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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 8(D)(1)

TO:	Honorable Vice Chairwoman Audrey M. Edmonson and Members, Board of County Commissioners	**DATE:**	December 4, 2012
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Resolution appointing Squire Sanders (US) LLP as Special Tax Counsel to represent County in Internal Revenue Service matter with respect to Seaport Revenue Bonds, Series 1996 Resolution No. R-1005-12

The accompanying resolution was prepared by the Finance Department and placed on the agenda at the request of the Internal Management and Fiscal Responsibility Committee.

R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum

MIAMI-DADE COUNTY

Date: December 4, 2012

To: Honorable Vice Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Edward Marquez
Deputy Mayor

Subject: Resolution Appointing Squire Sanders (US) LLP as Special Tax Counsel to County Regarding Internal Revenue Service Review of the Seaport Revenue Bonds, Series 1996

Recommendation

It is recommended that the Board of County Commissioners (Board) adopt the accompanying Resolution appointing Squire Sanders (US) LLP (Squire) as special tax counsel to the County in an Internal Revenue Service (IRS) review initiated by the County with respect to the federal income tax treatment of interest on the Seaport Revenue Bonds, Series 1996 (Series 1996 Bonds).

Scope

The appointment of Squire will have a countywide impact.

Fiscal Impact/Funding Source

Squire, while acting as bond counsel on a proposed Seaport bond refunding, discovered that contracts with the cruise lines entered into after the Series 1996 Bonds were issued may affect the federal income tax treatment of the interest on the Series 1996 Bonds. When circumstances change regarding outstanding bonds such as in this case, the IRS has a voluntary procedure that governmental entities could use to obtain a final determination from the IRS. If the IRS determines that the Series 1996 Bonds federal income tax treatment of the interest did change, the County may be liable to the IRS for a settlement amount. While settlement agreements with the IRS can vary widely in their terms and amounts, based on how the IRS has calculated interest and penalties in similar circumstances involving other governmental entities, the County's liability may range from less than $200,000 to $1 million or more. In addition, the County will be responsible for Squire's fees and expenses which are estimated to be $15,000 to $20,000 for the initial contact and submission and depending on the response by the IRS, up to $50,000 or more to complete the process. Such fees and expenses will not exceed $50,000 without further Board approval. Squire's engagement letter is attached as Exhibit A.

The amount, if any, due to the IRS and the fees and expenses of Squire shall be paid from Seaport revenues and if the Seaport Refunding is approved by the Board as a future item, from the interest savings which are estimated to be over $3 million based on the current market.

Background

In November 1996, the County issued the Series 1996 Bonds in the amount of $29,270,000 to finance primarily cruise terminals 8 and 9. They were issued as governmental bonds so the interest paid to the bondholder was not subject to any federal income taxation. As a result, the County benefitted from the lowest tax exempt interest rates in the market at the time.

Not all County bonds are governmental bonds. Alternatively, a County bond may be tax exempt but may also be subject to an alternative minimum tax, known as a Private Activity Bond, which increases the amount of interest the County must pay. To qualify as a Private Activity Bond, two tests must be met. The first is private use by a non-governmental entity and the second is private payment to or private security for the County from the same non-governmental entity. Although Carnival Cruise Lines was using terminals 8 and 9 when the Series 1996 Bonds were issued, it had

no obligation to pay the County for such use other than the dockage and wharfage fees paid by all cruise lines using the Seaport. Without any additional payment obligations from or guarantees by Carnival at that time for the use of the terminals, the second private activity test was not met so the Series 1996 Bonds were issued as governmental bonds.

Over the past year, the County has been contemplating refunding the outstanding Series 1996 Bonds and the Seaport Revenue Refunding Bonds, Series 1995 (collectively, Seaport Bonds). In the current market, the outstanding Seaport Bonds are good refunding candidates for interest savings because their interest rates range from 5.4 percent to 5.75 percent. The current expected savings associated with the planned refunding is $4.5 million of gross savings over the remaining life of the bonds which equates to $3 million in present value savings.

Squire was appointed bond counsel for the refunding, and in its tax review and diligence discovered that a 1998 contract between the County and Carnival (Terminal Agreement) may affect the classification of the Series 1996 Bonds as governmental bonds. The new contract obligates Carnival to make a payment to the County if the number of Carnival passengers falls below a certain level in exchange for a reduced wharfage and dockage fee. In effect, it is possible that one could interpret the Terminal Agreement such that Carnival may be deemed to be guaranteeing a minimum amount of wharfage and dockage fees. Although Carnival has never made a payment to the County, its guarantee along with Carnival's use of the cruise terminals may result in a reclassification of the Series 1996 Bonds from governmental bonds to Private Activity Bonds. The IRS recognizes that a change in circumstances could occur subsequent to the issuance of bonds. For that reason, it has established a procedure in which a governmental entity could voluntarily make its case as to why there should be no change in the federal income tax treatment of interest on previously issued bonds.

