

TERMS AND CONDITIONS OF SERVICES

- A. **Overall Terms and Conditions:** In general, F&H and Client enter into the AGREEMENT in good faith and any misunderstandings and disagreements should be discussed in a good faith effort to resolve any disagreements without escalation. In the event, miscommunication or disagreements continue without reconciliation, the terms and conditions are set forth below for further clarification. First and foremost, Client acknowledges and agrees that the Services provided pursuant to the related AGREEMENT will be based solely upon:
- a. The representations, information, documents and other facts provided to F&H by Client, its personnel and any representatives thereof;
 - b. The review of documents under this AGREEMENT does not constitute an engagement to provide audit, compilation, review or attest services as described in the pronouncements on professional standards issued by the American Institute of Certified Public Accountants or the U.S. Public Company Accounting Oversight Board;
 - c. The understanding that F&H will only be responsible to provide the services listed in the AGREEMENT and F&H only provides tax preparation, planning, back-office and consulting services specifically identified by Client;
 - d. Client's understanding that any tax advice provided pursuant hereto will be based upon the law, regulations, cases, rulings, and other taxing authority in effect at the time specific tax advice is provided. If there are subsequent changes in or to the foregoing taxing authorities (for which F&H shall have no specific responsibility to advise Client), Client acknowledges that such changes may result in that tax advice being rendered invalid or necessitate (upon Client's request) a reconsideration of that prior tax advice;
 - e. Client's understanding and agreement that the results of F&H's tax advice may be audited and challenged by the tax agencies, who may not agree with our positions. In this regard, Client understands that the result of any tax advice is not binding on the tax agencies or the courts and should never be considered a representation, warranty, or guarantee that the tax agencies or the courts will concur with our advice or opinion; and
 - f. F&H, as a result of providing such tax advice, is under no obligation to represent Client with respect to any such challenge or an administrative or judicial challenge thereof. F&H would generally be available to represent Client before the appropriate taxing authorities, if permissible, for an additional fee that is mutually agreed upon.
 - g. Although F&H might in certain circumstances provide Client with drafts of a deliverable before it is finalized, Client understands that Client may not rely upon any of the analysis, conclusions, or recommendations unless and until the final deliverable is issued. Any part of our analysis, including the recommendations or conclusions may change between the time of any draft and the issuance of a final deliverable.
- B. **Services:** These Terms and Conditions of all F&H services to be rendered constitute the entire AGREEMENT between CLIENT and F&H. As used herein, the term "services", includes only the services as described in the AGREEMENT. All decisions in connection with the implementation of F&H's services in connection with this AGREEMENT shall be Client's responsibility.
- C. **Third Parties and Internal Use:** Except as otherwise agreed, all services hereunder shall be solely for Client's internal purposes and use, and this AGREEMENT does not create privity between F&H and any person or party other than Client (a "third party"). This AGREEMENT is not intended for the express or implied benefit of any third party. No third party is entitled to rely, in any manner or for any purpose, on

the services provided by F&H. In order to protect F&H from any unauthorized reliance or claims, Client further agrees that the services provided by F&H shall not be distributed, made available, circulated, or quoted to or used by any third party without the prior written consent of F&H. However, nothing in this paragraph shall be construed as limiting or restricting such disclosure for Client's tax return filing purposes. Client agrees to hold F&H harmless from any claims or liability that may arise out of or as a result from F&H complying with Client's request to disclose or share Client's information with third-parties.

D. Confidentiality:

- a. To the extent that, in connection with this AGREEMENT, F&H comes into possession of any information of Client's identified as proprietary or confidential, F&H will not disclose such information to any third party without Client's consent, except (a) as may be required by law, regulation, judicial or administrative process, in accordance with applicable professional standards, or in connection with litigation pertaining hereto, or (b) to the extent such information (i) shall have otherwise become publicly available (including, without limitation, any information filed with any governmental agency and available to the public) other than as the result of a disclosure by F&H in breach hereof, (ii) is disclosed by Client or Client's personnel to a third party without substantially the same restrictions as set forth herein, (iii) becomes available to F&H on a non-confidential basis from a source other than Client or Client's personnel which F&H does not believe is prohibited from disclosing such information to F&H by obligation to Client, (iv) is known by F&H prior to its receipt from Client without any obligation of confidentiality with respect thereto, or (v) is developed by F&H independently of any disclosures made by Client or Client's personnel to F&H of such information.
- b. We may use subcontractors and/or other tax professionals to assist us in the preparation of our clients' matters, including but not limited to preparation of tax memorandum, tax returns and any and all other consulting documentation. In order to safeguard the confidentiality of client information, both F&H and any subcontractors and/or tax professionals we may use have established internal policies, procedures and controls designed to maintain data security and protect privacy. We will not utilize a subcontractor and/or other tax professional without a confidentiality agreement in place to prevent the unauthorized release of client information. Furthermore, we will not use a subcontractor and/or other tax professionals located outside of the U.S. to assist us in the preparation of a client's tax returns without prior written consent of the Client.

