



SO ORDERED,

Katharine M. Samson

Judge Katharine M. Samson
United States Bankruptcy Judge
Date Signed: March 10, 2015

The Order of the Court is set forth below. The docket reflects the date entered.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

In re:)	
)	
MISSISSIPPI PHOSPHATES)	
CORPORATION, <i>et al.</i> ¹)	CASE NO. 14-51667-KMS
)	Chapter 11
)	
Debtors)	Jointly Administered
)	

ORDER GRANTING APPLICATION OF THE DEBTORS TO RETAIN
DELOITTE TRANSACTIONS AND BUSINESS ANALYTICS LLP
TO PROVIDE THE DEBTORS WITH "OTHER SERVICES"
NUNC PRO TUNC TO DECEMBER 20, 2014

[Dkt. # 441]

This matter came on for consideration by the Court on the *Application of the Debtors to Retain Deloitte Transactions and Business Analytics LLP to Provide the Debtors with "Other Services" Nunc Pro Tunc to December 20, 2014* (the "**Application**")² [Dkt. # 441] filed herein by Mississippi Phosphates Corporation, *et al.*, the debtors and debtors-in-possession herein

¹ The chapter 11 cases of the following affiliated Debtors have been administratively consolidated for joint administration pursuant to that certain *Order Granting Motion of the Debtor for Order Directing Joint Administration of Affiliated Cases Pursuant to Bankruptcy Rule 1015(b)*, dated October 29, 2014 [Dkt. # 62]: Mississippi Phosphates Corporation ("**MPC**"). Case No. 14-51667. Ammonia Tank Subsidiary, Inc. ("**ATS**"). Case No. 14-51668 and Sulfuric Acid Tanks Subsidiary, Inc. ("**SATS**"). Case No. 14-51671. These chapter 11 cases are sometimes referred to herein as the "**Bankruptcy Cases**."

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Application.

(collectively, the “*Debtors*”), pursuant to the terms and conditions of that certain letter agreement between Deloitte Transactions and Business Analytics LLP (“*DTBA*” or the “*Firm*”) and the Debtors, dated effective as of December 20, 2014 (the “*Engagement Letter*”)³ to provide the Debtors with “other services” described generally as services related to electronic discovery services, including collection of data, and processing, hosting and production of data, as well as document review services for electronically stored information (“*ESI*”).

The Court considered the Motion and finds as follows:

1. This Court has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b). This Court possesses the requisite authority to grant the relief requested herein pursuant to 11 U.S.C. §§ 105(a), 363(b), 1107(a), 1108 and other applicable sections of the United States Bankruptcy Code.

2. As reflected by the *Notice* [Dkt. # 447] and the *Certificate of Service* [Dkt. # 452] filed herein, proper notice of the Motion was given to all persons who are registered users of the CM/ECF System for these Bankruptcy Cases and also to all persons or entities on the Limited Service List, and no objection or other response was timely filed to the Motion.

3. After due deliberation and after considering the Motion and the proceedings before this Court, the Court has determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors, and all parties in interest.

IT IS HEREBY ORDERED that the Motion is **GRANTED**.

³ A true and correct copy of the Engagement Letter is attached hereto as Exhibit “A” and is incorporated herein by reference. In the event of any inconsistencies between the description of the DTBA engagement described in this Application and the terms of the Engagement Letter, the Engagement Letter shall control.

IT IS FURTHER ORDERED that the retention of DTBA to provide the Debtors with certain “other Services” is hereby approved, *nunc pro tunc* to December 20, 2014, all pursuant to the terms and conditions of the Engagement Letter.

IT IS FURTHER ORDERED that, as provided in the Engagement Letter, DTBA’s professional fees for the engagement, except for the electronic discovery services (which will be billed on the basis as set forth in Appendix B to the Engagement Letter), will be on a time and expense basis with its fees determined by the tasks required and the related time spent. DTBA’s per-hour billing rates will be as provided in the Engagement Letter, plus reimbursement of reasonable expenses incurred in connection with this engagement, including travel, meals and lodging, and delivery services.