It is recommended that the County initiate the voluntary process with the IRS as soon as possible to mitigate any liability the County may incur. Additionally, the IRS may look favorably upon the fact that the County acted voluntarily shortly after it was discovered that there may be an issue with the Series 1996 Bonds. The County will also be able to proceed with the Seaport Bonds refunding expeditiously since the matter is being addressed with the IRS.

In order to navigate the IRS process in the most advantageous manner for the County and to be able to rely on past experience with the applicable IRS procedures and rules, specialized tax expertise is necessary. For that reason, it is recommended that Squire, which has such expertise and is familiar with the issues, be appointed to represent the County.

It is not possible to determine how much, if any, the County would have to pay if the IRS determines that there has been a change in classification of the Series 1996 Bonds from governmental bonds to Private Activity Bonds. Based on a formula that has been used in similar cases, the County's exposure may range between $200,000 and $1 million in back interest and up to ten percent in penalties. It is recommended that the County pay any amount due the IRS and Squire from the interest savings if the Board approves the Seaport Bonds refunding, and from Seaport revenues, if the Seaport Bonds are not refunded.

Memorandum

MIAMI-DADE COUNTY

Date: October 31, 2012

To: Edward Marquez
Deputy Mayor

From: Carlos A. Gimenez
Mayor

Subject: Appointment of Squire Sanders (US) LLP As Special Tax Counsel

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In accordance with the opinion issued by Joseph Centorino, Executive Director, Miami-Dade Commission on Ethics and Public Trust dated October 24, 2012 ("Ethics Opinion"), I hereby delegate to you all delegable authority relating to the appointment of Squire Sanders (US) LLP as special tax counsel to the County in an Internal Revenue Service (IRS) review initiated by the County with respect to the federal income tax treatment of interest on the Seaport Revenue Bonds, Series 1996 (Series 1996 Bonds) including, but not limited to, the authority to recommend to the Board of County Commissioners this appointment.

If you believe that this appointment is in the best interest of Miami-Dade County, then I hereby delegate to you the authority to seek sponsorship by a County Commissioner in accordance with the Commission's Rules of Procedure. I further delegate to you all delegable authority regarding this matter. You should exercise this authority and utilize your own judgment and should take all actions which are in the best interest of Miami-Dade County and consistent with the County Code, regulations, rules and the solicitation documents. Consistent with the Ethics Opinion, I will not be participating in any decisions made regarding this appointment. In the event an issue arises in the exercise of delegated authority which requires action by the County Mayor and that action is not delegable under Florida law, the Miami-Dade County Home Rule Charter or the County Code, please seek an opinion from the Ethics Commission regarding the appropriate course of action as recommended in the Ethics Opinion.

c: Robert A. Cuevas, Jr., County Attorney
Joe Centorino, Executive Director, Commission on Ethics and Public Trust
Christopher Agrippa, Clerk of the Board

MEMORANDUM

(Revised)

TO: Honorable Vice Chairwoman Audrey M. Edmonson and Members, Board of County Commissioners

DATE: December 4, 2012

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(D)(1)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(D)(1)
12-4-12

RESOLUTION NO. R-1005-12

RESOLUTION APPOINTING SQUIRE SANDERS (US) LLP AS SPECIAL TAX COUNSEL TO REPRESENT COUNTY IN INTERNAL REVENUE SERVICE MATTER WITH RESPECT TO SEAPORT REVENUE BONDS, SERIES 1996

WHEREAS, the County is planning to refund certain outstanding Seaport Revenue Bonds including the Series 1996 Bonds ("Series 1996 Bonds") in order to achieve an interest cost savings; and

WHEREAS, Squire Sanders (US) LLP ("Squire"), a member of the County's bond counsel pool, was appointed bond counsel in connection with the proposed Seaport refunding; and

WHEREAS, in the course of conducting its tax due diligence pursuant to rules and regulations of the Internal Revenue Code of 1986, as amended ("IRS Code"), Squire discovered that a contract with a port user entered into subsequent to the issuance of the Series 1996 Bonds may affect the tax exempt status of those Bonds; and

WHEREAS, it is in the best interest of the County and its citizens to employ Squire as special tax counsel to contact the Internal Revenues Service and to represent the County in discussions and any proceedings with the Internal Revenue Service regarding the status of the Series 1996 Bonds in order to take advantage of Squire's extensive experience with Internal Revenue Service regulatory matters; and

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying Deputy Mayor's Memorandum, a copy of which is incorporated in this resolution by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that Squire be employed as special tax counsel to represent the County in discussions with the Internal Revenue Service and in any related legal proceedings in connection with the status of the Series 1996 Bonds as more fully described in the Deputy Mayor's Memorandum.

