 at 12:56 PM
To: Cindy Dalrymple <cdalrymple@burnetcountytexas.org>, Stephanie McCormick <smccormick@burnetcountytexas.org>
Cc: James Oakley <judgejamesoakley@gmail.com>

Backup for the agenda.

Karin

---------- Forwarded message ---------
From: **Muriel, Manny** <Manny.Muriel@bakertilly.com>
Date: Wed, Sep 20, 2023 at 11:57 AM
Subject: RE: Draft Burnet County, Texas - Engagement Letter.pdf
To: Karin Smith <ksmith@burnetcountytexas.org>
Cc: James Oakley <judgejamesoakley@gmail.com>

Karin,

The conflict check has cleared. Please see attached.

Manny J. Muriel, EA, MBA

Director | Forensics, Litigation & Valuation Services

Baker Tilly US, LLP T: +1 (972) 748-0199| M: +1 (561) 232-7377| F: +1 (214) 452 1166

2500 Dallas Parkway, Suite 300, Plano, Texas, 75093 USA manny.muriel@bakertilly.com | bakertilly.com

From: Karin Smith <ksmith@burnetcountytexas.org>
Sent: Wednesday, September 20, 2023 11:32 AM
To: Muriel, Manny <Manny.Muriel@bakertilly.com>
Cc: James Oakley <judgejamesoakley@gmail.com>
Subject: Re: Draft Burnet County, Texas - Engagement Letter.pdf

bakertilly

BAKER TILLY US, LLP
2500 DALLAS PARKWAY
STE. 300
PLANO, TX 75093

TEL: 972.748.0199
BAKERTILLY.COM

CONFIDENTIAL

September 20, 2023

Judge James Oakley
Burnet County, Texas
220 South Pierce Street
Burnet, TX 78611
United States

RE: Forensic Consulting Services

Dear Judge Oakley,

Thank you for the opportunity to provide consulting services on behalf of Burnet County, Texas ("Client"). This letter (the "Engagement Letter") and the attached *Standard Terms and Conditions* confirm the understanding and agreement between Baker Tilly US, LLP ("Baker Tilly") and Client regarding the investigatory services Baker Tilly will provide (the "Matter").

SCOPE OF SERVICES

1. Client has requested that Baker Tilly provide certain consulting services. The subject and scope of any such services will be subject to Client's direction; however, Client understands that Baker Tilly shall undertake all work we deem necessary to provide the requested analysis. Such work is likely to include:

   a. Review policies and procedures.

   b. Review and analyze Payroll records for the 20-25 department employees during the period January 2020 through January 2023.

   c. Review the payroll software (Time Clock Plus).

   d. Review and validate through sample testing the county's internal investigation and analysis.

   e. Conduct interviews of county professionals (if appropriate).

   f. Prepare a report summarizing our findings and recommendations.

   g. Present the findings to the Commissioner's Court.

2. Client understands that the professional conclusions reached regarding this matter are those of the Baker Tilly professionals. Accordingly, Baker Tilly has not and cannot predict what conclusions the Baker Tilly professionals will reach concerning the specific questions or issues for which we have been retained. Further, Baker Tilly cannot predict and does not warrant or guarantee the legal, financial, and/or income tax consequences of our work.

3. Client will make available to Baker Tilly the documents necessary for our professionals to complete all requested services. Should we determine that additional documents are necessary, we will make all requests for such records to Client. Baker Tilly will assume that all information provided to us is correct and complete. Further, Client authorizes us to rely upon such information without independent investigation or verification.

4. Baker Tilly's services are not intended to be, nor should they be, considered an audit, review, or compilation in accordance with generally accepted auditing standards or statements on standards for accounting and review services.

5. The services we provide will be based on the concepts of selective testing and sampling. Accordingly, they will not include all aspects of the internal controls. Thus, our services are not designed, nor should they be relied upon to disclose internal weaknesses in internal controls, financial statement errors, irregularities, illegal acts, or disclosure deficiencies.

6. Baker Tilly is not being retained to provide expert witness services in the Matter at this time. Should it become necessary for any Baker Tilly professional to be called as an expert witness in any proceeding related to this Matter, a separate engagement letter covering those services will be required.

7. Client will not disclose Baker Tilly's work product to third parties or reference Baker Tilly or its work product in any pleading or statement without Baker Tilly's express written permission, which shall not be unreasonably withheld. However, Baker Tilly understands that the findings will be presented to the Commissioner's Court.

8. Further, while Baker Tilly will treat all information and our work product related to this Matter as confidential, Baker Tilly cannot opine on how such information will be treated by a court should there be litigation surrounding our work. Baker Tilly is not, and cannot, offer legal advice; thus, Baker Tilly's work product may not be considered privileged.