IT IS FURTHER ORDERED that the terms of the Engagement Letter, including without limitation, the fee provisions, and the indemnification provisions, are reasonable terms and conditions of employment and are approved; **provided, however**, that during the pendency of these Bankruptcy Cases, all requests of DTBA for payment of indemnity, contribution or otherwise pursuant to the Engagement Letter shall be made by means of an interim or final fee application and shall be subject to the approval of, and review by, the Court to ensure that such payment conforms to the terms of the Engagement Letter and amounts asserted for indemnification thereunder are reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity is sought, and **further provided**, notwithstanding the terms of the Engagement Letter, the Debtors and DTBA have agreed that in no event shall an indemnified party be indemnified or receive contribution thereunder if the Debtors, their estates or any statutory committee of unsecured creditors appointed in these Bankruptcy Cases (i) assert a claim against an indemnified party and (ii) to the extent the Court determines by final order

that such claim resulted from the bad-faith, self-dealing, breach of fiduciary duty (if any and only to the extent such breach does not constitute ordinary negligence), gross negligence or willful misconduct on the part of that indemnified party.

IT IS FURTHER ORDERED that DTBA shall be entitled to receive reasonable compensation and to receive reimbursement of actual, necessary expenses after notice and a hearing as contemplated by 11 U.S.C. §§ 330 and 331 Rule 2016 of the Federal Rules of Bankruptcy Procedure, and any other applicable or related statutes and rules.

IT IS FURTHER ORDERED that any application for compensation and reimbursement for expenses filed by DTBA herein shall set forth the date of entry of all previous orders allowing compensation and expenses and the amounts so allowed.

###END OF ORDER###

ORDER PREPARED AND SUBMITTED BY:

Stephen W. Rosenblatt (Miss. Bar No. 5676)
BUTLER SNOW LLP
1020 Highland Colony Parkway, Suite 1400
Ridgeland, MS 39157
Telephone: (601) 948-5711
steve.rosenblatt@butlersnow.com

ONE OF THE ATTORNEYS FOR THE DEBTORS

ButlerSnow 25023108v3

EXHIBIT "A"

January 30, 2015

PRIVILEGED & CONFIDENTIAL
WORK PRODUCT PREPARED
FOR COUNSEL

Stephen W. Rosenblatt, Esq.
Butler Snow LLP
1020 Highland Colony Parkway, Suite 1400
Ridgeland, MS 39158

Re: Mississippi Phosphates Corporation Electronic Discovery Services Engagement

Dear Mr. Rosenblatt:

UNDERSTANDING OF ROLE

This letter sets forth the agreement between Butler Snow LLP ("Counsel") and Deloitte Transactions and Business Analytics LLP ("DTBA"), effective as of December 20, 2014, whereby DTBA personnel will provide to Counsel the services described herein (this "Engagement"). We understand that such services are being requested by Counsel in connection with Counsel's representation of Mississippi Phosphates Corporation and its subsidiaries (collectively, the "Company") in the above-entitled matter and related matters. The services to be performed by DTBA personnel will be as a non-testifying consultant. In the event Counsel desires to engage DTBA personnel to testify as an expert witness, and if such engagement is accepted by DTBA, the terms and provisions hereof will apply to such expert witness engagement, unless a separate written agreement with respect to such engagement is entered into. Although Counsel is engaging DTBA to provide the services for this Engagement, such services are ultimately for the benefit of the Company. Accordingly, the Company, and not Counsel, will be responsible for the payment of any and all professional fees, expenses and other charges of DTBA in connection with this Engagement.

We understand that it is Counsel's intention and the position of Counsel that our work for it will be covered by the attorney work-product privilege and other applicable privileges. Accordingly, it is agreed that all working papers and other documents prepared or received by us pursuant to this Engagement will be maintained by us as confidential material in accordance with the terms hereof.

Counsel agrees that it will advise DTBA in a timely manner of any applicable legal or other requirements concerning the services to be provided by DTBA, including, without limitation, the identification of any reports to be provided by DTBA, the formats of and filing deadlines for such reports, and the requirements, if any, concerning the retention of our notes, draft reports, or other work product. DTBA does not, in advance of obtaining sufficient relevant information and completing its analyses, provide any assurance that it will be able to support any position.

DTBA is prepared to provide document review services and the following electronic discovery services: collection of data, and processing, hosting and production of data. The specific procedures to be performed

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by DTBA will be established based on discussions with you as the Engagement progresses and additional information is obtained during the course of the Engagement.

It is understood that Counsel, with DTBA's assistance, will complete project specifications forms to memorialize the understanding of the parties regarding the specific collection, processing and hosting services to be performed by DTBA prior to DTBA beginning the performance of these services. In the event that Counsel would like to modify any of these services after the project specifications form has been agreed upon, Counsel, with DTBA's assistance and agreement, will modify the project specifications form. DTBA shall be entitled to be compensated by the Company, subject to approval by the Bankruptcy Court, for all services performed pursuant to the original project specifications form or any agreed upon modification thereto in accordance with the terms of this letter and the Pricing Schedule attached as Appendix B (regardless of whether, among other things, any modification to the project specifications form results in the need to re-perform any services).