The foregoing resolution was offered by Commissioner **José "Pepe" Diaz**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Vice Chairwoman			**aye**
Bruno A. Barreiro	**aye**	Lynda Bell	**absent**
Esteban L. Bovo, Jr.	**aye**	Jose "Pepe" Diaz	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**absent**
Jean Monestime	**aye**	Dennis C. Moss	**aye**
Rebeca Sosa	**aye**	Sen. Javier D. Souto	**absent**
Xavier L. Suarez	**absent**	Juan C. Zapata	**aye**

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of December, 2012. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: *Christopher Agrippa*
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Gerald T. Heffernan

SQUIRE SANDERS

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October 15, 2012

R. A. Cuevas, Jr., Esq.
County Attorney
Miami-Dade County, Florida
111 N.W. 1st Street,
Suite 2810
Miami, Florida 33128

Re: Dade County, Florida Seaport Revenue Bonds, Series 1996

Dear Mr. Cuevas:

We thank you for the opportunity to represent Miami-Dade County, Florida in connection with a submission to the Internal Revenue Service under their Voluntary Compliance Agreement Program with respect to the captioned bonds.

A written engagement agreement is required or recommended by the law of professional ethics in the jurisdictions in which Squire Sanders (US) LLP (the "Firm" or "Squire") practices law. The engagement agreement between us consists of this letter and the enclosed Standard Terms and Conditions of Engagement ("Standard Terms"). The engagement agreement is designed to address our responsibilities to each other and to outline for you certain important matters that are best established early as we form an attorney-client relationship with you in this matter.

The engagement agreement responds to requirements in the rules of professional ethics and is intended to achieve a better understanding between us. It is governed by the law of Florida. We request that you review this agreement carefully. By proceeding with this engagement you will be indicating to us that you have done so. It is important that you review and understand the terms of our relationship, such as the section on "Conflicts of Interest."

Our fees will be based on the hours devoted by Firm timekeepers to this matter at a blended hourly rate of $450. We anticipate that Todd Cooper and Johnny Hutchinson will be principally working on this matter. Other timekeepers, including Luis Reiter and Pedro Hernandez, may be involved as necessary from time to time. Whenever possible, we will work in conjunction with the County Attorney's office so as to minimize fees. Please note that, under our Standard Terms, we will bill you monthly for our fees and other charges and invoices are payable within thirty days of the date of our statement.

Any of the following alternative methods for acceptance of this engagement agreement will be effective: (i) signing and returning a copy of this letter, or (ii) assigning us work, including continuing any previous assignment of work, or (iii) sending us a letter or e-mail clearly referencing this engagement agreement and agreeing to it. However, even if you accept this engagement agreement by methods (ii) or (iii), I would appreciate it if you would confirm your acceptance by countersigning the enclosed copy of this letter and returning it to me. If you do not agree with one or more of the provisions of the engagement agreement, please contact me so that we can try to address your concerns.

Throughout our relationship, we want you to be satisfied with the professional services that we perform on your behalf. Accordingly, we encourage you to contact us just as soon as you have any questions or concerns regarding our services or our fees.

We look forward to assisting the County with this matter.

Very truly yours,

Luis Reiter

Letter and Standard Terms Accepted,
including section on "Conflicts of Interest"

MIAMI-DADE COUNTY, FLORIDA

By: _____ Date: _____, 2012
R.A. Cuevas, Jr., Esq.
County Attorney

Enclosure

SQUIRE SANDERS

Standard Terms and Conditions of Engagement Applicable Worldwide 31

The Engagement Agreement between us consists of the accompanying cover letter and, as applicable, any separate Matter Acknowledgment Letter (collectively and individually "Engagement Letter"). It also consists of Terms and Conditions of Engagement applicable worldwide and any Terms and Conditions of Engagement applicable for particular jurisdictions (collectively and individually "Standard Terms and Conditions of Engagement" or "Standard Terms"). The Engagement Agreement is the means by which you are retaining the Firm (as defined in these Standard Terms and also referred to as "us" or "we" or "Squire") to provide legal services. "You" and "yours" refers to our client(s) defined more fully below in the section entitled WHO IS OUR CLIENT. For your convenience, set forth below are the topics covered in these Standard Terms:

