

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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	:	Chapter 11
In re	:	
	:	Case No. 24-10164 (KBO)
CANO HEALTH, INC., et al.,	:	
	:	(Jointly Administered)
Debtors.¹	:	
	:	Re: Docket Nos. 250 & 525
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**NOTICE OF FILING OF ADDITIONAL
ENGAGEMENT LETTER WITH KPMG LLP**

PLEASE TAKE NOTICE that on February 15, 2024, Cano Health, Inc. and certain of its subsidiaries, as debtors and debtors in possession (the “**Debtors**”) in the above-captioned chapter 11 cases filed the *Debtors’ Application pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Fed. R. Bankr. P. 2014(a) for Entry of an Order (i) Authorizing the Retention and Employment of KPMG LLP to Provide Tax Compliance, Tax Provision, Tax Consulting, Valuation, and Accounting Advisory Services to the Debtors Effective as of the Petition Date, and (ii) Granting Related Relief* [Docket No. 144] (the “**Application**”)² with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

PLEASE TAKE FURTHER NOTICE that, on March 5, 2024, the Court entered an order [Docket No. 250] (the “**Order**”) that, among other things, (i) authorized the employment and retention of KPMG LLP (“**KPMG**”) to provide tax consulting services to the Debtors and (ii) approved an expedited process by which the Debtors may retain KPMG to provide additional

¹ The last four digits of Cano Health, Inc.’s tax identification number are 4224. A complete list of the Debtors in the chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.kccllc.net/CanoHealth>. The Debtors’ mailing address is 9725 NW 117th Avenue, Miami, Florida 33178.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Application.



services other than those set forth in the Application and the engagement letter without further order of the Court and without the need to file formal applications to expand KPMG's retention.

PLEASE TAKE FURTHER NOTICE that, on March 22, 2024, the Debtors and KPMG entered into an additional engagement letter (the "**March 2024 Engagement Letter**") for the provision of accounting advisory services, valuation services, and financial reporting services. *See* Docket No. 525.

PLEASE TAKE FURTHER NOTICE that, on April 24, 2024, the Debtors and KPMG entered into an additional engagement letter (the "**April 2024 Engagement Letter**") for the provision of additional tax services. The April 2024 Engagement Letter is attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that, in accordance with the Order, any responses or objections to the retention of KPMG pursuant to the April 2024 Engagement Letter (each, an "**Objection**") must be made in writing and filed with the Clerk of the Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **May 13, 2024 at 4:00 p.m. (prevailing Eastern Time)** (the "**Objection Deadline**").

PLEASE TAKE FURTHER NOTICE that if an Objection is timely filed and served in accordance with the Order and such Objection cannot be consensually resolved, the Debtors will promptly schedule a hearing on such Objection before the Court.

PLEASE TAKE FURTHER NOTICE that if no Objections are timely filed and served in accordance with the Order, upon the expiration of the Objection Deadline, the retention of KPMG pursuant to the April 2024 Engagement Letter shall be approved pursuant to the Order.

Dated: May 3, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ James F. McCauley

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*Attorneys for the Debtors
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Exhibit A



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Cano Health, Inc.
9725 NW 117th Ave., Ste. 300
Miami, Florida 33178

Attention: Mark Kent
Chief Executive Officer

This Engagement Letter, including the Standard Terms and Conditions and any exhibits, attachments, addenda or appendices attached hereto (collectively, the "Agreement"), dated as of April 24, 2024 (the "Effective Date"), is between Cano Health, Inc. ("Client") and KPMG LLP ("KPMG"), whereby Client is engaging KPMG to provide the professional services described herein (the "Services").

1. Scope of Services

1.1. Tax Provision Services

1.1.1. Tax Provision Preparation

KPMG will provide the following interim/quarterly and year-end tax provision services for 2024:

- Assist in the identification and computation of temporary and permanent differences between financial income and taxable income;
- Compute a preliminary income tax provision;
- Compute preliminary income tax related balance sheet account adjustments;
- Assist in the preparation of draft footnote disclosures;
- Assist in the preparation of draft income tax provision workpapers;
- Assist in preparation of the valuation allowance and uncertain tax positions documentation; and
- Assist Client in its efforts to work with its independent auditors to draft income tax provision work papers.

