

STATE OF KANSAS ■ OFFICE OF THE ATTORNEY GENERAL

KANSAS TORT CLAIMS ACT
CONTRACT FOR ATTORNEY SERVICES

This Contract for Attorney Services ("Contract") is made on behalf of the State of Kansas ("the State") by the Office of the Attorney General, and Hite, Fanning & Honeyman, LLP ("Outside Counsel").

WHEREAS, the Attorney General of the State of Kansas is authorized by law to defend civil actions and proceedings brought against employees of any department, branch, agency, authority, institution, or other instrumentality of the state government of the State of Kansas, in such employee's official or individual capacity or both, on account of an act or omission in the scope of such employee's employment as an employee of the state government, or persons who, in the opinion of the State, are otherwise in need of legal representation due to their state employment (*see* K.S.A. 75-701, *et seq.*; K.S.A. 75-4360; K.S.A. 75-6101, *et seq.*, as amended; K.S.A. 75-6116, as amended); and

WHEREAS, the Attorney General has determined that the State of Kansas, is in need of legal representation in a lawsuit that is expected to be filed pursuant to K.S.A. 72-64b01 *et seq.* regarding the constitutionality of the State's public education funding formula (the "Lawsuit"); and

WHEREAS, the State desires to engage Outside Counsel to represent the above-named employee/agency in the Lawsuit; and

WHEREAS, Outside Counsel is qualified by reason of training and experience to provide such representation;

THEREFORE, the State and Outside Counsel agree as follows:

1. Representation. Outside Counsel shall provide representation on behalf of the State of Kansas and other related parties as determined by the Attorney General in the Lawsuit and perform those legal services reasonably necessary for such representation.
2. Representation Guidelines. Outside Counsel shall comply with all requirements contained in the attached Guidelines. Those Guidelines are incorporated into this Contract by reference and are binding as though fully set forth herein. Those Guidelines contain specific requirements concerning staffing, fees, billing, and other matters.

3. Hourly Rates. Subject to the terms of the Guidelines, the State shall compensate Outside Counsel at the rates below for every hour of time spent performing activities necessary to represent the above-named employee/agency:

Name	Hourly Rate
Arthur Chalmers	\$225*
James Robinson	\$225
Gaye Tibbets	\$225
Jerry Hawkins	\$200
Gwynne Birzer	\$175
Rachel Avey	\$175
Carolyn Garrett	\$100

*The rate charged for the initial 100 hours billed by senior partners will be reduced by forty percent (40%) of the above stated rate.

4. Expenses. Subject to the terms of the Guidelines, the State shall reimburse Outside Counsel for actual and reasonable expenses incurred in the performance of those activities necessary to the representation.

5. Term of Agreement. The term of this Contract shall be from the Effective Date until such time as the case is finally concluded or the Contract is terminated as provided for in paragraph 13.

6. Billing Procedure. Outside Counsel shall submit by the 15th day of each month an itemized billing for the previous month's attorney time, cost of consultants or experts, and any other actual expenses incurred. Billing shall be done in accordance with the Guidelines and submitted to the Deputy Attorney General for Civil Litigation.

7. Fiscal Year-End Billing. The State of Kansas fiscal year ends on June 30th. Outside Counsel shall submit to the State by July 5, as provided in paragraph 6 herein, a final invoice for work performed in each fiscal year or an estimate of the total amount due at Fiscal year-end. **If Outside Counsel fails to timely submit said final invoice, payment for services rendered in the prior fiscal year will be forfeited by Outside Counsel. Further, payment of any invoice is contingent upon funding made available by the Kansas Legislature for the services provided herein.**

8. Communications. Outside Counsel shall promptly and regularly advise the State or its designated representative of developments in the Lawsuit. In addition, Outside Counsel shall provide quarterly reports as required in the attached Guidelines.

9. Lead Counsel. Outside Counsel shall act as lead counsel in the Lawsuit,
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and neither the State nor its designated representatives are acting as a "supervisory authority" recognized in Rule 5.1 of the Kansas Rules of Professional Conduct.