The Firm 1
What Professionals Will Provide the Legal Services? 2
Our Services to You 2
Who Is Our Client? 2
Conflicts of Interest 3
Termination of Representation 4
How We Set Our Fees 5
Other Charges 6
Billing Arrangements and Payment Terms 7
Revenue and Expense Sharing in Networks and Other Relationships with Independent Law Firms 7
Taxes 8
Data Protection and Privacy 8
Client and Firm Documents 8
Equality and Diversity 8
Disclosure of Your Name 8
Firm Attorney Client Privilege 9
Severability 9
Primacy 9
Entire Agreement 9
Governing Law 9
In Conclusion 9

THE FIRM

The "Firm" or "Squire" means, as the case may be, either Squire Sanders (US) LLP[1] or Squire Sanders (UK) LLP,[2] or, when necessary or appropriate under the law of a particular jurisdiction, an affiliate lawfully permitted to practice law in that jurisdiction. "Squire Sanders" is the collective trade name for an international legal practice of which those entities are the practising entities. Your engagement in this instance is with the entity[3] which sent you the cover letter accompanying these Standard Terms. Still, Squire Sanders attorneys worldwide are available to meet your needs and thus Squire Sanders personnel from other Squire Sanders entities may be selected to serve you whatever Squire Sanders entity you contract with. The use of "Squire Sanders" as a trade or business name or brand by all or any of such entities shall not imply that the international legal practice is itself engaged in the provision of legal or other services. Please see www.squiresanders.com for further information.

[1] Squire Sanders (US) LLP is a limited liability partnership organized under the laws of the State of Ohio, USA.
[2] Squire Sanders (UK) LLP (trading as Squire Sanders Hammonds) is a limited liability partnership registered in England and Wales with number OC 335584 and regulated by the Solicitors Regulation Authority. A list of the members and their professional qualifications is open to inspection at 7 Devonshire Square, London, EC2M 4YH.
[3] Squire Sanders includes partnerships or other entities in a number of different nations. Due to local laws on regulation of the legal profession, the formal legal name may differ in some nations.

This agreement shall apply to all matters for which you might now or in the future request our assistance, unless of course you and we agree in the future to an updated version of this engagement agreement or to a new or revised engagement agreement expressly referring to and superseding this agreement in whole or in part. We encourage you to retain this agreement.

WHAT PROFESSIONALS WILL PROVIDE THE LEGAL SERVICES?

In most cases one Squire attorney will be your principal contact. From time to time that attorney may delegate parts of your work to other lawyers or to legal assistants or nonlegal personnel in the Firm or to outside "contract" personnel.

OUR SERVICES TO YOU

In our letter that presents these Standard Terms to you, or in a separate Matter Acknowledgement Letter, we will specify the matter or case in which we will be representing you. Unless we agree in writing to expand the scope of our representation, an important part of our agreement is that we are not your counsel in other matters, and you will not rely upon us to provide legal services for matters other than that described in the relevant letter. For example, unless specified in the relevant letter, our representation of you does not include any responsibility for: review of your insurance policies to determine the possibility of coverage relating to this matter; for notification of your insurance carriers about the matter; advice to you about your disclosure obligations under U.S. securities laws or any other laws or regulations; or advice on tax consequences. If at any time you do not have a clear understanding of the legal services to be provided or if you have questions regarding the scope of our services, we are relying on you to communicate with us.

We will apply our professional skill, experience and judgment to achieve your objectives in accordance with the honored standards of our profession that all attorneys are required to uphold. However, we cannot guarantee the outcome of any matter. Any expression of our professional judgment regarding your matter or the potential outcome is, of course, limited by our knowledge of the facts and based on the law at the time of expression. It is also subject to any unknown or uncertain factors or conditions beyond our control, including the unpredictable human element in the decisions of those with whom we deal in undertaking your representation.

The confidentiality of protected client information (known as "confidences" and "secrets" in some jurisdictions and as "information relating to the representation of a client" in others) will be maintained inviolate in accordance with the applicable law of professional ethics, except to the extent necessary to further your interests or as authorized by applicable law.

Your responsibilities to us in each representation that you ask us to undertake include providing full, complete and accurate instructions and other information to us in sufficient time to enable us to provide our services effectively.