Although DTBA may provide advice and recommendations concerning the specific procedures we might perform, DTBA is not responsible for responding to the Company's obligations to shareholders, lenders, regulators, and other stakeholders. Counsel and the Company each acknowledges that DTBA is not providing legal services under the terms of this Engagement, and any advice or recommendation provided under this Engagement should not be relied on as legal advice. Neither party intends that the services provided hereunder shall be deemed to constitute the practice of law, and DTBA does not engage in the practice of law. Counsel further agrees to provide supervision by qualified, and appropriately licensed, legal counsel over DTBA services rendered in connection with this Engagement. DTBA's classifications of documents or other information as being subject to, or not subject to, production in discovery or otherwise, are preliminary recommendations only. Qualified legal counsel, provided by Counsel or the Company, will review these recommendations consistent with all applicable legal and ethical requirements before such counsel makes any final determination with respect thereto, and Counsel acknowledges that it is responsible for all such determinations.

The personnel provided by DTBA hereunder will work directly under Counsel's supervision, and Counsel will be responsible for the direction and control of their work. Accordingly, DTBA will not be responsible for the scope and nature of document management assistance services provided by its personnel nor for the direction or control of their work.

Counsel and the Company each agrees that, without DTBA's prior written permission, any reports, schedules, documents, or other materials provided by DTBA ("DTBA Work product") are not to be used, in whole or in part, by Counsel or the Company for any purpose other than in connection with the resolution or disposition of the matters that are the subject of this Engagement (the "Matters"), and are not to be disclosed, quoted or referenced, in whole or in part, to any other person or entity ("third party") other than those third parties that are adverse to the Company in the Matters, their legal counsel, other consultants to legal counsel in this matter and any court or other tribunal, if any, in which the Matters are then pending. This Engagement shall not create privity between DTBA and any third party. Neither the DTBA Work product nor the services provided hereunder are intended for the express or implied benefit of any third party.

CONFLICTS

We have agreed to perform the services hereunder based on our understanding that we will be requested to process data that only the Company owns or licenses and that Counsel and the Company will not provide us

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with any other data for processing unless Counsel has requested DTBA to process such other data as described below.

In the event that Counsel requests DTBA to process any other data, Counsel will provide DTBA with the names of the third parties that own or license such data and any other third parties involved in the matter (the "Involved Parties"), and we will perform an internal search for any potential conflicts based upon the names of the Involved Parties (the "Conflicts Search"). If the Conflict Search identifies a client conflict, DTBA will either decline to perform the requested services that give rise to the conflict or disclose the nature of the client conflict to Counsel. Except for the Conflicts Search, we will not undertake any process to identify any other relationships with the Involved Parties. Counsel agrees that it will inform us promptly to the extent Counsel is aware of or learns of additional parties involved in the matter or of name changes for any of the Involved Parties. As you know, DTBA and its affiliates have many clients and we are engaged by new clients every day. Therefore, we cannot assure that, following the completion of our Conflicts Search, an engagement relating to one or more of the Involved Parties will not be accepted. Should any potential conflict come to the attention of our Engagement Director, we will endeavor to resolve such potential conflict and will determine what action needs to be taken.

Any counsel representing parties involved in this matter may have in the past engaged, represented or opposed, and may currently or in the future engage, represent or oppose, DTBA and/or its affiliates and their respective personnel in connection with matters unrelated to this Engagement. Also, any insurance carrier providing coverage to parties involved in this matter may have provided, may currently be providing, or may in the future provide coverage to a party, or may itself be a party, involved in a matter unrelated to this Engagement where DTBA and/or its affiliates have provided, are currently providing, or may in the future provide consultation or other services, or where DTBA or its affiliates may be a party.

ENGAGEMENT STAFFING AND FEES

I will participate as Engagement Director, maintaining overall responsibility for the engagement on behalf of DTBA. Technical support may also be provided by other professionals who will be identified during the course of the Engagement.

We bill on a time and expense basis, except for the electronic discovery services (which will be billed on the basis set forth in Appendix B), with our fees determined by the tasks required and the related time spent. Our per-hour billing rates are as follows:

Partner, Principal, Director	\$450
Senior Manager	\$350
Manager	\$300
Senior Associate	\$250
Associate	\$200

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USI Reviewer ¹	\$ 27
US Reviewer	\$ 55
Review Team Manager	\$120

Our rates are adjusted from time to time; we will advise you promptly if a rate adjustment is being made by DTBA. Engagement related expenses, such as charges for travel, lodging, meals, telephone, computer hard drives, backup tapes, messengers, overnight delivery facsimiles and photocopying, will be billed in addition to the fees and per unit charges. Expenses will be stated separately on the invoices. Unless otherwise agreed, invoices will be prepared on a monthly basis.