10. Amendments. This Contract may be amended by written agreement of the parties during the term of the Contract, including the rate of compensation and the total allowed expenditures. In addition, the State may unilaterally increase the total allowed expenditures.

11. Independent Contractor. The parties agree that Outside Counsel, including any third party employed or compensated pursuant to this contract, is an independent contractor and is not employed, considered, or paid as a state employee. The parties further agree that any document or other tangible object produced or procured by Outside Counsel, or any third party employed pursuant to this Contract, which is produced or procured in the performance of this Contract, shall be the property of the State of Kansas.

12. Additional Required Provisions Attached. The provisions found in the Contractual Provisions Attachment (Form DA-146a), attached hereto, are hereby incorporated in this Contract and made a part hereof. Outside Counsel shall incorporate the provisions of Form DA-146a into any contract with any third party.

13. Termination. Either party may terminate this Contract upon reasonable notice to the other of not less than five (5) days. The State shall have no liability for any fee or expenses, including the expenses of any third party, for work, services, or tangible items produced more than five (5) days after such notice has been given. Any termination by Outside Counsel shall be consistent with the applicable ethical rules.

14. Recoupment of Fees and Costs. If the State and/or employee/agency prevails in the Lawsuit, Outside Counsel shall make reasonable efforts to recoup all available expenses, costs, and fees paid under this Contract, unless otherwise agreed by the parties. Any expenses, costs or fees recovered by Outside Counsel shall be the property of the State and delivered to the State immediately.

15. Reporting Legislator Involvement. Outside Counsel shall abide by K.S.A. 46-239(c) which states:

Any individual within one year after the expiration of a term as a legislator, who contracts to perform any service for a state agency other than the legislature, shall not later than 10 days after the acceptance of such contract, file a disclosure statement as provided in this section. Any agency of the State of Kansas which enters into a contract with any legislator, or any member of a firm of which such legislator is a member, under which the legislator or the member of such firm is to perform services for such agency for compensation shall make a report on a form prescribed and provided by the commission giving the name of the state agency, the purpose of the employment and the method of determining and computing the compensation.

for such employment. All such forms shall be filed quarterly in the office of the secretary of state.

Outside Counsel agrees to notify the State in the event K.S.A. 46-239(c) is applicable and assist the State in fulfilling reporting requirements.

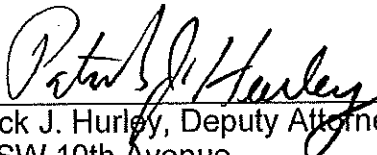
16. Confidentiality. Outside Counsel shall keep confidential any and all medical records received or reviewed during the course of representation in this case and shall not disclose them or use them for any purpose other than defending the Lawsuit. Outside Counsel shall seek reasonable protective orders restricting access to such records only for purposes of the Lawsuit and prohibiting disclosure beyond that necessary for purposes of the Lawsuit.

17. Settlement. Outside Counsel understands that settlement of legal claims involving the State and/or State employees is subject to the terms of the Kansas Tort Claims Act, K.S.A. 75-6101, *et seq.* Outside Counsel is not authorized to enter into any settlement without the approval of the Office of the Attorney General. Moreover, any such agreement requiring payment by the State of Kansas generally requires approval by the State Finance Council, and Outside Counsel shall include this contingency in any settlement agreement that is negotiated.

18. Effective Date. This Contract shall be effective as of August 4, 2010.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the dates written below.

OFFICE OF THE ATTORNEY GENERAL

By: 
Patrick J. Hurley, Deputy Attorney General
120 SW 10th Avenue
Topeka, Kansas 66612-1597
TEL: 785-296-2215/FAX: 785-296-6296
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HITE, FANNING & HONEYMAN, LLP

By: 
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EMAIL: parks@hitefanning.com
Social Security/Federal I.D. Number 43-1877461

APPROVED:

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a vertical line and a short horizontal stroke at the top.