E. Client Responsibilities:

- a. Client is responsible for making all financial records and related information available to us. F&H shall be entitled to assume, without independent verification, the accuracy of all representations, assumptions, information and data that Client and Client's representatives provide to F&H. All assumptions, representations, information and data to be supplied by Client and Client's representatives will be complete and accurate to the best of Client's knowledge. F&H may use information and data furnished by others; however, F&H shall not be responsible for, and F&H shall provide no assurance regarding, the accuracy and completeness of any such information or data. Except as specifically provided herein, F&H shall not assume any responsibility for any financial reporting with respect to the tax services provided hereunder. Client acknowledge and understand that F&H is providing no attest services of any kind, scope or nature whatsoever, as part of this AGREEMENT. F&H shall have no responsibility to address any legal matters or questions of law in connection with this AGREEMENT. See **section C** above for additional information regarding confidentiality.

- b. Client shall cooperate with F&H in the performance by F&H of its services hereunder, including, without limitation, providing F&H with reasonable facilities and timely access to data, information, and Client's personnel. Client shall be responsible for the performance of Client's personnel and agents and for the accuracy and completeness of all data and information provided to F&H for purposes of the performance by F&H of its services hereunder.

F. **Fees and Payment:** Our invoices for these services will be rendered each month as work progresses and are payable on presentation unless otherwise agreed too. If properly submitted invoices are not paid within 30 days of the invoice date, a late charge may accrue at the lesser of (i) 1 % per month or (ii) the highest rate allowable by law. Without limiting its rights or remedies, F&H shall have the right to halt or terminate entirely its services until full payment is received on such past due invoices. In the case of nonpayment, Client will be liable for any and all costs and fees incurred by F&H to collect the fees contemplated herein. The failure of F&H to exercise its right to suspend or terminate work shall not constitute a waiver by F&H of any right or remedy. In the event of a termination of this AGREEMENT pursuant to **section F** below, Client agrees to compensate F&H for tax services performed and expenses incurred through the effective date of termination. All outstanding bills will be paid in full prior to the release of any information or prior to final product or service delivery, unless other arrangements to pay Client's bill have been agreed upon. See **section N** below for additional information regarding Limitation on Damages.

G. **Term:** This AGREEMENT shall conclude on the completion and delivery of Client's services hereunder. Either F&H or Client may terminate this AGREEMENT at any time by giving thirty (30) days written notice to the other. In the event Client terminates the AGREEMENT before F&H has had the opportunity to earn the performance-based fees provided for in this AGREEMENT, Client agrees to compensate F&H for the services performed at one hundred percent (100%) of F&H's standard hourly rate or what is negotiated in the AGREEMENT, plus expenses incurred through the effective date of the termination. In the event F&H withdraws from the AGREEMENT, its only obligation to Client will be to return any original documents furnished to F&H by Client. Client shall have no continuing financial obligation to F&H in the event F&H withdraws from the AGREEMENT.

H. **General:**

- a. This AGREEMENT forms the entire AGREEMENT between the parties relating to the services, and replaces and supersedes any previous proposals, correspondence, understandings or other communications whether written or oral. This AGREEMENT shall be binding on all transferees, successors and assigns of both F&H and Client. Neither party shall be liable to the other for any delay or failure to perform any of the services or obligations set forth in this AGREEMENT due to causes beyond reasonable control. Each party acknowledges that this was a negotiated contract, and as a result, no part of this contract shall be construed against either party based on drafting of the contract. If any provision of this AGREEMENT is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the AGREEMENT shall remain enforceable.
- b. No delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either party of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other covenant. No waiver or discharge shall be valid unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.

- c. Client acknowledges and agrees that Client will be solely responsible for any and all applicable sales tax due, if any, in connection with the services provided under this AGREEMENT.
- d. It is common practice for professional service firms such as ours, in discussions with prospective clients, to make reference to prior work, and we would like to have the opportunity to do so with respect to this assignment. Unless Client informs F&H to the contrary, on completion of this assignment we understand that we will be entitled to make reference to having undertaken it, including a brief description of its objectives, in F&H newsletters and publications and discussions with third parties regarding work opportunities.