The scope of our services, as well as the complexity and duration of this Engagement, can vary greatly due to circumstances which may not be anticipated. Our fees and expenses are not contingent upon the final resolution of the matters that are the subject of this Engagement. If it is agreed that we will act as an expert witness, it is our normal practice that we be paid in full for all work performed to date prior to our issuance of any report and/or providing testimony.

In addition, we will be compensated for any time and expenses (including, without limitation, reasonable legal fees and expenses) that we may incur in participating as a witness or otherwise in any legal, regulatory, or other proceedings (including, without limitation, those unrelated to the matters that are the subject of this Engagement) as a result of DTBA's performance of these services.

* * * * *

THE BANKRUPTCY CASE

On 27 October 2014, the Company filed in the United States Bankruptcy Court for the Southern District of Mississippi (the "Bankruptcy Court") a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Company has requested that Jonathan Nash serve as its Chief Restructuring Officer and that DTBA perform certain services. Mr. Nash and DTBA have agreed to perform such services, subject to the terms and conditions of a separate engagement letter and the Bankruptcy Court's *Amended Order Authorizing the Debtors pursuant to 11 U.S.C. §§ 105(a) and 363(b) to (I) Retain Deloitte Transactions and Business Analytics LLP to Provide the Debtors with a Chief Restructuring Officer, and (II) Designate Jonathan J. Nash as Chief Restructuring Officer for the Debtors Nunc Pro Tunc to November 10, 2014*, entered on January 7, 2015 [Dkt. # 367]. This engagement letter, and DTBA's obligations and responsibilities relating to discovery services, shall be effective as of the effective date on the first page of this letter, subject to, and conditioned upon, the Company obtaining Bankruptcy Court approval in the above Chapter 11 case (In re: Mississippi Phosphates Corporation, et al. (Case No. 14-51667) (the "Case")), nunc pro tunc to such date.

In addition to DTBA's other rights or remedies, DTBA may, in its sole discretion and without any liability arising therefrom, terminate this agreement in the event that (a) a final order authorizing the employment of

¹ DTBA will use personnel from US India FAS ("USI"), an indirect subsidiary of its affiliate Deloitte Financial Advisory Services LLP, to perform certain document review services.

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DTBA to provide the services hereunder is not entered by the Bankruptcy Court in the Case on or before sixty (60) days from the date hereof on the terms and conditions set forth herein or on such other terms and conditions as are satisfactory to DTBA in its sole discretion, or (b) the application of the Company seeking such order is denied by the Bankruptcy Court in the Case. In any such event, the Company hereby agrees to withdraw or amend, promptly upon DTBA's request, any application filed or to be filed with the Bankruptcy Court to retain DTBA's services in the Case.

This Engagement is subject to the General Business Terms attached hereto. For the purposes of the attached General Business Terms, "Client" shall mean, individually and collectively, the Company and Counsel. Mississippi Phosphates Corporation represents and warrants that it has the power and authority to execute this letter on behalf of, and to bind, itself and its subsidiaries to the terms of this Engagement.

If you and your client agree to the terms of this letter and the attached General Business Terms, please sign and have your client sign the enclosed copy of this letter in the space provided and return it to me. If you have any questions, please call me at (713) 982-2747. We appreciate the opportunity to work for you and look forward to your prompt response.

Very truly yours,

DELOITTE TRANSACTIONS AND BUSINESS ANALYTICS LLP

By: _____
Bryan Foster, Director

Encl.

Accepted by: Butler Snow LLP

Accepted by: Mississippi Phosphates
Corporation on behalf of itself and its
subsidiaries

By: _____
Stephen W. Rosenblatt

By: _____
Stephen S. Russo

Title: _____
Partner

Title: _____
Chief Executive Officer

Date: _____

Date: _____

APPENDIX A: GENERAL BUSINESS TERMS

1. Services.

a) The services provided by Deloitte Transactions and Business Analytics LLP ("DTBA") (the "Services") under the engagement letter to which these terms are attached (the "Engagement Letter") will be performed under the Standards for Consulting Services of the American Institute of Certified Public Accountants. The Services may include advice and recommendations, but DTBA will not make any decisions on behalf of Client in connection with the implementation of such advice and recommendations.