OFFICE OF THE ATTORNEY GENERAL
BUDGET DIRECTOR

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 4th day of August, 2010.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or

damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.

11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

**STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL**

GUIDELINES FOR CONTRACTS FOR LEGAL SERVICES

I. COMMUNICATION WITH THE OFFICE OF THE ATTORNEY GENERAL

The Office of the Attorney General respects the independence of our retained counsel. However, to assist us in our administrative functions, we require a quarterly status report for all cases you are handling for us. The report will generally require no more than one page for each case. Once submitted, reports should only be updated to reflect significant developments over the preceding quarter and action items for the immediate future. Do not repeat information previously reported to us. Your reports should be brief if you are keeping us routinely informed of all significant developments. Compensation for the preparation of the reports will be limited to an amount equal to one hour of attorney time per quarter per case.

II. BUDGETING

Outside Counsel must provide an estimate of the fees and expenses to be incurred for each fiscal year. The fiscal year begins on July 1 of each year, and estimates for the new fiscal year should be submitted at least 30 days in advance. The estimates must cover the scope of work, major assumptions, major phases of the work and anticipated costs of each legal project. **You must notify the Office of the Attorney General when you have reached billing totaling 85% of the approved estimate in any given fiscal year. You must also notify us promptly in the event unanticipated issues cause the estimated legal fees or disbursements to vary from the estimated amount specified in the contract (or amendment). Failure to provide the required notification herein may result in delayed payment or nonpayment for services billed in excess of the contract (or contract amendment) amount.**

III. DISCOVERY

A. Discovery and Motion Practice

Discovery and motion practice need to be cost-effective. Responses to document production requests should be focused, and the expense for selecting and reproducing documents should be minimized.

B. Depositions

We will normally pay for only one attorney at a time to attend depositions. Compensation for more than one attorney (or a paralegal in lieu of the additional attorney) will be contingent on preapproval by the Assistant Attorney General assigned to your case. Additionally, we expect Outside Counsel to carefully evaluate whether or not it is necessary to depose collateral witnesses or if a sworn statement or interview may serve as well.

IV. LEGAL RESEARCH

We have retained your firm because of its expertise. We will not pay for basic legal research to educate lawyers in the fundamental rules of law. Technical opinion letters should be avoided unless specifically requested. Necessary legal research should be only as thorough as necessary to represent the State.

We consider the subscription and original purchase charges for computerized legal research services to be an overhead cost, augmenting the firm's legal library. We expect law firms to have access to and use traditional legal publications, either in print or on CD-ROM, to retrieve and view established case, statutory and related materials, and we will not pay charges for on-line access to such materials. Actual on-line charges for reasonable computerized research services will be paid if this method of research is the most cost-efficient means available, and a description of the subject of the research is included in the billing statement.

V. SETTLEMENT

In order to promote uniformity and efficiency in the settlement or compromise of actions falling within the purview of the Kansas Tort Claims Act, all such settlements or compromises must conform to the provisions of K.S.A. 75-6101, *et seq.* and the current version of the Attorney General's policy statement on settlement procedures.

All settlements requiring any payment by the State of Kansas must be approved by the State Finance Council, which meets only periodically. Thus, all settlement agreements must contain language acknowledging that such approval is required.

VI. STAFFING

A. Approved Timekeepers

Generally, the Office of the Attorney General will pay for a team of up to two attorneys and one paralegal to perform services on any case. Any deviation from this staffing model must be considered and approved on a case by case basis. You must

advise us regarding personnel to be assigned on each case, and we will normally pay fees only for the attorneys and paralegal you have designated.

The Office of the Attorney General will not pay for more than two hours per month for work performed by firm personnel who have not been identified as assigned to a matter. We will not pay for the learning curve of replacement personnel substituted for original team members or training for inexperienced associates. These charges are overhead that should be borne by your firm.