CONFLICTS OF INTEREST

9. Client has requested that Baker Tilly determine if any work currently being performed by Baker Tilly would pose a conflict with the work that is the subject of this Engagement Letter. As of the date of this Engagement Letter, we have determined that we can perform the work contemplated herein, free of any conflict of interest.

10. During this engagement, Client agrees to inform Baker Tilly of additional parties to the dispute or name changes for those parties provided to the extent such additional parties or name changes come to the attention of Client. Should this information or any other circumstance that comes to our attention have the potential to change our prior conclusion regarding a conflict of interest, we will advise you as soon as possible.

FEES AND BILLING ARRANGEMENTS

11. The scope of this engagement is limited to the specific items noted under the section labeled 'Scope of Services.' Furthermore, the fees quoted below are based on the following assumptions.

a) The scope of this engagement is limited to the specific items noted under the section labeled 'Scope' within the proposal. Furthermore, the fees quoted above are based on the following assumptions.

b) Baker Tilly and Burnet County will agree upon a timeline including milestones and deliverables.

c) Personnel and requested documentation are available as outlined in our agreed-upon work plan.

d) The internal investigations and data analysis was:

i. Performed using a data set for which completeness, accuracy, and integrity have been validated, including an assessment of the underlying system(s) used to generate data used in the analysis.

ii. The methodologies used in performing the investigation and analysis are clearly documented and available for Baker Tilly's.

12. Our fees are based upon the hours expended by each engagement team member at each member's applicable discounted hourly billing rate as reflected in the chart below. We estimate the fees to be between $15,000 and $20,000. We will do all we can to keep our fees reasonable by leveraging our staff and using technology where appropriate. We agree to cap the fee at $20,000 based on limited scope of work and the assumptions presented.

Position	**Standard Hourly Rates**	**Discounted Hourly Rates**
Partners and Principals	$895 - $1,350	$550
Managing Directors/Directors	$600 - $895	$425
Senior Managers	$450 - $600	$350
Managers	$300 - $450	$300
Senior Consultants	$275 - $300	$225
Staff Consultants	$200 - $275	$200
Paraprofessionals	$135 - $210	$100

13. Our fees do not include any technology costs (i.e., tools to capture and work with electronically stored information) and other out of pocket expenses.

14. Client agrees to reimburse Baker Tilly for any costs and expenses associated with collection, processing, hosting, structuring/formatting, and review of hard copy and electronically stored information and data.

15. Client agrees to reimburse Baker Tilly for any reasonable and documented out-of-pocket expenses, including, without limitation, travel, photocopying, delivery services, postage, vendor changes and other reasonable and documented out-of-pocket expenses incurred in providing professional services.

16. Our fees and expenses are not contingent or conditioned upon the specific advice, conclusions, or opinions rendered in this Matter. We do not predict or guarantee any result or resolution in this Matter. We will meet with Client regularly to discuss ongoing work and associated fees.

17. Client agrees that invoices need only contain general time descriptions in blocks of hourly or daily increments.

18. Invoices will be presented monthly and are due upon presentation. Client shall be responsible for paying our fees and expenses in connection with this engagement.

19. It is Baker Tilly's normal practice to request an advance payment to be held against its final invoice. Baker Tilly requests $7,500.00 as its advance payment in this Matter (the "Advance Payment") to be invoiced upon execution of this Engagement Letter and the attached *Standard Terms and Conditions*. Client has agreed to pay such Advance Payment to Baker Tilly and agrees that the Advance Payment is fair, reasonable, and necessary under the circumstances. Client further agrees that (i) the Advance Payment paid to Baker Tilly shall constitute a full, complete and immediate transfer of ownership of the Advance Payment to Baker Tilly, (ii) the Advance Payment shall, upon transfer, become the property of Baker Tilly, and shall be deemed an absolute transfer, and (iii) Baker Tilly shall not be required to place the Advance Payment in an escrow account or any similar segregated account and such Advance Payment may be treated as income to Baker Tilly upon receipt. Baker Tilly will apply the Advance Payment against Baker Tilly's final invoice for fees and expenses due to Baker Tilly. Further, Client will, upon conclusion of this engagement, have a right to payment in an amount equal to the Advance Payment, less the final amount of fees and expenses billed by Baker Tilly. Baker Tilly expressly reserves the right to request additional advance payments. The advance payment is not intended to be an estimate for the total cost of work to be performed.

20. Baker Tilly reserves the right to halt further services until payment is received on past-due invoices. We must be paid in full for all work performed to date prior to issuance of a report.