b) The Services may include, for purposes of gathering information, access to the work of other public accountants or to financial statements or financial information reported on by other public accountants; however, access is not for the purpose of affirming or evaluating the auditing procedures or related professional standards used by such other public accountants.

c) Client acknowledges that draft or tentative reports, findings, conclusions or advice that are provided to Client, whether written or oral, may be subject to further revision by DTBA.

d) In the performance of the Services, DTBA will use and rely upon certain software, tools and technology. In the event that DTBA had used and relied upon other software, tools or technology in performing the Services, different results might have been obtained.

e) If the Services include utilizing machine automation such as automated language translation, automated voice transcription, or automated redactions, DTBA will use applicable software for performing the task. Because human language is complex, results will vary depending on the source data for each automated service. No automated translation, transcription, or redaction is perfect nor is it intended to replace a human doing the same. DTBA will not verify the accuracy of the automated task performed by the applicable software and takes no responsibility for the accuracy of the results of such automated task.

f) DTBA currently conducts planned maintenance outages of its hosting and data processing systems every Saturday starting at 12:00 a.m. Central with the duration of the downtime posted on the Discovery Portal Announcement page. This is the regular downtime window ("RDW"). Accordingly, hosting and other electronic discovery services are generally not available during such times. From time to time, DTBA may conduct planned maintenance outages of its hosting and data processing systems at times outside of the RDW. In such event, DTBA will post advance notice of the planned maintenance on the Discovery Portal Announcement page.

g) Unless otherwise expressly agreed by the parties, all data provided to DTBA for the performance of any electronic discovery Services will be a copy of such data, and the originals (or another copy) of such data will be retained by Client or, if applicable, a third party. After completion of the Services, DTBA will destroy its copy of the data in accordance with its standard practices and policies unless Client has advised DTBA to return its copy of the data to Client at any time prior to the completion of the Services. DTBA shall be compensated by Client for all time and expenses incurred by DTBA in connection with returning any data to Client.

2. **Payment of Invoices.** The Company will compensate DTBA under the terms of the Engagement Letter for the Services performed and expenses incurred, through the term or effective date of termination of this engagement. DTBA's invoices are due upon receipt. If payment is not received within thirty (30) days of the receipt of an invoice (i) such invoice shall accrue a late charge equal to the lesser of (a) 1½% per month or (b) the highest rate allowable by law, in each case compounded monthly to the extent allowable by law, and (ii) DTBA may also suspend or terminate the Services. The Company shall be responsible for any taxes imposed on the Services or on this engagement, other than taxes imposed by employment withholding for DTBA's personnel or on DTBA's income or property.

3. **Term.** Unless terminated sooner in accordance with its terms, this engagement shall terminate on the completion of the Services. This engagement may be terminated by Client or DTBA at any time on the delivery of written notice of termination to the other.

4. Deliverables and Working Papers.

a) DTBA has rights in, and may, in connection with the performance of the Services, use create, modify, or acquire rights in, works of authorship, materials, information, and other intellectual property (collectively, the "DTBA Technology").

b) Upon full payment to DTBA hereunder, and subject to the terms and conditions contained herein, (i) the tangible items specified as deliverables or work product in the Engagement Letter (the "Deliverables") shall become the property of Client, and (ii) DTBA hereby grants Client a royalty-free, fully paid-up, worldwide, non-exclusive license to use the DTBA Technology contained in the Deliverables in connection with the use of such Deliverables. Except for the foregoing license grant, DTBA or its licensors retain all rights in and to all DTBA Technology.

c) To the extent that any DTBA Technology provided to Client hereunder constitutes inventory within the meaning of section 471 of the Internal Revenue Code, such DTBA Technology is licensed to Client by DTBA as agent for Deloitte Transactions and Business Analytics Products Company LLC on the terms and conditions contained herein. The rights granted in this Section 4 do not apply to any DTBA Technology that is subject to a separate license agreement between Client and any third party (including, DTBA's affiliates).

d) Working Papers. The working papers created by DTBA during this engagement are the property of DTBA. Client understands that DTBA does not retain working papers indefinitely.