WHO IS OUR CLIENT?

An essential condition of our representation is that our only client is the person or entity identified in the accompanying letter. In the absence of an express identification of our client in the text of the letter, our client is the person or entity to whom the letter is addressed, even though in certain instances the payment of our fees may be the responsibility of others. In situations in which our client is an entity, we have addressed the letter to an authorized representative of the client. Throughout these standard terms, "you" refers to the entity that is our client, not the individual addressed.

Unless specifically stated in our letter, our representation of you does not extend to any of your affiliates and we do not assume any duties with respect to your affiliates. For example, if you are a corporation, our representation does not include any of your direct or indirect parents, subsidiaries, sister corporations, partnerships, partners, joint ventures, joint venture partners, any entities in which you own an interest, or, for you or your affiliates, any employees, officers, directors, or shareholders. If you are a partnership or limited liability company, our representation does not extend to the individual partners of the partnership or members of the limited liability company. If you are a joint venture, our representation does not extend to the participants. If you are a trade association, our representation excludes members of the trade association. If you are a governmental entity, our representation does not include other governmental entities, including other agencies, departments, bureaus, boards or other parts of the same level of government. If you are an individual, our representation does not include your spouse, siblings, or other family members. If you are a trust, you are our only client. The beneficiaries are not our clients, nor is the trustee in any capacity other than as the fiduciary for the particular trust in our representation. It would be necessary for affiliates, including all those listed above, to enter into a written engagement agreement with us much like this one before they would become clients and we would assume duties towards them. You should know that our engagement agreements with a number of other clients have a similar provision.

If you provide us with any confidential information of your affiliates or any other entities or individuals during our representation of you, we will treat it as your information and maintain its confidentiality in accordance with our duties to you as our client, but you are the exclusive party to whom we owe duties regarding such information.

Except as specifically agreed by both of us, the advice and communications that we render on your behalf are not to be disseminated to or relied upon by any other parties without our written consent.

CONFLICTS OF INTEREST

Since legal practice first began under the name Squire Sanders over 100 years ago, thousands of corporations, other businesses, individuals, governmental bodies, trusts, estates, and other clients have asked Squire Sanders attorneys to represent them. Information on the nature of the Firm's clients and practice is available at http://www.squiresanders.com and upon request. Because of the broad base of clients that Squire represents on a variety of legal matters, it is possible that you may find yourself in a position adverse to another Squire Sanders client in counseling, litigation, business negotiations, or some other legal matter in which we do not represent you. Accordingly, following an insurer's recommendation we adopted the following model language recommended:

You agree that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you even if the interests of such clients in those other matters are directly adverse to your interests or might be deemed to create a material limitation on our representation of you. We agree, however, that your prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a non-public nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage. In similar engagement agreements with a number of our other clients, we have asked for similar agreements to preserve our ability to represent you.

TERMINATION OF REPRESENTATION

You may terminate our representation at any time, with or without cause, upon written notice to us. After receiving such notice, we will cease to render services to you as soon as allowed by applicable law and ethical and/or court rules, which may include court approval of our withdrawal from litigation. Your termination of our services will not affect your responsibility for payment of legal services rendered and other charges incurred both before termination and afterwards in connection with an orderly transition of the matter, including fees and other charges arising in connection with any transfer of files to you or to other counsel, and you agree to pay all such amounts in advance upon request.

You agree that the Firm has the right to withdraw from its representation of you if continuing the representation might preclude its continuing representation of existing clients on matters adverse to you or if there are any circumstances even arguably raising a question implicating professional ethics, for example, because a question arises about the effectiveness or enforceability of this engagement agreement, or a question arises about conduct addressed by it, or an apparent conflict is thrust upon Squire by circumstances beyond its reasonable control, such as by a corporate merger or a decision to seek to join litigation that is already in progress, or there is an attempt to withdraw consent.

In any of these circumstances, you agree that Squire would have the right to withdraw from the representation. Regardless of whether you or we terminate the representation, we would (with your agreement) assist in the transition to replacement counsel by taking reasonable steps in accordance with applicable ethical rules designed to avoid foreseeable prejudice to your interests as a consequence of the termination. You agree that regardless of whether you or we terminate the representation (A) we would be paid by you for the work performed prior to termination; (B) our representation of you prior to any termination would not preclude Squire Sanders from undertaking or continuing any representation of another party; and (C) as a result of Squire Sanders' representation of another party you would not argue or otherwise use our representation of you prior to any termination to contend that Squire Sanders should be disqualified.