B. Delegation of Work

If billing rates for partners and associates differ, the use of associates and legal assistants rather than partners should reduce total bills, not increase them. Tasks should suit the personnel assigned to perform them. For example, attorneys should not perform paralegal tasks, such as preparing deposition summaries and performing routine document reviews. Secretaries, librarians, file clerks, word processors and messengers (performing tasks such as word processing, photocopying, filing, delivering materials to the court or opposing counsel, scheduling depositions and hearings, arranging for deposition reporters and/or travel) are not to be billed as firm personnel.

C. Experts, Consultants, and Additional Counsel

Prior to retaining other counsel, experts or consultants, you must prepare a written request for approval directed to the Deputy Attorney General for Civil Litigation. Retention of such individuals must be approved in advance. In some instances, the Office of the Attorney General may request that their invoices be submitted for direct payment.

VII. FEES

A. Compensable Legal Services

Fees billed for professional services should reflect only the time actually devoted to such services during a given day. Matters capable of being handled by a secretary, case clerk or courier should not be billed. In general, time spent on such items as internal conferences, legal research on basic or general legal principles, training and supervision of inexperienced attorneys and paralegals, drafting standard form documents, and duplicative attendance at meetings, depositions and hearings, should not be billed.

B. Duplication of Effort

We do not normally pay for more than one attorney to attend a hearing or deposition, conduct a field investigation or interview, or otherwise handle casework

Guidelines for Outside Counsel

requiring an appearance other than trial. Preapproval is required in instances where more than one attorney (or a paralegal in lieu of an attorney) is present. We also ask you to avoid the involvement of more than one attorney in telephone and office conferences with us and within your own firm. Should strategic conferences involve more than one individual from your firm, whether they are internal conferences or those that involve other parties, we will pay for the time billed by the senior attorney only.

C. Travel Time

We will accept reasonable charges for "lost opportunity" time, not to exceed four (4) hours per travel day or as otherwise approved in advance. Time when substantive work can be performed, such as during airplane or train travel, should not be applied to the four (4) hour maximum – whether work is done or not, and whether work actually done is for the State or for another client. The State expects you to use your travel time to its advantage.

VIII. BILLING

A. Billing Judgment

Each billing statement should be reviewed personally by the responsible firm lawyer to ensure that all time charged reasonably reflects the value of the work performed, and that all recorded expenses were reasonably and necessarily incurred. Every bill from Outside Counsel is an assertion that the legal services and disbursements reflected on the bill were both necessary and reasonable. Be aware that attorney invoices may be subject to the Kansas Open Records Act; time descriptions should be written with that in mind.

B. Guidelines Compliance

The Office of the Attorney General will make every effort to process properly submitted invoices for payment. However, our ability to pay your invoices depends on your keeping the case budget current and on charges being billed in adherence with these Guidelines. The Office of the Attorney General will not pay any interest or service charge on the outstanding balance in the event that payment is somehow delayed. **Further, payment is at all times contingent upon the availability of funds approved by the Kansas Legislature for payment of such services.**

Every invoice will be reviewed for compliance with these Guidelines, and a bill review report will be prepared. If we are billed for items we decline to pay under these guidelines, such as clerical work, overhead costs, or excessive expenses, these charges will be deducted from your statement prior to payment, and will not be paid. If your statements include charges that inadequately detail the work done or expenses incurred, payment for these charges will be suspended until you resubmit each charge,

correctly rebilled, on a separate invoice.

IX. BILL FORMAT

Your monthly invoices should include the following information:

1. The case caption;
2. The court case number;
3. The date of each service performed and a full description of each service rendered. A full description should include the activity performed, the names of the individuals involved, and the subject or purpose of the charges. For example, bills should reference the purpose of conferences and the names of participants, the subject matter and recipient of all correspondence prepared or reviewed by the firm, the titles of documents, proceedings and motions, and the specific issues involved in any legal research billed.
4. The name of each timekeeper performing each service and the number of hours worked on each task, billed in .10 hour increments; ***"Block billing" is not permitted;***
5. The hourly rate for each timekeeper and the resulting total charge for each service;
6. Total fees for all professional services rendered during the billing period;
7. An itemized list of all disbursements (include the number of copies and per page charge for photocopies); and
8. The combined total for professional services and disbursements for the month or other approved billing period, and an individual list of the total hours billed by each attorney and paralegal during the billing period.
9. A separate billing summary listing the date, invoice number, fees and expenses from each invoice previously submitted to the State, and a cumulative total billed on each matter.