21. Baker Tilly shall be compensated for any time and expenses (including, without limitation, any fees and expenses of one law firm serving as legal counsel) that may be incurred in connection with this Matter, including, without limitation, considering or responding to discovery requests or other requests for documents or information, participating as a witness or otherwise in any legal, regulatory, or other proceedings, or defending Baker Tilly's retention or performance of services hereunder.

NOTICE OF PRIVACY

22. Baker Tilly takes our client's privacy very seriously. We maintain all of nonpublic information, both personal and financial, in a confidential manner. This notice explains the types of nonpublic information we may collect, and the limited situations in which we disclose it to any third parties.

23. In our normal course of business, it is necessary for us to collect nonpublic information about Client to provide the services or products requested. The sources may include but are not limited to information collected directly from Client, either in person or forms or questionnaires, and/or information collected from documents provided to us by Client in the course of this Matter.

24. Baker Tilly does not disclose nonpublic information to third parties without consent, except as required during litigation, or required by law. Third parties that perform services on our behalf, will receive the nonpublic information only as necessary to perform their functions, and are not allowed to share this information or use it for any other purpose. Internally, we restrict access to nonpublic information to those employees who need the information to provide the services or products requested.

25. Baker Tilly maintains physical, electronic, and procedural safeguards to protect your nonpublic information.

OTHER MATTERS

26. This agreement is binding upon the parties, their successors, and assigns.

27. Baker Tilly may communicate with Client by electronic mail or otherwise transmit documents in electronic form during this Matter. Client accepts the inherent risks of these forms of communication (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications, and the risks of viruses or other harmful devices).

28. To the extent of any inconsistency between the terms of this Engagement Letter and the *Standard Terms and Conditions*, the terms of this Engagement Letter shall govern. The Parties acknowledge their respective agreement with the terms stated herein and acknowledge that they have reviewed and agreed to be bound to the terms of this Engagement Letter and the attached *Standard Terms and Conditions*, as evidenced by their respective signatures below, which may be executed in multiple counterparts. Please return to Baker Tilly the signed copy of this Engagement Letter. Facsimile and electronic signatures shall be deemed original, binding signatures.

We appreciate the opportunity to work with you. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Baker Tilly US, LLP

By:

____

Matthew Morris
Principal

Acceptance by Burnet County, Texas

The above Engagement Letter and the attached *Standard Terms and Conditions* confirm our understanding of the services which Baker Tilly will perform relating to the above referenced Matter and the fee arrangement and our understanding and agreement to the terms of the Engagement Letter and the attached *Standard Terms and Conditions*.

Accepted by: J. Oakley
Judge James Oakley

Date:

Baker Tilly US, LLP
Standard Business Terms

These Standard Business Terms ("Terms") govern the services provided by Baker Tilly US, LLP (Baker Tilly, we, us or our) set forth in the letter defining the scope of work (the "Letter") to which these Terms are attached (the "Services"). These Terms and any applicable online terms and conditions or terms of use ("Online Terms") related to online products or services made available to Company by Baker Tilly ("Online Offering"), together with the Letter to which they are attached, constitute the entire understanding and agreement between the client identified on such Letter (the "Client") and Baker Tilly with respect to the Services described in the Letter (collectively, the Letter and these Terms are referred to as the "Agreement") and supersede and incorporate all prior or contemporaneous representations, understandings or agreements, and may not be modified or amended except by an agreement in writing signed between the parties hereto. For clarity and avoidance of doubt, the terms of this Engagement Letter govern Baker Tilly's provision of the services described herein, and the Online Terms govern Company's use of the Online Offering. This Agreement's provisions shall not be deemed modified or amended by the conduct of the parties. If there is a conflict between these Terms and the terms of any Letter, these Terms shall govern.

Section 1. Confidentiality

With respect to this Agreement and any information supplied in connection with this Agreement and designated by the disclosing party (the "Disclosing Party") as "Confidential Information" either by marking it as "confidential" prior to disclosure to the receiving party (the "Recipient") or, if such information is disclosed orally or by inspection, then by indicating to the Recipient that the information is confidential at the time of disclosure and confirming in writing to the Recipient, the confidential nature of the information within ten (10) business days of such disclosure, the Recipient agrees to: (i) protect the Confidential Information in the same manner in which it protects its confidential information of like importance, but in no case using less than reasonable care; (ii) use the Confidential Information only to perform its obligations under this Agreement; and (iii) reproduce Confidential Information only as required to perform its obligations under this Agreement. This section shall not apply to information which is (A) publicly known, (B) already known to the recipient, (C) disclosed by Recipient to a third party without restriction, (D) independently developed, or (E) disclosed pursuant to legal requirement or order, or as is required by regulations or professional standards governing the Services performed. Subject to the foregoing, Baker Tilly may disclose Client's Confidential Information to its subcontractors and subsidiaries.