When we complete the specific services you have retained us to perform, our attorney-client relationship for that matter will be terminated at that time regardless of any later billing period. To eliminate uncertainty, our representation of you ends in any event whenever there is no outstanding request from you for our legal services that requires our immediate action and more than six (6) months (180 days) have passed since our last recorded time for you in the representation, unless there is clear and convincing evidence of our mutual understanding that the representation has not come to an end. After termination, if we choose to perform administrative or limited filing services on your behalf, including but not limited to receiving and advising you of a notice under a contract, lease, consent order, or other document with continuing effect, or filing routine or repeated submissions or renewals in intellectual property or other matters, or advising you to take action, our representation of you lasts only for the brief period in which our task is performed, unless you retain us in writing at that time to perform further or additional services. After termination, if you later retain us to perform further or additional services, our attorney-client relationship will commence again subject to these terms of engagement unless we both change the terms in writing at that time. Following termination of our representation, changes may occur in applicable laws that could impact your future rights and liabilities. Unless you actually engage us in writing to

provide additional advice on issues arising from the matter after its completion, the Firm has no continuing obligation to advise you with respect to future legal developments.

During or following our representation of you, we will be entitled to recover from you fees for any time spent and other charges, calculated at the then applicable rates if we are asked to testify or provide information in writing as a result of our representation of you or any legal requirements, or if our records from our representation of you are demanded, or if any claim is brought against the Firm or any of its personnel based on your actions or omissions (in addition to any other costs involving the claim), or if we must defend the confidentiality of your communications under the attorney-client or any other legal professional privilege (in which case we will to the extent that circumstances permit make reasonable efforts to inform you of the requirement made upon us and give you the opportunity to waive privilege).

HOW WE SET OUR FEES

Unless another basis for billing is established in this engagement agreement, we will bill you monthly for the professional fees of attorneys, paralegals, and other personnel incurred on your behalf based on their applicable rates and the number of hours they devote to your representation. Overall fees will be in accord with the factors in the applicable rules governing professional responsibility. The billing rates of the personnel initially assigned to your representation are generally specified in the accompanying engagement letter. The billing rates of our attorneys and paralegals vary, depending generally upon the experience and capabilities of the attorney or paralegal involved. Unless otherwise agreed in writing, we will charge you for their services at their applicable rates. Our hourly billing rates are adjusted from time to time, usually at the beginning of each year, both on a selected and firm wide basis. In addition, as personnel gain experience and demonstrate improved skills over time, they may advance into categories that generally have higher hourly billing rates. Advancements to a higher category are typically made annually. Upon any adjustment in the applicable rates, we will charge you the adjusted rates.

At times clients ask us to estimate the total fees and other charges that they are likely to incur in connection with a particular matter. Whenever possible, we are pleased to respond to such requests with an estimate or proposed budget. Still, it must be recognized that our fees are often influenced by factors that are both beyond our control and unforeseeable. This is particularly true in litigation and other advocacy contexts in which much of the activity is controlled by the opposing parties and the Judge, Arbitrator or other decision-maker. Accordingly, such an estimate or proposal carries the understanding that, unless we agree otherwise in writing, it does not represent a maximum, minimum, or fixed fee quotation. The ultimate cost frequently is more or less than the amount estimated. Accordingly, we have made no commitment to you concerning the maximum fees and costs that will be necessary to resolve or complete this matter. We will not be obliged to continue work if the fees or other charges accrued on a matter reach an estimate previously given and a revised estimate cannot be agreed. It is also expressly understood that payment of our fees and charges is in no way contingent on the ultimate outcome of the matter.

OTHER CHARGES

As an adjunct to providing legal services, we may incur and pay a variety of charges on your behalf or charge for certain ancillary support services. Whenever we incur such charges on your behalf or charge for such ancillary support services, we bill them to you separately or arrange for them to be billed to you directly. We may also require

an advance payment from you for such charges. These charges typically relate to long-distance telephone calls; messenger, courier, and express delivery services; facsimile and similar communications; document printing, reproduction, scanning, imaging and related expenses; translations and related charges; filing fees; depositions and transcripts; witness fees; travel expenses; computer research; and charges made by third parties (such as outside experts and consultants, printers, appraisers, local and foreign counsel, government agencies, airlines, hotels and the like). Other charges will generally be itemized on your bill, and will also be subject to VAT where applicable. Any bank charges which we incur when making check payments or telegraphic transfers of money will be charged to you inclusive of a handling fee. Our charges for these ancillary support services generally reflect our direct and indirect costs, but charges for certain items exceed our actual costs. For some services, particularly those that involve significant technology and/or support services provided by the Firm (such as imaging documents and computer research), we attempt from time to time to reduce costs by contracting with vendors to purchase a minimum volume of service that is beyond the needs of any single client. In those cases, we may bill you at a per unit rate that may not reflect the quantity discounts we obtain. In many cases the total quantity that will be used by all clients of the Firm over a year or other period of time is not certain. Our charge for fax services is typically based on a charge per page rather than the cost of the telephone usage. In the event any of our statements for such services are not paid by their due dates, you agree that we have the right not to advance any further amounts on your behalf.