1.1.2. U.S. Federal Corporate Alternative Minimum Tax

For each year covered under this Agreement, Client and KPMG will agree in writing (email acceptable) the additional fees KPMG will incur to compute Client's CAMT analysis, calculations, and reporting, as applicable, as part of preparing the Returns and extensions included herein. Client assumes responsibility for verifying and approving the CAMT analysis, calculations, and/or reporting, as applicable.

1.1.3. Application of Accounting Principles

KPMG's services are to be directed toward the straightforward application of tax rules to Client's facts and the preliminary computation of Client's income tax provision. Unless separately engaged to do so, KPMG will not express an opinion on the possible outcome of an uncertain tax position.

This engagement does not contemplate the provision of oral advice or the issuance of a written report on the application of accounting principles pursuant to AU-C 915, Reports on Application of Requirements of an Applicable Financial Reporting Framework. Accordingly, KPMG's services will not be directed toward consultation on the application of accounting principles to Client's particular facts and circumstances.



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1.1.4. Succeeding Year Engagement Planning Activities

KPMG will provide preliminary engagement planning activities related to the tax provision for the tax year immediately succeeding the last tax year covered by this Agreement.

1.1.5. Out of Scope Services

The following services are not within the scope of this Agreement:

- Material one-off transactions undertaken by Client that require analysis of facts and research of the appropriate tax treatment, including statements and disclosures. Material transactions include, but are not limited to, determining the amount and character of gain or loss upon disposition of asset(s) or debt refinancing and associated tax considerations of incurred debt costs.
- Complex tax issues or changes in federal or state tax law and/or regulations, including newly enacted law or issued guidance that requires detailed analysis of facts and/or research to determine the appropriate tax treatment of an item, development of facts, research, analysis and qualification of amount.
- Specialized tax elections and accounting method changes including those, but not limited to, method changes impacted by new tax legislation or guidance or the adoption of new accounting standards.
- Separate tax-related analyses or reports including, but not limited to, transfer pricing studies, or studies or reports addressing: ownership changes, research and experimentation credits, uniform capitalization; asset/liability basis, stock basis, earnings and profits, foreign tax credits, permanent establishment studies or nexus studies.

1.1.6. Deliverables

KPMG shall provide the following Deliverables:

- Draft income tax provision including footnote disclosures and related workpapers, and documentation as required.

When, in the course of providing general tax consulting services, it is determined that the service would exceed the scope of general tax consulting, preliminary engagement planning activities undertaken prior to the issuance of a separate engagement contract for the discrete tax consulting project are intended to be covered by the Agreement.

1.2. Term of the Agreement

The term hereof shall begin on the Effective Date and, unless terminated as contemplated herein, shall continue for 15 months from the Effective Date.

2. Fees

2.1. Tax Provision Services

The fee for this engagement, on an as requested basis, will be based on the actual time incurred to complete the work at 60% of our standard hourly rates for the individuals involved in the services. Given the dynamic and technical nature of our work, it is difficult to provide a concise estimate of the level of effort that will be required to complete our engagement. Based on our experiences and discussions with you, we estimate that our services under this engagement will be \$120,000 for Q1 2024, Q2 2024, Q3 2024 and Q4 2024 (Q1 \$30,000, Q2 \$15,000 Q3 \$15,000 and Q4 \$60,000).



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KPMG will prepare the provision once all information has been provided by the Client on an agreed upon schedule/timing. Once all information is provided, KPMG will need 5 days at Interim and 11 days at year-end to prepare the initial draft of the income tax provision. Client will provide any comments within 48 hours of receiving the draft provision and KPMG will then need 48 hours from when comments are received to prepare a final version of the income tax provision. To the extent Client does not provide information or perform review procedures as described above, KPMG may incur additional hours, which shall be invoiced as incurred.

If there are updates to the underlying information request (e.g. late GAAP entries) KPMG will need 48 hours to incorporate these changes into the draft tax provision. This may result in additional fees estimated to be \$5,000 - \$8,500 per rerun.

Billing arrangement will be reviewed on a periodic basis and as applicable adjusted if Cano Health personnel are hired or process efficiencies are obtained, which materially adjust the budgeted KPMG hours for providing the services described within this SOW.