Section 2. Deliverables

(a) Notwithstanding the above and solely with respect to ownership of deliverables in this Section, unless specified otherwise on the applicable Letter, materials specifically prepared by Baker Tilly for Client as a deliverable under a Letter (each a "Deliverable") may, when fully paid for by Client, be used, copied, distributed internally, and modified by Client but solely for its internal business purposes. Client shall not, without Baker Tilly's prior written consent, disclose to a third party, publicly quote or make reference to the Deliverables. Baker Tilly shall retain all right, title and interest in and to: (i) the Deliverables, including but not limited to, all patent, copyright, trademark and other intellectual property rights therein; and (ii) all methodologies, processes, techniques, ideas, concepts, trade secrets and know-how embodied in the Deliverables or that Baker Tilly may develop or supply in connection with this Agreement (the "Baker Tilly Knowledge"). Subject to the confidentiality restrictions contained in Section 1, Baker Tilly may use the Deliverables and the Baker Tilly Knowledge for any purpose.

(b) The documentation for this engagement, including the workpapers, is not part of the Deliverables, is the property of Baker Tilly and constitutes confidential information. We may have a responsibility to retain the documentation for a period of time sufficient to satisfy any applicable legal or regulatory requirements for records retention. Baker Tilly does not retain any original client records and we will return such records to you at the completion of the Services rendered under this engagement. When such records are returned to you, it is the Company's responsibility to retain and protect its accounting and other business records for future use, including potential review by any government or other regulatory agencies. By your signature below, you acknowledge and agree that, upon the expiration of the documentation retention period, Baker Tilly shall be free to destroy our workpapers related to this engagement. If we are required by law, regulation or professional standards to make certain documentation available to Regulators, Client hereby authorizes us to do so.

Section 3. Acceptance

Client shall accept Deliverables which (i) substantially conform to the specifications in the Letter or (ii) where applicable, successfully complete the mutually agreed to acceptance test plan described in the Letter. Client will promptly give Baker Tilly written notification of any nonconformance of the Deliverables with such requirements (Nonconformance) within thirty (30) days following delivery of such Deliverables, and Baker Tilly shall have a reasonable period of time, based on the severity and complexity of the Nonconformance, to correct the Nonconformance so that the Deliverables substantially conform to the specifications. If Client uses the Deliverable before acceptance, fails to promptly notify Baker Tilly of any Nonconformance within such 30-day period, or delays the beginning of acceptance testing more than five (5) business days past the agreed upon date for the start of such acceptance testing as specified or otherwise determined under the Letter, then the Deliverable shall be deemed irrevocably accepted by the Client.

Section 4. Standards of Performance

Baker Tilly shall perform its Services in conformity with the terms expressly set forth in this Agreement. Accordingly, our Services shall be evaluated on our substantial conformance with such terms and standards. Any claim of nonconformance (and applicability of such standards) must be clearly and convincingly shown. Client acknowledges that the Services will involve the participation and cooperation of management and others of Client. Unless required by professional standards or Client and Baker Tilly otherwise agree in writing, Baker Tilly shall have no responsibility to update any of its work after its completion.

Section 5. Warranty

(a) Each party represents and warrants to the other that it has full power and authority to enter into and perform this Agreement and any Letter entered into pursuant hereto and the person signing this Agreement or such Letter on behalf of each party hereto has been properly authorized and empowered to enter into this Agreement.

(b) Client warrants that it has the legal right and authority, and will continue to have the legal right and authority during the term of this Agreement, to operate, configure, provide, place, install, upgrade, add, maintain and repair (and authorize Baker Tilly to do any of the foregoing to the extent the same are included in the Services) the hardware, software and data that comprises any of Client's information technology system upon which or related to which Baker Tilly provides Services under this Agreement.

(c) Baker Tilly warrants that any Services that it provides to Client under this Agreement and any Letter will be performed in accordance with generally accepted industry standards of care and competence. Client's sole and exclusive remedy for a breach of Baker Tilly's warranty will be for Baker Tilly, in its sole discretion, to either: (i) use its reasonable commercial efforts to re-perform or correct the Services, or (ii) refund the fee Client paid for the Services that are in breach of Baker Tilly's warranty. Client must make a claim for breach of warranty in writing within thirty (30) days of the date that the Services that do not comply with Baker Tilly's warranty are performed. This warranty is voided in the event that Client makes alterations to the Services provided by Baker Tilly or to the environment in which the Services are used (including the physical, network and systems environments) that are not authorized in writing by Baker Tilly. If Client does not notify Baker Tilly of a breach of Baker Tilly's warranty during that 30-day period, Client will be deemed to have irrevocably accepted the Services.