I. Foreign Financial Account Reporting:

- a. Any U.S. citizen or resident (including individuals, corporations, partnerships, trusts and estates) who has a financial interest in, or signature or other authority over, “foreign financial accounts” with an aggregate value exceeding \$10,000 at any time during the prior calendar year, is required to report that relationship to the Internal Revenue Service. Filing requirements also apply to those with direct or indirect control over a foreign or domestic entity with foreign financial accounts, even if the taxpayer does not have foreign financial accounts of its own. Because persons with a financial interest and persons with signature authority are required to submit filings, a single account may require multiple filings. For example, a corporate-owned foreign account would require filings by the corporation and by the individual corporate officers with signature authority.
- b. “Foreign financial accounts”, for purposes of this section, are financial accounts located in a foreign jurisdiction and may include, but are not limited to, bank accounts, mutual funds, securities or brokerage accounts, life insurance, credit cards, retirement plans and interests in partnerships, trusts or other pass through entities having foreign accounts.
- c. These filings must be made by April 15 and the due date of these filings cannot be extended. Failure to disclose the required information to the Internal Revenue Service, even an inadvertent failure, may result in substantial civil and/or criminal penalties.

J. Independent Contractor. It is understood and agreed that each of the parties hereto is an independent contractor and that neither party is, nor shall be considered to be, an agent, partner, joint venturer, or representative of the other. Neither party shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation of behalf of, or in the name of, the other.

K. Safe Environment. Client agrees that in any circumstances wherein F&H personnel are required to work at any premises or location operated or controlled by Client, Client will take all actions and precautions necessary to ensure that Client premises are free from all known or reasonably foreseeable safety hazards, and all forms of harassment and discrimination.

L. Property. The workpapers and files which F&H generates in connection with this AGREEMENT are the property of F&H. Upon the termination of this AGREEMENT, upon request we will return Client’s original records to Client. All F&H workpapers and files will be retained pursuant to F&H’s document retention policy.

M. Electronic Communication. In the interest of facilitating our services to Client, we may communicate by facsimile transmission or by sending electronic mail over the Internet. Such communications may include information that is confidential to Client. Our firm employs measures in the use of facsimile machines and computer technology designed to maintain data security. While we will use our best efforts to keep such communications secure in accordance with our obligations under applicable laws and

professional standards, we have no control over the unauthorized interception of these communications once they have been sent.

N. Dispute Resolution:

- a. Because there are inherent difficulties in recalling or preserving information as the period after an AGREEMENT increases, Client agree that, notwithstanding any applicable statute of limitations, any claim based on this AGREEMENT must be filed within twenty four (24) months after performance of our service for continuing clients and twelve (12) months for clients who discontinue their relationship with F&H, unless Client has previously provided us with a written notice of a specific defect in our services that forms the basis of the claim.
- b. If any dispute, controversy or claim arises in connection with the performance or breach of this AGREEMENT, except with respect to the nonpayment or collection of F&H's fees, either party may, upon written notice to the other party, request that the matter be mediated. Such mediation will be conducted by a mediator appointed by and pursuant to the rules of the American Arbitration Association or such other neutral facilitator acceptable to both parties. Both parties will exert their best efforts to discuss with each other in good faith their respective positions in an attempt to finally *resolve* such dispute or controversy.
- c. Each party may disclose any facts to the other party or to the mediator which it, in good faith, considers necessary to *resolve* the matter. All such discussions, *however*, will be for the purpose of assisting in settlement efforts and will not be admissible in any subsequent litigation against the disclosing party. Except as agreed by both parties, the mediator will keep confidential all information disclosed during negotiations. The mediator may not act as a witness for either party in any subsequent arbitration between the parties.
- d. The mediation proceedings will conclude within sixty days from receipt of the written notice unless extended or terminated sooner by mutual consent. Each party will be responsible for its own expenses. The fees and expenses of the mediator, if any, will be borne equally by the parties. If the parties cannot *resolve* a dispute not related to fees through mediation, either party may pursue action in a court of competent jurisdiction as set forth in **section O** of these Terms and Conditions.
- e. If there is a fee dispute Client and F&H agrees to submit all fee disputes to resolution by arbitration in accordance with the rules of the American Arbitration Association. Client waives the right to make counterclaims in the arbitration of such fee disputes and such arbitration shall be binding and final, as permitted by the law of the applicable jurisdiction. In agreeing to arbitration, we both acknowledge that in the event of a dispute over fees, each of us is giving up the right to have the dispute decided in a court of law before any judge or jury and instead are accepting the use of arbitration for resolution. Each party will bear its own costs of arbitration and both parties shall share equally the costs of the arbitrators.

O. Limitation on Damages. Unless otherwise prohibited by law or applicable professional standard, Client agrees that F&H and its personnel shall not be liable to Client for any claims, liabilities, or expenses relating to this AGREEMENT for an aggregate amount in excess of the fees paid by Client to F&H pursuant to this AGREEMENT, except to the extent finally judicially determined to have resulted from the bad faith or intentional misconduct of F&H. Unless otherwise prohibited by law or applicable professional standard, in no event shall F&H or its personnel be liable for consequential, special, indirect, incidental, punitive, or exemplary losses or damages relating to this AGREEMENT. This limitation on liability provision shall apply to the fullest extent of the law, whether in contract, statute, tort (such as negligence), professional standard, or otherwise.