2.2. Other Fees & Expenses

We will endeavor to notify you if we encounter any circumstances that warrant additional time or expense. If such matters exceed the scope of this Agreement, we will issue an addendum or separate engagement contract to confirm the scope and related terms of any additional engagements.

3. Payment Schedule

Fees will be billed as work is performed.

4. Client Obligations

Client shall:

- Assume responsibility for management analysis and/or decision-making with respect to the application of accounting principles relevant to the income tax provision, related financial statement disclosures and balance sheet accounts (such as determining the necessity or amount of a valuation allowance or reserve for uncertain tax positions).
- Review and approve all draft and preliminary Deliverables.
- Ensure that adequate support exists for the Client's final tax provision, current and deferred income taxes, financial statement disclosures and underlying tax assertions (e.g., uncertain tax positions, valuation allowance, indefinite reversal criteria for outside tax basis for foreign subsidiaries).
- Consult with its independent auditor on the application of accounting principles.

5. Assumptions

The Services and fees are subject to the following assumptions:

- There have been and, throughout the term of the Agreement, will be no:
 - significant changes to the organizational, legal and/or capital structure or business operations of Client, including the legal and tax classifications of any entity or number and experience of personnel supporting Client's tax provision preparation that have not been disclosed to KPMG as of the Effective Date;
 - changes to the currently effective tax laws and related authorities impacting Client's actual or potential tax return reporting obligations and related tax provision;



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- tax accounting method changes that have not been disclosed to KPMG as of the Effective Date; or
- changes to the current status, format or quality of underlying financial data or information systems that significantly impact the preparation of the provision and related computations and work papers.

6. Client Access to Tools

6.1. *Client Access to Third Party Software*

In connection with the engagement, selected personnel of Client may be granted limited access to certain KPMG-licensed third-party software owned and hosted by, or by a third-party on behalf of, Thomson Reuters (Tax and Accounting) Inc. (the "Software") used by KPMG for the Services pursuant to the terms of this engagement ("Client Use Access"). KPMG's software license for the Software permits Client Use Access. The terms of Client Use Access under the license require KPMG to be the predominant user defined as more than fifty (50) percent of the total time the Software is used for the Services included in this engagement. Client Use Access time may be tracked or monitored for compliance with this predominant user requirement and either KPMG or Thomson Reuters may modify or terminate Client Use Access in its sole discretion. When the Services include income tax return preparation, KPMG must sign as paid preparer on all of the tax returns processed in the Software. When KPMG is engaged for electronic filing services using the Software access for electronic filing submittals to tax authorities is restricted to KPMG only.

The Software is being provided "as is" without warranties of any kind; any and all implied warranties of merchantability or fitness for a particular purpose are expressly excluded. Client acknowledges and agrees that KPMG shall have no liability of any kind or nature to Client relating to, arising from or in connection with the use of the Software by Client or its personnel and accepts full and complete responsibility for any liability that may occur as a result of such use. Client agrees to indemnify KPMG against all claims, liabilities, costs and expenses (including reasonable legal fees) incurred by KPMG in the event of a third-party claim, demand, suit or action arising out of or relating to unauthorized use of the Software by Client or its personnel.

Client is solely responsible for the accuracy of all information input to the Software and related processing performed by Client personnel, and additional time that may be incurred by KPMG to correct processing input errors may be billed at KPMG standard rates. The Software is not a data repository or system of record for any data. In relation to the Software and the limited access provided hereunder: Thomson Reuters is an express beneficiary of any limitations on liability, disclaimers, and indemnities in favor of KPMG under KPMG's agreement with Client; and Client agrees that any claim relating to the Software shall be made against KPMG and not Thomson Reuters.

The Client Use Access to the Software is subject to a set-up process that will commence within twenty (20) business days following the receipt of the signed engagement letter. All logon identifiers and passwords for authorized users of the Software ("Authorized Users") will be managed by KPMG and will be unique for each Authorized User of Client. Client is solely responsible for its users and will be responsible for its user's access. Client agrees to provide a list of their Authorized Users to KPMG for set-up and promptly notify KPMG if an Authorized User leaves Client's employ or is no longer providing services to Client for which the Software access is needed.

Client acknowledges that Thomson Reuters (Tax and Accounting) Inc. and its service providers may employ different information security mechanisms or practices with respect to the Software than are specified in KPMG's agreement with Client.