When you send us a letter at the request of your auditors asking us for a response on any loss contingencies, we will charge you a fixed fee for our response that varies with the level of difficulty of the response.

Letter Type	Description	Rate
Clean	No litigation reported	US $550
Normal	1-3 cases	US $850
Extraordinary	>3 cases	US $1,350
Update	Update of prior response	US $400
No-Services	Verifying no work for client during fiscal year	US $75

Where we engage others to act on your behalf we do so as your agent and we will not be responsible for any act or omission of those parties. Notwithstanding our advance payments of any charges, you will be solely responsible for all invoices issued by third parties. It is our policy to arrange for outside providers of services involving relatively substantial charges (such as the fees of outside consultants, expert witnesses, appraisers, and court reporters) to bill you directly.

Prompt payment by you of invoices generated by third-party vendors is often essential to our ability to deliver legal services to you. Accordingly, you agree that we have the right to treat any failure by you to pay such invoices in a timely manner to be a material breach of your obligation to cooperate with us.

BILLING ARRANGEMENTS AND PAYMENT TERMS

We will bill you on a regular basis – normally, each month – for both fees and other charges. You agree to make payment within 30 days of the date of our statement, unless a different period of time is specified in the Engagement Letter. If you have any issue with our statement, you agree to raise it specifically before 30 days from the date of our statement or any other due date established in an Engagement Letter. If the issue is not immediately resolved, you agree to pay all fees and other charges not directly affected by the issue before 30 days

from the original bill or any other due date established in an Engagement Letter and all amounts affected by the issue within 10 days of its resolution. If we have rendered a final bill and we become liable for other charges incurred on your behalf, we will be entitled to render a further bill or bills to recover those amounts. In the event that a statement is not paid in full before 30 days from the date of our statement or any other due date established in an Engagement Letter, interest and/or late charges will be imposed on any unpaid fees and/or costs at the combined rate of eight percent (8%) per annum or at any lower rate legally required by a particular jurisdiction. If the cover letter accompanying these Standard Terms of engagement specifies an event or an alternate date upon which payment is due, interest and/or late charges will be imposed on any unpaid fees and/or costs 30 days after the specified event or date or any other period specified in an Engagement Letter. The purpose of the late payment charge is to encourage prompt payment, thus reducing our billing and collection costs.

In addition, if your account becomes delinquent and satisfactory payment terms are not arranged, we may postpone or defer providing additional services or withdraw, or seek to withdraw, from the representation consistent with applicable rules. You will remain responsible for payment of our legal fees rendered and charges incurred prior to such withdrawal.

If our representation of you results in a monetary recovery by litigation or arbitration award, judgment, or settlement, or by other realization of proceeds, then (when permitted by applicable law) you hereby grant us an attorneys' lien on those funds in the amount of any sums due us.

We look to you, the client, for payment regardless of whether you are insured to cover the particular risk. From time to time, we assist clients in pursuing third parties for recovery of attorneys' fees and other costs arising from our services. These situations include payments under contracts, statutes or insurance policies. However, it remains your obligation to pay all amounts due to us before expiration of 30 days from the date of our statement unless a different period is established in an Engagement Letter.

REVENUE AND EXPENSE SHARING IN NETWORKS AND OTHER RELATIONSHIPS WITH INDEPENDENT LAW FIRMS

We have relationships with selected other independent law firms with offices in locations outside the United States where we do not have a Squire Sanders office. These include the Squire Sanders Legal Counsel Worldwide Network, a network of independent firms that share resources and work together to serve clients. Unless we actually form an attorney-client relationship with a client of such a selected independent law firm, such a party is not our client for any purpose, including conflicts of interests. In many cases we share revenues and expenses with such firms in a mutual relationship designed for multiple matters on a continuing basis over a substantial period of time. For example, each member of the Squire Sanders Legal Counsel Worldwide Network pays a base membership fee, with additional membership fees payable based on the cumulative amount of business referred to each member firm from members of the network. These fee and expense arrangements are intended to cover expenses of the network and encourage its use. We will not increase our fee to you for the purpose of recovering any amounts paid to the network or shared with another law firm. Other law firms with which we have relationships, whether or not part of the network, are required to observe the same restriction.