5. Limitation on Damages, Indemnification and Limitation on Actions.

a) DTBA, its subsidiaries and subcontractors, and their respective personnel shall not be liable to Client for any claims, liabilities, or expenses relating to this engagement ("Claims") for an aggregate amount in excess of the fees paid by the Company to DTBA pursuant to this engagement, except to the extent resulting from the bad faith or intentional misconduct of DTBA or its subcontractors. In no event shall DTBA, its subsidiaries or subcontractors, or their respective personnel be liable to Client for any loss of use, data, goodwill, revenues or profits (whether or not deemed to constitute a direct Claim), or any consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense relating to this engagement.

b) The Company shall indemnify and hold harmless DTBA, its subsidiaries and subcontractors, and their respective personnel from all Claims, except to the extent resulting from the bad faith or intentional misconduct of DTBA or its subcontractors.

c) In circumstances where any limitation on damages or indemnification provision hereunder is unavailable, the aggregate liability of DTBA, its subsidiaries and subcontractors, and their respective personnel for any Claim shall not exceed an amount that is proportional to the relative fault that the conduct of DTBA and its subcontractors bears to all other conduct giving rise to such Claim.

d) No action, regardless of form, relating to this engagement, may be brought by any party more than one year after the cause of action has accrued, except that an action for non-payment may be brought by a party not later than one year following the due date of the last payment owing to the party bringing such action.

6. Client Responsibilities. Counsel and the Company shall each cooperate with DTBA in the performance of the Services, including, providing DTBA with reasonable facilities and timely access to data, information and personnel of Counsel or the Company, as applicable. If DTBA is provided with access to or use of the Company's facilities outside of the United States for the purpose of performing the Services such facilities may not be dedicated solely for DTBA's use, and DTBA will not be deemed a tenant of the Company with respect to such facilities. Counsel and the Company shall be responsible for the performance of their respective personnel and agents, and each of Counsel and the Company shall be responsible for ensuring the accuracy and completeness of all data and information that each provides to DTBA by such party for purposes of the performance of the Services. DTBA's performance is dependent upon the timely and effective satisfaction of respective responsibilities of Counsel and the Company hereunder and timely decisions and approvals of Client in connection with the Services. DTBA shall be entitled to rely on all decisions and approvals of Client. With respect to the data and information provided by the Company or Counsel to DTBA or its subcontractors for the performance of the Services, Client shall have all rights required to provide such data and information, and shall do so only in accordance with applicable law and with any procedures agreed upon in writing. Client shall not request DTBA to collect, use, export or otherwise process any data unless such processing will comply with applicable law.

7. Force Majeure. Neither Client nor DTBA shall be liable for any delays or nonperformance directly or indirectly resulting from circumstances or causes beyond its reasonable control, including fire, epidemic or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.

8. Independent Contractor. It is understood and agreed that, with respect to the relationship between DTBA, on the one hand, and Client, on the other hand, (i) each party hereto is an independent contractor and neither party is nor shall be considered to be, nor shall purport to act as, the other's agent, partner, fiduciary, joint venturer, or representative.

9. Confidentiality. To the extent that, in connection with this engagement, either DTBA or Client (each the "receiving party") comes into possession of any confidential information of the other (the "disclosing party"), it will not disclose such information to any third party without the disclosing party's consent, using at least the same degree of care as it employs in maintaining in confidence its own confidential information of a similar nature, but in no event less than a reasonable degree of care. The disclosing party hereby consents to the receiving party disclosing such information: (a) as expressly permitted in the Engagement Letter; (b) to subcontractors, whether located within or outside of the United States, that are providing services in connection with this engagement and that have agreed to be bound by confidentiality obligations similar to those in this Section 9; (c) as may be required by law, regulation, judicial or administrative process, or in accordance with applicable professional standards or rules, or in connection with litigation or arbitration pertaining hereto; or (d) to the extent such information (1) is or becomes publicly available other than as the result of a disclosure in breach hereof, (2) becomes available to the receiving party on a nonconfidential basis from a source that the receiving party believes is not prohibited from disclosing such information to the receiving party, (3) is already known by the receiving party without any obligation of confidentiality with respect thereto, or (4) is developed by the receiving party independently of any disclosures made to the receiving party hereunder. Nothing in this Section 9 shall alter Client's obligations under the Engagement Letter. DTBA, however, may use and disclose any knowledge and ideas acquired in connection with the Services to the extent they are retained in the unaided memory of its personnel.

10. Professional and Regulatory Actions. Without limiting any other right to terminate this engagement that DTBA may have under the Engagement Letter, these terms or law DTBA may terminate this engagement upon written notice to Client if DTBA determines that the performance of any part of the Services would be in conflict with law, or independence or professional rules.