If the engagement is longer than one year, access to the Software will be reviewed and, if appropriate, renewed each tax year.

6.2. *Enabling Tools*

KPMG will license the Enabling Tools enumerated herein for Client's use to facilitate the Services.



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To provision access to Enabling Tools, Client shall provide a list of Client's users to KPMG and shall promptly notify KPMG if a user leaves Client's employ, is no longer involved in the Services, or should otherwise have their access modified or removed.

6.3. *Microsoft SharePoint Online*

KPMG will provide Client with access to Microsoft SharePoint Online as an Enabling Tool.

6.4. *Access to KPMG Tax Applications via KPMG Digital Gateway*

KPMG will provide Client with access to KPMG Digital Gateway with the following capabilities, [visualizations and/or applications (if applicable)] as detailed below through KPMG Digital Gateway, as Enabling Tools, (collectively "Applications"):

- **Data & Analytics**

KPMG Digital Gateway includes functionality for viewing and sharing data across engagements for Client and its related companies around the globe and for linking to other tax applications that Client and its related companies receive from KPMG and other Member Firms. Use of any applications linked to KPMG Digital Gateway is subject to the corresponding agreement between Client and/or its related companies on the one hand, and KPMG or the providing Member Firm on the other. Information provided to KPMG Digital Gateway, including through linked applications, may be used by KPMG and other Member Firms to provide tax analytics and services to Client and its related companies.

7. **Other Matters**

7.1. *Communication with Independent Auditor*

KPMG assumes no responsibility for auditing information provided by Client or for expressing an opinion on any part of Client's financial statements. Those are the sole responsibility of Client's independent auditor. If necessary and appropriate, KPMG will meet with Client's independent auditor during the engagement to discuss the Services and any preliminary findings.

7.2. *Consents to Disclose and Use Tax Return Information*

In connection with the Services, KPMG may be subject to certain federal and state laws that prohibit KPMG from disclosing Client's tax return information to third parties, or KPMG's use of that information for purposes other than the provision of tax services to Client, unless such disclosure or use is otherwise authorized by law or Client consents to such disclosure or use. Likewise, federal law generally precludes KPMG from disclosing Client's tax return information to service providers outside the United States without Client's consent. Accordingly, KPMG requests Client's consent for the disclosures and uses described with more specificity below.

7.2.1. **Consent for Disclosure of Tax Return Information to Third Parties Within and Outside the United States**

To complete the Services, which may include tax return preparation services, as well as preliminary engagement preparation and tax return preparation activities for the immediately succeeding tax year, KPMG may disclose some or all of Client's tax return information from prior tax years, the current tax year and the immediately succeeding tax year to certain third-party contractors, other entities or service providers within or outside the United States. The entities that may receive such disclosures include: KPMG Global Services Private Limited ("KGS"), an entity that is located in India and controlled by KPMG and certain other members of the KPMG network; any successor entity to KGS; and certain other members of the KPMG network and other third-party subcontractors that may otherwise assist in the completion of the Services.



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To complete the Services, KPMG may also disclose some or all of Client's tax return information to certain third-party contractors located within the United States who are under KPMG's oversight and assist in the delivery of the Services.

Client hereby consents to the disclosure of Client's tax return information to the third parties who are located within and outside the United States, as described above.

7.2.2. Digital Gateway - Consent to Use and Disclose Client's Tax Return Information Within or Outside the United States to Develop Analytics that May Enhance the Services KPMG Offers to Client and Other Clients, to Develop New Services and Technologies, and to Complete Other Engagements with Other Members of the KPMG Network

Supplementary to the terms of the Agreement and in connection with Client's access of KPMG Digital Gateway, KPMG requests Client's specific consent to allow KPMG and other member firms of the KPMG network to use Client's tax return information and other data within Digital Gateway, for other purposes, such as improving the delivery or quality of services or technology to Client and other clients, thought leadership projects and to allow Client and other clients to evaluate various business transactions and opportunities. More particularly, KPMG requests Client's consent to allow KPMG and other member firms of the KPMG network to produce anonymized statistical compilations, to analyze tax return information, to develop benchmarks as well as new services and technology, and to allow KPMG to evaluate KPMG's performance on Client's behalf and on behalf of KPMG's other clients ("Data Analytics Services"). KPMG also requests Client's specific consent to disclose Client's tax return information and other data within Digital Gateway to members of the KPMG network and other onshore and/or offshore third-party service providers such as KGS and the other parties described above to assist KPMG in performing the type of Data Analytics Services described above. In addition, KPMG and such third-party service providers may also prepare reports, studies and presentation decks reflecting statistics and reasoned conclusions regarding tax metrics, economic benchmarks, and tax and general business compliance risks and opportunities (the "Output").