- P. **Governing Law and Severability.** This AGREEMENT shall be governed by and construed, interpreted and enforced in accordance with the laws of the state of Texas, without giving effect to the provisions relating to conflict of laws. If any provision of this AGREEMENT is found by a court of competent jurisdiction to be 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 in this AGREEMENT.
- Q. **Inherent Conflicts of Interest:** F&H cannot represent a client when there is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client (a "conflict of interest"), unless all affected parties *waived* the conflict of interest in writing. In some very common situations there are inherent potential conflicts of interest between or among clients. For example, an entity, such as a corporation, partnership or limited liability company, has potential conflicts of interest with its respective shareholders, partners or members, board members, officers, management team or employees (collectively "Executives"). Conflicts are present in almost any financial decision of the entity; for example, certain tax elections required to be made by the entity may not benefit all Executives equally, or decisions to make capital improvements, borrow money or admit new owners may have a financial impact on existing Executives. Another common example of inherent conflicts of interest exists between or among estates, trusts or similar entities represented by a fiduciary ("Estate") or a person engaged in succession planning or other disposition of assets ("Grantor"), and the respective primary and contingent beneficiaries ("Beneficiaries"). Tax elections, return positions, or other decisions regarding assets or investments may be required to be made by the Estate, and those elections, positions or decisions may not benefit all Beneficiaries equally. It is common for F&H to provide tax advice and prepare tax returns for both entities and their Executives or Beneficiaries. If F&H represents any entity of which Client are an Executive or Beneficiary, Client hereby acknowledge such conflicts of interest and agree that F&H can advise and prepare tax returns for such entity as well as perform the services described in this AGREEMENT on Client's behalf.
- R. **Limitations on Oral and Email Communication:** We may discuss with Client our views regarding the tax treatment of certain items and may provide Client with tax information in the body of an email. Any advice or information delivered orally or in the body of an email (as opposed to a memorandum delivered as an email attachment) will be based upon limited tax research and a limited discussion and analysis of the underlying facts. Additional research or a more complete review of the facts could affect our analysis and conclusions. Because of these "limitations and the related risks, it may not be appropriate to proceed with any transaction solely on the basis of any oral or email communication, and we will not be liable for "any loss, cost, or expense resulting from Client's decision to rely on any oral or email communication.
- S. **Indemnification:**
- a. Unless otherwise prohibited by law or applicable professional standard, Client shall indemnify and hold harmless F&H and its personnel from and against any causes of action, damages (whether compensatory, consequential, special, indirect, incidental, punitive, exemplary or of any other type or nature), costs and expenses (including, without limitation, reasonable attorneys' fees and the reasonable time and expenses of F&H's personnel involved) brought against or involving F&H at any time and in any way arising out of or relating to F&H's services under this AGREEMENT, except to the extent judicially determined to have resulted from the bad faith, gross negligence, or willful or intentional misconduct of F&H's personnel. This provision shall survive the termination of this AGREEMENT for any reason, and shall apply to the fullest extent of the law, whether in contract, tort, or otherwise.

- b. If any action or proceeding (any of the foregoing being a “Claim”) is threatened or commenced by any third party against F&H that Client are obligated to defend or indemnify under this AGREEMENT, then written notice thereof shall be given to Client as promptly as practicable. After such notice and only so long as F&H’s and Client’s interests with respect to the claim remain consistent, no conflict exists, and, by Client’s control of the defense, F&H’s insurance is not voided or otherwise compromised in any way, Client shall be entitled, if Client so elect in writing within ten days after receipt of such notice, to take control of the defense and investigation of such Claim and to employ and engage attorneys to handle and defend the same, at Client’s sole cost and expense, with the approval of F&H, which approval shall not be unreasonably withheld. F&H shall cooperate in all reasonable respects with Client and Client’s attorneys in the investigation, trial and defense of such Claim and any appeal arising therefrom; provided, however, that F&H may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such Claim and any appeal arising therefrom. Client shall enter into no settlement of a Claim that involves a remedy other than the payment of money by Client without the prior consent of F&H.

- c. After notice by Client to F&H of Client’s election to assume full control of the defense of any such Claim, and F&H’s approval of selected counsel, Client shall not be liable to F&H for any legal expenses incurred thereafter by F&H in connection with the defense of that Claim. If Client does not assume full control over the defense of a Claim, then Client may participate in such defense, at Client’s sole cost and expense, and F&H shall have the right to defend Client in such manner as it may deem appropriate, at Client’s cost and expense.