11. Survival and Interpretation. All provisions which are intended by their nature to survive performance of the Services shall survive such performance, or the expiration or termination of this engagement. No affiliated or related entity of DTBA, or such entities' personnel, shall have any liability hereunder to Client and Client will not bring any action against any such affiliated or related entity or such entity's personnel in connection with this engagement. Without limiting the foregoing, such affiliated and related entities are intended third-party beneficiaries of these terms, and may in their own right enforce such terms. Each of the provisions of these terms shall apply to the fullest extent of the law, whether in contract, statute, tort (such as *negligence*), or otherwise, notwithstanding the failure of the essential purpose of any remedy. Any references herein to the term "including" shall be deemed to be followed by "without limitation".

12. Assignment and Subcontracting. Except as provided below, none of the parties may assign any of its rights or obligations hereunder (including interests or Claims) without the prior written consent of the other parties. Client hereby consents to DTBA assigning or subcontracting any portion of the Services to any affiliate or related entity whether located within or outside of the United States. Services performed hereunder by DTBA's subcontractors shall be invoiced as professional fees on the same basis as Services performed by DTBA personnel, unless otherwise agreed.

13. Waiver of Jury Trial. DTBA AND CLIENT HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM RELATING TO THIS ENGAGEMENT.

14. Entire Agreement, Amendment and Notices. These terms and the Engagement Letter, including attachments, constitute the entire agreement between DTBA and Client with respect to this engagement, supersede all other oral and written representations, understandings or agreements relating to this engagement, and may not be amended except by a written agreement signed by the parties. In the event of any conflict or ambiguity between these terms and the Engagement Letter, these terms shall control. All notices hereunder shall be (a) in writing, (b) delivered to the representatives of the parties at the addresses set forth in the Engagement Letter, unless changed by any party by notice to the other parties, and (c) effective upon receipt.

15. Governing Law and Severability. These terms, the Engagement Letter, including, attachments, and all matters relating to this engagement shall be governed by, and construed in accordance with, the laws of the State of New York (without giving effect to the choice of law principles thereof). If

any provision of these terms or the Engagement Letter is unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth herein.

APPENDIX B: ELECTRONIC DISCOVERY PRICING SCHEDULE

Service Category	Unit	Rate Per Unit (NOTE 16)
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FORENSICS & DATA EXTRACTION

Forensic Collection and Analysis (Excludes Expert Services)

Forensic Imaging of hard drives & Acquisition of network and other data	Per Hour	\$ 250
Basic Password Cracking and Exception Handling (Note 1)	Per Hour	\$ 275
Advanced Decryption	Per Day	\$ 1,000

Forensic Image Data Extraction

Image Extraction & Pre-Culling (Note 2)	Per Hour	\$ 275
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PROCESSING

Processing In (Note 3)

	Per GB	
Tier 1: Up to 1 TB		\$ 95
Tier 2: Over 1 TB		\$ 75

Processing Out (Note 4)

	Per GB	
Tier 1: Up to 1 TB		\$ 295
Tier 2: Over 1 TB		\$ 275
Custom OCR (Note 5)	Per Hour	\$ 275

REVIEW

Documents Reviewed through Text Analytics	Per Document	\$ 0.10
Documents Reviewed through Eyes on Review	Per Hour	see rate table

HOSTING

Estimated Months Hosted		
Hosted Database Site Set-up Fee per Matter	Per Matter	Included
User Access Fee (Note 6)	Per User Per Month	\$ 75
Enhanced Hosted Database Security (Citrix and/or RSA) (Note 6)	Per User Per Month	\$ 10
<u>Data Migration & Loading - Note 7</u>		
Tier 1: Up to 5 GB - Flat Fee	Per Load	\$ 500
Tier 2: Over 5 GB	Per GB	\$ 100
Monthly Hosting Fees - Note 8 Minimum Fee Applies	Per GB	\$ 25
Automated Language Translation (Note 9)	Per Document	\$ 0.50
Relativity Analytics (Note 10)	Per GB	Included

Pure Discovery (Note 10)	Per GB	Included
Deloitte Dynamic Review (Note 10)	Per GB	Included

PRODUCTION AND EXPORT COSTS (NOTE 11)

Native Production	Per Document	\$ 0.12
TIFF or PDF Conversion (Note 12)	Per Page	\$ 0.03
Manual Re-print of TIFF or PDF Images	Per Hour	\$ 250
Endorsement of TIFF Images provided by third party data	Per Page	\$ 0.02
Load File Creation	Per Prod. Load File	\$ 500
External Media (e.g. Hard Drive, DVD, Tape, etc.)	Per Disk	At Cost

CASE ARCHIVE AND RESTORATION (NOTE 13)