KPMG also requests Client's consent to disclose the Output to other clients for whom KPMG or other members of the KPMG network perform or are seeking to perform tax and tax-related services. More specifically, the Output may be included in presentations to Client and such other clients. These materials will be intended to help Client and KPMG's other KPMG network clients understand where each of KPMG's clients stands relative to peers, to identify transactions that may be beneficial for Client's businesses, and to suggest areas in which KPMG or other members of the KPMG network might work with Client or KPMG's other clients to achieve Client's or such clients' objectives, both with respect to accurate and compliant tax reporting and tax efficient planning. Any such disclosures of the Output will be anonymous as to taxpayer identity as required by law.

Finally, in connection with Client's access of KPMG Digital Gateway under the Agreement, KPMG requests Client's consent to use Client's tax return information and other data within Digital Gateway to allow KPMG and other members of the KPMG network to perform other services for Client and Client's related entities. KPMG also requests Client's consent to disclose Client's tax return information and other data within KPMG Digital Gateway to members of the KPMG network and other onshore and/or offshore third-party service providers such as KGS and the other parties described above to perform other services engagements by KPMG or other members of the KPMG network for Client and Client's related entities.

Client hereby consents to:

1. (a) the use by KPMG and the third parties identified herein of any and all tax return information including any such information contained in Client's federal, state, and foreign income tax returns set forth in the Agreement and supporting schedules and other data within Digital Gateway for the development and provision of the Data Analytics Services; (b) the disclosure of such information to the members of the KPMG network and other third-party service providers for the development and delivery of the Data Analytics Services; and (c) the disclosure to KPMG's and other KPMG network members' clients and potential clients of the Output from the Data Analytics Services.



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2. the use by KPMG, other members of the KPMG network and the third parties identified herein of any and all tax return information including any such information contained in Client's federal, state, and foreign income tax returns set forth in the Agreement and supporting schedules and other data within KPMG Digital Gateway to perform other services engagements by KPMG or other members of the KPMG network for Client and Client's related entities; and (b) the disclosure of such information to the members of the KPMG network and other third-party service providers for other services engagements by KPMG or other members of the KPMG network for Client and Client's related entities.

7.2.3. Representation Regarding Protection of Tax Return Information from Unauthorized Disclosure or Use

Consistent with the terms of the Agreement, KPMG represents that with respect to each member of the KPMG network and third party referred to in the consents set forth above, KPMG and the third parties each have technical, legal and/or other safeguards, measures and controls in place to protect Client's tax return information from unauthorized disclosure or use.

7.2.4. Duration of the Consent

If Client agrees to the disclosure and use of Client's tax return information for the purposes set forth above and in the terms of the Agreement, Client's consent is valid for ten (10) years in order for KPMG to complete the Services, including, but not limited to administrative support activities such as data storage, or for such longer periods as required in order for KPMG to assist Client with future tax-related needs and/or to comply with legal, regulatory, and professional standards.

7.2.5. Right to Refuse to Provide Consent

Client has the right to decline to provide any or all of the consents requested herein or to request a more limited disclosure of Client's tax return information than that provided in any such consent. However, KPMG reserves the right to decline to provide any tax return preparation services described in the Agreement to which this consent relates in the absence of consent or if KPMG concludes that the more limited disclosure Client authorizes will interfere with the efficient and effective performance of such tax return preparation services.

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Cano Health, Inc.