(d) Baker Tilly does not warrant any third-party product (each, a Product). All Products are provided to Client by Baker Tilly "AS IS." Baker Tilly will, to the extent it is allowed to by its vendors, pass through any warranties and indemnifications provided by the manufacturer of the Product. Client, recognizing that Baker Tilly is not the manufacturer of any Product, expressly waives any claim that Client may have against Baker Tilly based upon any product liability or infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property right (each a Claim) with respect to any Product and also waives any right to indemnification from Baker Tilly against any such Claim made against Client by another. Client acknowledges that no employee of Baker Tilly or any other party is authorized to make any

representation or warranty on behalf of Baker Tilly that is not in this Agreement.
(e) This section 5 is Baker Tilly's only warranty concerning the Services and any deliverable, and is made expressly in lieu of all other warranties and representations, express or implied, including any implied warranties of merchantability, ACCURACY, TITLE, noninfringement or fitness for a particular purpose, or otherwise.

Section 6. Limitation on Damages and Indemnification
(a) The liability (including attorney's fees and all other costs) of Baker Tilly and its present or former partners, principals, agents or employees related to any claim for damages relating to the Services performed under this Agreement shall not exceed the fees paid to Baker Tilly for the portion of the work to which the claim relates, except to the extent finally determined to have resulted from the willful misconduct or fraudulent behavior of Baker Tilly relating to such Services. This limitation of liability is intended to apply to the full extent allowed by law, regardless of the grounds or nature of any claim asserted, including the negligence of either party. Additionally, in no event shall either party be liable for any lost profits, lost business opportunity, lost data, consequential, special, incidental, exemplary or punitive damages, delays, interruptions or viruses arising out of or related to this Agreement even if the other party has been advised of the possibility of such damages.
(b) As Baker Tilly is performing the Services solely for the benefit of Client, Client will indemnify Baker Tilly, its subsidiaries and their present or former partners, principals, employees, officers and agents against all costs, fees, expenses, damages and liabilities (including attorneys' fees and all defense costs) associated with any third-party claim, relating to or arising as a result of the Services, Client's use of the Deliverables, or this Agreement.
(c) In the event Baker Tilly is requested by the Client; or required by government regulation, subpoena or other legal process to produce our engagement working papers or its personnel as witnesses with respect to its Services rendered for the Client, so long as Baker Tilly is not a party to the proceeding in which the information is sought, Client will reimburse Baker Tilly for its professional time and expenses, as well as the fees and legal expenses, incurred in responding to such a request.
(d) Because of the importance of the information that Client provides to Baker Tilly with respect to Baker Tilly's ability to perform the Services, Client hereby releases Baker Tilly and its present and former partners, principals, agents and employees from any liability, damages, fees, expenses and costs, including attorney's fees, relating to the Services, that arise from or relate to any information, including representations by management, provided by Client, its personnel or agents, that is not complete, accurate or current, whether or not management knew or should have known that such information was not complete, accurate or current.
(e) Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Agreement are material bargained for bases of this Agreement and that they have been taken into account and reflected in determining the consideration to be given by each party under this Agreement and in the decision by each party to enter into this Agreement.
(f) The terms of this Section 6 shall apply regardless of the nature of any claim asserted (including, but not limited to, contract, tort or any form of negligence, whether of Client, Baker Tilly or others), but these Terms shall not apply to the extent finally determined to be contrary to the applicable law or regulation. These Terms shall also continue to apply after any termination of this Agreement.
(g) Client accepts and acknowledges that any legal proceedings arising from or in conjunction with the Services provided under this Agreement must be commenced within twelve (12) months after the performance of the Services for which the action is brought, without consideration as to the time of discovery of any claim or any other statutes of limitations or repose.

Section 7. Personnel
During the term of this Agreement, and for a period of six (6) months following the expiration or termination thereof, neither party will actively solicit the employment of the personnel of the other party involved directly with providing Services hereunder. Both parties acknowledge that the fee for hiring personnel from the other party, during the project term and within six months following completion, will be a fee equal to the hired person's annual salary at the time of the violation so as to reimburse the party for the costs of hiring and training a replacement.