Near-Line Storage

Tier 1: Up to 10 GB - Flat Fee	Per Matter	\$ 100
Tier 2: Over 10 GB	Per GB	\$ 10

Deletion and Archiving of Material (Note 14)

Tier 1: under 100 GB	Per Matter	Included
Tier 2: 101 - 500 GB	Per Matter	\$ 2,500
Tier 3: 501 - 1 TB	Per Matter	\$ 5,000
Tier 4: 1 TB - 4.9 TB	Per Matter	\$ 7,500
Tier 5: Over 5 TB	Per Matter	\$ 10,000
Restoration of Archived Material	Per Hour	\$ 275
Offsite Storage: Lock box storage fees	Per Drive Per Month	\$ 5

PER HOUR LABOR RATES

Strategic E-Discovery Consulting

Partner/Principal/Director	Per Hour	\$ 450
Senior Manager	Per Hour	\$ 350
Manager	Per Hour	\$ 300
Senior Associate	Per Hour	\$ 250
Associate	Per Hour	\$ 200
Help Desk Support	Per Hour	Included

Training

Review Database Training	Per Hour	\$ 275
EDSC Management & Technical Support (Note 15)	Per Hour	\$ 275

NOTES:

- 1) Special handling is performed upon client request including, inter alia, password cracking and conversion of non-standard data types.
- 2) Includes data extraction from media as well as initial filtering of NIST List files.
- 3) Processing In includes meta-data and text extraction, first pass OCR, and de-duplication. Additionally, fees will provide Case Administrators access to the text and meta-data of documents for analysis purposes. GB fees will be charged based on the uncompressed data size after data has been extracted from archive container files.
- 4) Processing Out fees are applied against the uncompressed size of the data moved into the review section of the hosted database or the total export size of data sent to a third party. Hourly fees will be applied to customize data exports, this includes adding any fields outside of DTBA's standard field list or providing an output format other than a .dat file. Additionally, the size of exports for third parties will include exported natives, the text, and the load file. This fee does not cover tiff creation and export.
- 5) Image based files are processed free of charge within processing platform. If OCR is required outside of the system an additional fee will be applied.
- 6) User Fees relate to direct access over web. For enhanced security including Citrix access or RSA two-factor authentication, additional fees apply. Additionally, a \$50 charge will be applied for each unreturned or damaged RSA tokens.
- 7) Fees apply only to data processed by outside parties. The fee assumes data is delivered with .dat file and in an agreed upon format. Additional data handling will be charged at an hourly technical support rate. The minimum charge only applies if data loading is performed.
- 8) Hosted data fees are applied against the size of all data stored in the client accessible folder of the Hosted Database. The size includes the total storage size of the native files, the text files, associated images, associated production images, and the SQL database. There will be a \$500 minimum per month on all hosting services.
- 9) For services including automated language translation, automated voice transcription, or automated redactions, DTBA will use applicable software for performing the task. Because human language is complex, results will vary depending on the source data for each automated service. No automated translation, transcription, or redaction is perfect nor is it intended to replace a human doing the same. DTBA will not verify the accuracy of the automated task performed by the applicable software and takes no responsibility for the accuracy of the results of such automated task.
- 10) Analytics includes the technology associated with Relativity Analytics, DTBA's Proprietary Dynamic Review capability, and access to Pure Discovery. Support and analytics provided by DTBA professionals will be charged at an hourly rate.
- 11) Production fees are applied to the production set locked down by counsel. Any changes made to production sets or specifications once the production has commenced will be charged at an hourly rate as listed under technical support. Additionally, a 25% fee will be applied for all productions where the production shipment time is within 24 hours of the final production lock.
- 12) Tiff and PDF Conversion rates assume DTBA applies standard QA procedures. If additional procedures are requested an hourly rate will be applied.
- 13) Charges applicable for (1) collect and hold data stored on storage area network ("SAN") or offsite or (2) inactive projects stored on the SAN.
- 14) Deletion and archiving includes all data DTBA has in custody. Data exports and returns include return of the original media, natives, images, and meta-data that exists in the Review or Archive sets currently accessible by clients and counsel. Data exports do not include data that is in the staging set that has not completed processing. Upon completion of these steps, data will no longer exist online.
- 15) EDSC Management & Technical Support generally includes services such as special processing, review support, pre-production support, and client specific custom support.
- 16) A surcharge will be added to per GB and per page rates when all work must be performed solely within the United States or by US Citizens.

ASSUMPTIONS:

- 1) Files and email will be processed in GMT.
- 2) Web site links are not systematically processed.