Invoices which do not meet these guidelines will not be paid.

X. EXPENSES

We expect Outside Counsel not to profit on expenses incurred on our behalf. Mark-ups on internal or outside expenses are not allowed. We will pay only the actual cost of such expenses as long distance telephone, facsimile, courier services, express mail, and postage. Outside Counsel should always be prepared to support the actual cost of any disbursement with the appropriate supporting documentation. You are responsible for ensuring that retained vendors comply with our billing guidelines.

All travel expenses must be itemized on your bill. This accounting must include detailed information about car rental, hotel, air and train fare, regardless of amount.

A. Internal Photocopying

Copying will be reimbursed at a maximum of 10 cents per page, or your actual cost if lower. The actual number of copies and per copy rate must be reflected on the bill.

B. Fax Charges

The Office of the Attorney General will pay for telephone line charges incurred to send faxes. However, charges for receipt of facsimiles and for other overhead expenses of the firm, such as machine maintenance, paper or operator costs, will not be paid. There should be no charges for local faxing.

C. Hotel Accommodations

The Office of the Attorney General will pay for hotel accommodations for attorneys and paralegals necessarily required to travel out of town, but such accommodations shall not exceed the lowest single occupancy rate available in moderately priced hotels.

D. Personal Expenses

The Office of the Attorney General will not pay additional charges for room service, in-room movies, garment cleaning, or similar items charged to the room. Non-reimbursable expenses include charges for unused guaranteed hotel reservations, airline headsets, recreation and health club facilities and personal trip insurance.

E. Meals

Meal charges for attorneys and paralegals generally will not be paid whether or not out of town. Exceptions may be made for clearly justified hospitality provided to witnesses or others where the names and the reason for the hospitality is stated on the bill. Any such hospitality shall be reasonably priced. ***Liquor charges will***

not be paid under any circumstances.

F. Airfare

Air travel will be reimbursed at coach rates or lower excursion or discounted fares. Information showing the party traveling, purpose, date and destination must be included on your bill.

G. Mileage

The Office of the Attorney General authorizes mileage reimbursed at the current per mile rate allowed by the IRS for business mileage expense. Mileage reimbursement should indicate number of miles and rate. In addition, all expenditures incurred for parking and tolls will be fully reimbursed. Fines for moving and parking violations will not be reimbursed.

H. Automobile Rentals

Reimbursement rates for car rental expense will be based on compact or intermediate car rentals. Cars should be rented only where a rental car represents the most economical form of transportation.

I. Mail and Express Deliveries

Standard mail services should be used whenever possible. Written correspondence and documents should be completed in time to avoid unnecessary use of express mail and delivery services. Charges for certified, registered, insured, other special handling or express mail should be billed at the actual cost incurred and must be itemized.

J. Staff Overtime

Although it may be necessary for your staff to work overtime on a project, the Office of the Attorney General has no control over your workload or work assignment priorities. Therefore, we consider overtime to be firm overhead.

K. Business Development Costs

The Office of the Attorney General will not reimburse entertainment expenses, such as the cost of tickets for theater, sporting events and related transportation expenses.

XI. AUDITING

The Office of the Attorney General has the right to audit all bills, using either in-

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house auditors or the services of an independent auditor. Outside Counsel must maintain all necessary bills, pre-bills, receipts and records and will make them available to us or our representatives for this purpose. The Attorney General will give Outside Counsel reasonable advance notice of any such audit.