Section 8. Data Privacy and Security
(a) To the extent the Services require Baker Tilly to receive personal data or personal information from Client, Baker Tilly may process, and engage subcontractors to assist with processing, any personal data or personal information, as those terms are defined in applicable privacy laws. Baker Tilly's processing shall be in accordance with the requirements of the applicable privacy laws relevant to the processing in providing Services hereunder, including Services performed to meet the business purposes of the Client, such as Baker Tilly's tax, advisory, and other consulting services. Applicable privacy laws may include any local, state, federal or international laws, standards, guidelines, policies or regulations governing the collection, use, disclosure, sharing or other processing of personal data or personal information with which Baker Tilly or its Clients must comply. Such privacy laws may include (i) the EU General Data Protection Regulation 2016/679 (GDPR); (ii) the California Consumer Privacy Act of 2018 (CCPA); and/or (iii) other laws regulating marketing communications, requiring security breach notification, imposing minimum security requirements, requiring the secure disposal of records, and other similar requirements applicable to the processing of personal data or personal information. Baker Tilly is acting as a Service Provider/Data Processor, as those terms are defined respectively under the CCPA/GDPR, in relation to Client personal data and personal information. As a Service Provider/Data Processor processing personal data or personal information on behalf of Client, Baker Tilly shall, unless otherwise permitted by applicable privacy law, (a) follow Client instructions; (b) not sell personal data or personal information collected from the Client or share the personal data or personal information for purposes of targeted advertising; (c) process personal data or personal information solely for purposes related to the Client's engagement and not for Baker Tilly's own commercial purposes; and (d) cooperate with and provide reasonable assistance to Client to ensure compliance with applicable privacy laws. Client is responsible for notifying Baker Tilly of any applicable privacy laws the personal data or personal information provided to Baker Tilly is subject to, and Client represents and warrants it has all necessary authority (including any legally required consent from individuals) to transfer such information and authorize Baker Tilly to process such information in connection with the Services described herein. Baker Tilly is responsible for notifying Client if Baker Tilly becomes aware that it can no longer comply with any applicable privacy law and, upon such notice, shall permit Client to take reasonable and appropriate steps to remediate personal data or personal information processing. Client agrees that Baker Tilly has the right to generate aggregated/de-identified data from the accounting and financial data provided by Client to be used for Baker Tilly business purposes and with the outputs owned by Baker Tilly. For clarity, Baker Tilly will only disclose aggregated/de-identified data in a form that does not identify Client, Client employees, or any other individual or business entity and that is stripped of all persistent identifiers. Client is not responsible for Baker Tilly's use of aggregated/de-identified data.
(b) Baker Tilly has established information security related operational requirements that support the achievement of our information security commitments, relevant information security related laws and regulations, and other information security related system requirements. Such requirements are communicated in Baker Tilly's policies and procedures, system design documentation, and contracts with customers. Information security policies have been implemented that define our approach to how systems and data are protected. Client is responsible for providing timely written notification to Baker Tilly of any additions, changes or removals of access for Client personnel to Baker Tilly provided systems or applications. If Client becomes aware of any known or suspected information security or privacy related incidents or breaches related to this agreement, Client should timely notify Baker Tilly via email at dataprotectionofficer@bakertilly.com.

Section 9. Termination
(a) This Agreement may be terminated at any time by either party upon written notice to the other. However, upon termination of this Agreement, this Agreement will continue to remain in effect with respect to any Letter(s) already issued at the time of such termination, until such Letters are themselves either terminated or the performance thereunder is completed.
(b) This Agreement and all Letters may be terminated by either party effective immediately and without notice, upon: (i) the dissolution, termination of existence, liquidation or insolvency of the other party, (ii) the appointment of a custodian or receiver for the other party, (iii) the institution by or against the other party of any proceeding under the United States Bankruptcy Code or any other foreign, federal or state bankruptcy, receivership, insolvency or other similar law affecting the rights of creditors generally, or (iv) the making by the other party of any assignment for the benefit of creditors.
(c) Client shall pay Baker Tilly for all Services rendered and expenses incurred as of the date of termination, and shall reimburse Baker Tilly for all reasonable costs associated with any termination. In the event that collection procedures are required, the Company agrees to be responsible for all expenses of collection including related attorneys' fees.
(d) Any rights and duties of the parties that by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, limitation of liability, confidentiality, ownership of work product, and survival of obligations, any accrued rights to payment and remedies for breach of this Agreement shall survive the expiration or termination of this Agreement or any Letter.