Mark Kent
Chief Executive Officer

4/24/24
Date

KPMG LLP


Steven Fistere
Partner

April 24, 2024
Date



1. Definitions

- (a) "Advice" means any advice, recommendations, work product, Deliverables or other information provided by KPMG in connection with the Services.
- (b) "Agreement" means the Engagement Letter and these Standard Terms and Conditions for Advisory and Tax Services and any exhibits, attachments, addenda or appendices attached thereto.
- (c) "AICPA" means the American Institute of Certified Public Accountants.
- (d) "Client" or "you" (or derivatives thereof) means the engaging entity or entities, meaning the addressee(s) of the Engagement Letter.
- (e) "Client Materials" means any and all materials, facilities, network, hardware, systems, software, data and other equipment and information, that in each case is owned by or licensed or leased to you including any third-party materials, to which we are provided access in connection with the Services.
- (f) "Client Parties" means Client, its parent company and their affiliates, and their respective directors, officers, employees, and agents.
- (g) "Condition" means any acts of God, wars, revolution, civil commotion, pandemic, epidemic, terrorism, acts of public enemy, embargo, acts of government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, or any other circumstances beyond the reasonable control of the non-performing party.
- (h) "Confidential Information" means all documents, reports, data, records, forms and other materials that due to their character and nature, a reasonable person under like circumstances would treat as confidential received by one party (the "Receiving Party") relating to the provision or receipt of Services or otherwise in connection with the Agreement from, or on behalf of, the other party (the "Disclosing Party"); except to the extent such confidential information : (1) is already known to the Receiving Party at the time of disclosure by the Disclosing Party without an obligation of confidentiality; (2) is or becomes publicly known through no wrongful act of the Receiving Party; (3) is independently developed by the Receiving Party without benefit of the Disclosing Party's Confidential Information; (4) is information provided by KPMG, as the Disclosing Party, to Client with respect to the tax treatment or tax structure of a transaction; or (5) is received by the Receiving Party from a third party without restriction and without a breach of an obligation of confidentiality.
- (i) "Delayed Party" means the party delayed or unable to perform its obligations under this Agreement.
- (j) "Deliverables" means the items created or configured for delivery to Client that are specified as deliverables in the Engagement Letter.
- (k) "Engagement Letter" means the engagement letter to which these Standard Terms and Conditions for Advisory and Tax Services are attached.
- (l) "Enabling Tools" means KPMG proprietary and third-party software tools that KPMG makes available to facilitate KPMG's Services to you, such as project management or communications tools.
- (m) "Indemnified Party" means the party entitled to indemnification.
- (n) "Indemnifying Party" means the party obligated to indemnify.
- (o) "Intellectual Property Rights" means patents, copyrights, trademarks, trade secrets, and similar proprietary rights.
- (p) "KPMG" or "we" (or derivatives thereof) means KPMG LLP, a Delaware registered limited liability partnership and the United States member firm of the international KPMG network of independent firms.
- (q) "KPMG Parties" means KPMG, Member Firms and the legal entities comprising KPMG International and their respective partners, principals, employees, and agents.
- (r) "KPMG Property" means KPMG's, or its licensors', inventions, technology, know-how, methodologies, works of authorship and other materials created prior to, independently of, or in the course of providing the Services, and all improvements, enhancements and modifications thereto and derivative works thereof, including all Intellectual Property Rights appurtenant thereto, except that KPMG Property shall not include Client Confidential Information.
- (s) "KPMG Resources" means KPMG, Member Firms and third-party providers engaged by KPMG or a Member Firm, which may be located in or outside of the United States.
- (t) "Liabilities" means liabilities, losses, expenses (including reasonable attorneys' fees and expenses), fines, penalties, taxes, and other direct damages.
- (u) "Legal Demand" means a validly issued legal or regulatory demand or request, subpoena or other legal process.
- (v) "Member Firms" means the members of the international KPMG network of independent firms and entities controlled by, or under common control with, one or more KPMG network member firms.
- (w) "Residual Knowledge" means any generalized knowledge, experience, know-how, or any of the ideas, concepts, methodologies, tools, or techniques derived from or discovered during the provision of the Services performed under the Engagement Letter that does not contain Client's Confidential Information.



(x) "Services" means the services KPMG shall perform as set forth in the Engagement Letter.

2. Our services and personnel.

- (a) Our Services will be performed in accordance with AICPA and other applicable professional standards.
- (b) Any work performed in connection with the engagement described in the Agreement before its execution shall be governed by the Agreement.