TAXES

You will be responsible for any applicable VAT or other sales tax that any jurisdiction may impose on our fees and other charges for this representation.

DATA PROTECTION AND PRIVACY

We will comply with applicable data protection laws and regulations for any personal data which you provide to us; and we will assume that you have complied with your own similar obligations. We may process your personal data to enable us to provide you with legal and related services, for administrative purposes, and to comply with laws and regulations.

We may share the personal data you provide to us with some or all of our offices around the world and with other third parties who provide services to us or on our behalf, provided that on each occasion we take steps to ensure that the data is reasonably safeguarded.

CLIENT AND FIRM DOCUMENTS

We will maintain any documents you furnish to us in our client files for this matter. At the conclusion of the matter (or earlier, if appropriate), it is your obligation to advise us promptly as to which, if any, of the documents in our files you wish us to turn over to you. At your request, your papers and property will be returned to you promptly upon receipt of payment for outstanding fees and other charges. Your documents will be turned over to you in accordance with ethical requirements and subject to any lien that may be created by law for payment of any outstanding fees and costs. We may keep a copy of your files, made at your expense, if you ask us to return or transfer your files. We will retain our own documents and files, including our drafts, notes, internal memos, administrative records, time and expense reports, billing and financial information, accounting records, conflict checks, personnel materials, and work product, such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, and other materials prepared by or for the internal use of our lawyers. All such documents retained by the Firm will be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of unnecessary storage charges, we have the right to destroy or otherwise dispose of any such documents or other materials retained by us seven years after the termination of the engagement, unless applicable law permits a shorter period for preservation of documents or requires a longer period, or unless a different period is specified in a special written agreement signed by both of us.

EQUALITY AND DIVERSITY

We have a written Equality and Diversity policy to which we seek to adhere at all times in the performance of our services. A copy will be provided to you upon your written request and is available on the Firm's website at http://diversity.squiresanders.com/en-US/lmshome.aspx

DISCLOSURE OF YOUR NAME

We are proud to serve you as legal counsel and hope to share that information with other clients and prospective clients. On occasion, we provide names of current clients in marketing materials and on our Web site. We may include your name on a list of representative clients. We may also prepare lists of representative transactions or other representations, excluding of course any we believe are sensitive. If you prefer that we refrain from using your name and representation in this manner, please advise us in writing.

FIRM ATTORNEY/CLIENT PRIVILEGE

If we determine during the course of the representation that it is either necessary or appropriate to consult with the Firm's Ethics Attorneys, other specially designated Firm attorneys or outside counsel, we have your consent to do so and that our representation of you shall not diminish the attorney-client privilege that Squire has to protect the

confidentiality of our communications with such counsel.

SEVERABILITY

In the event that any provision or part of this agreement, including any letters expressly stated to be part of the agreement, should be unenforceable under the law of the controlling jurisdiction, the remainder of this agreement shall remain in force and shall be enforced in accordance with its terms.

PRIMACY

Unless expressly superseded by explicit reference the sections "Who Is our Client" and/or "Conflicts of Interest" are fully effective notwithstanding another provision in case of any duplication and to the fullest extent possible in case of inconsistency.

ENTIRE AGREEMENT

This agreement supersedes all other prior and contemporaneous written and oral agreements and understandings between us and contains the entire agreement between us. This agreement may be modified only by a signed written agreement by you and by us. You acknowledge that no promises have been made to you other than those stated in the agreement.

GOVERNING LAW

Unless otherwise specified in the letter accompanying these Standard Terms, all questions arising under or involving this engagement or concerning rights and duties between us will be governed by the law of the jurisdiction in which the lawyer sending you this agreement has his or her principal office, excluding choice of law provisions that might select the law of a different jurisdiction. When another jurisdiction provides that its law will govern notwithstanding any agreement, that other law may of course control, at least on certain questions.

IN CONCLUSION

We look forward to a mutually satisfying relationship with you. If you have any questions about, or if you do not agree with one or more of these terms and conditions, please communicate with your principal contact at the Firm so that we can try to address your concerns. Your principal contact can recommend changes that will be effective once you receive written notice of approval of any revisions, which, depending on the nature of the request, will be made by a Partner in Firm Management and/or an Ethics Partner. Thank you.