Section 10. Dispute Resolution
(a) Except for disputes related to confidentiality or intellectual property rights, all disputes and controversies between the parties hereto of every kind and nature arising out of or in connection with this Agreement as to the existence, construction, validity, interpretation or meaning, performance, nonperformance, enforcement, operation, breach, continuation or termination of this Agreement shall be resolved as set forth in this Section using the following procedure: In the unlikely event that differences concerning the Services or fees should arise that are not resolved by mutual agreement, both parties agree to attempt in good faith to settle the dispute by engaging in mediation administered by the American Arbitration Association under its mediation rules for professional accounting and related services disputes before resorting to litigation or any other dispute-resolution procedure. Each party shall bear their own expenses from mediation and the fees and expenses of the mediator shall be shared equally by the parties. If the dispute is not resolved by mediation, then the parties agree that the dispute or claim shall be settled by binding arbitration. The arbitration proceeding shall take place in the city in which the Baker Tilly office providing the relevant Services is located, unless the parties mutually agree to a different location. The proceeding shall be governed by the provisions of the Federal Arbitration Act (FAA) and will proceed in accordance with the then current Arbitration Rules for Professional Accounting and Related Disputes of the AAA, except that no prehearing discovery shall be permitted unless specifically authorized by the arbitrator. The arbitrator will be selected from AAA, JAMS, the Center for Public Resources, or any other internationally or nationally-recognized organization mutually agreed upon by the parties. Potential arbitrator names will be exchanged within 15 days of the parties' agreement to settle the dispute or claim by binding arbitration, and arbitration will thereafter proceed expeditiously. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation or enforceability of any of these procedures, shall be governed by the FAA and resolved by the arbitrators. The arbitration will be conducted before a single arbitrator, experienced in accounting and auditing matters. The arbitrator shall have no authority to award nonmonetary or equitable relief and will not have the right to award punitive damages or statutory awards. Furthermore, in no event shall the arbitrator have power to make an award that would be inconsistent with the Engagement Letter or any amount that could not be made or imposed by a court deciding the matter in the same jurisdiction. The award of the arbitration shall be in writing and shall be accompanied by a well reasoned opinion. The award issued by the arbitrator may be confirmed in a judgment by any federal or state court of competent jurisdiction. Discovery shall be permitted in arbitration only to the extent, if any, expressly authorized by the arbitrator(s) upon a showing of substantial need. Each party shall be responsible for their own costs associated with the arbitration, except that the costs of the arbitrator shall be equally divided by the parties. Both parties agree and acknowledge that they are each giving up the right to have any dispute heard in a court of law before a judge and a jury, as well as any appeal. The arbitration proceeding and all information disclosed during the arbitration shall be maintained as confidential, except as may be required for disclosure to professional or regulatory bodies or in a related confidential arbitration. The arbitrator(s) shall apply the limitations period that would be applied by a court deciding the matter in the same jurisdiction, including the contractual limitations set forth in this Engagement Letter, and shall have no power to decide the dispute in any manner not consistent with such limitations period. The arbitrator(s) shall be empowered to interpret the applicable statutes of limitations.
(b) Because a breach of any the provisions of this Agreement concerning confidentiality or intellectual property rights will irreparably harm the nonbreaching party, Client and Baker Tilly agree that if a party breaches any of its obligations thereunder, the nonbreaching party shall, without limiting its other rights or remedies, be entitled to seek equitable relief (including, but not limited to, injunctive relief) to enforce its rights thereunder, including without limitation protection of its proprietary rights. The parties agree that the parties need not invoke the mediation procedures set forth in this section in order to seek injunctive or declaratory relief.

Section 11. Force Majeure
In the event that either party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any act of God, fire, casualty, flood, war, strike, lock out, failure of public utilities, injunction or any act, exercise, assertion or requirement of any governmental authority, epidemic, destruction of production facilities, insurrection, inability to obtain labor, materials, equipment, transportation or energy sufficient to meet needs, or any other cause beyond the reasonable control of the party invoking this provision (Force Majeure Event), and if such party shall have used reasonable efforts to avoid such occurrence and minimize its duration and has given prompt written notice to the other party, then the affected party's failure to perform shall be excused and the period of performance shall be deemed extended to reflect such delay as agreed upon by the parties.

Section 12. Taxes
Baker Tilly's fees are exclusive of any federal, national, regional, state, provincial or local taxes, including any VAT or other withholdings, imposed on this transaction, the fees, or on Client's use of the Services or possession of the Deliverable (individually or collectively, the Taxes), all of which shall be paid by Client without deduction from any fees owed by Client to Baker Tilly. In the event Client fails to pay any Taxes when due, Client shall defend, indemnify, and hold harmless Baker Tilly, its officers, agents, employees and consultants from and against any and all fines, penalties, damages, costs (including, but not limited to, claims, liabilities or losses arising from or related to such failure by Client) and will pay any and all damages, as well as all costs, including, but not limited to, mediation and arbitration fees and expenses as well as attorneys' fees, associated with Client's breach of this Section 12.

Section 13. Notices
Any notice or communication required or permitted under this Agreement or any Letter shall be in writing and shall be deemed received (i) on the date personally delivered; or (ii) the date of confirmed receipt if sent by Federal Express, DHL, UPS or any other reputable carrier service, to applicable party (sending it to the attention of the title of the person signing this Agreement) at the address specified on the signature page of this Agreement or such other address as either party may from time to time designate to the other using this procedure.

Section 14. Miscellaneous
(a) This Agreement, any Letter(s) and any applicable Online Terms related to any "Online Offering" constitute the entire agreement between Baker Tilly and Client with respect to the subject matter hereof and supersede all prior agreements, promises, understandings and negotiations, whether written or oral, regarding the subject matter hereof. For clarity and avoidance of doubt, these Terms govern Baker Tilly's provision of the Services described herein, and the Online Terms govern Company's use of the Online Offering. No terms in any Client purchase order that are different from, or additional to, the terms of this Agreement

will be accorded any legal effect and are specifically hereby objected to by Baker Tilly. This Agreement and any Letter cannot be amended unless in writing and signed by duly authorized representatives of each party. Headings in this Agreement are included for convenience only and are not to be used to construe or interpret this Agreement.

(b) In the event that any provision of this Agreement or any Letter is held by a court of competent jurisdiction to be unenforceable because it is invalid or in conflict with any law of any relevant jurisdiction, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement or such Letter did not contain the particular provisions held to be unenforceable. The unenforceable provisions shall be replaced by mutually acceptable provisions which, being valid, legal and enforceable, come closest to the intention of the parties underlying the invalid or unenforceable provision. If the Services should become subject to the independence rules of the U.S. Securities and Exchange Commission with respect to Client, such that any provision of this Agreement would impair Baker Tilly's independence under its rules, such provision(s) shall be of no effect.

(c) Neither this Agreement, any Letter, any claims nor any rights or licenses granted hereunder may be assigned, delegated or subcontracted by Client without the written consent of Baker Tilly. Either party may assign and transfer this Agreement and any Letter to any successor that acquires all or substantially all of the business or assets of such party by way of merger, consolidation, other business reorganization, or the sale of interests or assets, provided that the party notifies the other party in writing of such assignment and the successor agrees in writing to be bound by the terms and conditions of this Agreement.

(d) The validity, construction and enforcement of this Agreement shall be determined in accordance with the laws of the State of Illinois, without reference to its conflicts of laws principles, and any action (whether by arbitration or in court) arising under this Agreement shall be brought exclusively in the State of Illinois. Both parties consent to the personal jurisdiction of the state and federal courts located in Illinois.

(e) The parties hereto are independent contractors. Nothing herein shall be deemed to constitute either party as the representative, agent, partner or joint venture of the other. Baker Tilly shall have no authority to bind Client to any third-party agreement. Though the Services may include Baker Tilly's advice and recommendations, all decisions regarding the implementation of such advice or recommendations shall be the responsibility of, and made by, Client.

(f) The failure of either party at any time to enforce any of the provisions of this Agreement or a Letter will in no way be construed as a waiver of such provisions and will not affect the right of party thereafter to enforce each and every provision thereof in accordance with its terms.

(g) Client acknowledges that: (i) Baker Tilly and Client may correspond or convey documentation via Internet e-mail unless Client expressly requests otherwise, (ii) neither party has control over the performance, reliability, availability or security of Internet e-mail, and (iii) Baker Tilly shall not be liable for any loss, damage, expense, harm or inconvenience resulting from the loss, delay, interception, corruption or alteration of any Internet e-mail.

(h) Except to the extent expressly provided to the contrary, no third-party beneficiaries are intended under this Agreement.

(i) The Services performed under this Agreement do not include the provision of legal advice and Baker Tilly makes no representations regarding questions of legal interpretation. Client should consult with its attorneys with respect to any legal matters or items that require legal interpretation under federal, state or other type of law or regulation.

(j) Baker Tilly US, LLP is an independent member of Baker Tilly International. Baker Tilly International Limited is an English company. Baker Tilly International provides no professional services to clients. Each member firm is a separate and independent legal entity and each describes itself as such. Baker Tilly US, LLP is not Baker Tilly International's agent and does not have the authority to bind Baker Tilly International or act on Baker Tilly International's behalf. None of Baker Tilly International, Baker Tilly US, LLP, nor any of the other member firms of Baker Tilly International has any liability for each other's acts or omissions. The name Baker Tilly and its associated logo is used under license from Baker Tilly International Limited.