3. Our fees.

- (a) We will bill you for fees and reasonable expenses as agreed to in the Engagement Letter. You agree to pay our invoices within thirty (30) days after receipt. If Client does not pay any properly submitted invoice amount within thirty (30) days after receipt of such invoice, then KPMG may suspend or terminate the Services. Notwithstanding the preceding sentence, any invoiced amounts not paid by their applicable due date shall accrue a late fee of the lesser of (i) 1.5% per month or (ii) the highest rate allowable by law, in each case compounded monthly to the extent allowable by law. Notwithstanding anything to the contrary set forth above, any invoice received by Client on or after August 15th of any calendar year shall be due no later than September 15th of that same calendar year.
- (b) Where we are reimbursed for expenses, we will bill you for the amount we paid and we will not add any markup to the expense. After such expenses are incurred, we may receive rebates or incentive payments based on our aggregate purchases, which may include expenses reimbursed by you in addition to other clients. Such rebates are not credited back to you but are used to reduce our overhead.
- (c) The fees, expenses and timelines set forth in the Engagement Letter may vary due to failure by a Client to meet its obligations under the Engagement Letter or a change in assumptions, such as failure of third parties to cooperate. Our fees do not include any sales, use, excise, value added, income or other taxes, tariffs, or duties applicable to your receipt of our Services, payment of which shall be your sole responsibility. KPMG shall be responsible for its net income or applicable employment taxes.

4. Use of our advice.

- (a) We may provide our Advice to you in draft form, but the final written Deliverable if provided supersedes any drafts provided earlier. Client agrees to review any draft Deliverables prepared by KPMG promptly and to advise KPMG on a timely basis of any comments Client may have. KPMG shall reasonably incorporate Client's comments into such Deliverable, however the content of the final Deliverable shall be determined by KPMG in the exercise of its professional judgment.
- (b) Deliverables bearing the "KPMG" name or logo may only be disclosed to a third party in its entirety and unmodified.
- (c) Advice is provided for your sole benefit and internal business use and not for the benefit of, or to be relied upon by any other party.

5. Termination.

Either party may terminate this Agreement at any time (i) by giving at least thirty (30) days' prior written notice to the other party, (ii) upon thirty (30) days written notice to the other party, in the event such other party breaches a term of this Agreement and such breach remains uncured at the end of such thirty (30) day period or (iii) upon written notice to the other party if laws, rules, regulations or professional standards applicable to a party preclude it from continuing to perform or receive the Services thereunder. Upon termination of this Agreement, Client shall pay all fees and expenses that have been incurred in connection with the performance of the Services through the effective date of such termination. Any provisions of the Agreement that by their nature are intended to survive termination or expiration will survive and continue to bind the parties.

6. Limitation on damages.

The total liability of the Client Parties and the KPMG Parties to one another for any Liabilities relating to the Services provided under the Engagement Letter shall be limited to the amount of fees paid to KPMG under the Engagement Letter. The Client Parties or KPMG Parties will not be liable to one another for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs). The preceding limitations do not apply to Liabilities arising from the parties' respective indemnification obligations or to the extent resulting from the gross negligence or willful misconduct of the parties. The provisions of this Paragraph 6 shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss asserted, whether in contract, statute, rule, regulation, or tort (including but not limited to negligence) or otherwise.

7. Ownership.

- (a) Subject to full payment to KPMG of fees owed for the applicable Services, KPMG (i) assigns to Client, all right, title and interest in and to the Deliverables except to the extent any KPMG Property is contained therein, and (ii) grants Client a royalty-free, non-exclusive, non-transferable, non-sublicensable perpetual license, to use such KPMG Property solely in connection with Client's internal use of the Deliverables.
- (b) Notwithstanding anything herein that may be construed to the contrary, Client agrees that nothing in this Agreement prevents KPMG from using Residual Knowledge.

8. Indemnification

- (a) KPMG shall indemnify, hold harmless and defend the Client Parties from and against any claims or Liabilities asserted by a third party against any of the Client Parties to the extent such Liabilities result from the infringement by the Deliverables (including any KPMG Property contained therein) of such third party's Intellectual Property Rights except to the extent arising

out of (i) use of the Deliverables other than in accordance with applicable documentation or instructions supplied by KPMG or other than for Client's internal business purposes; (ii) any modification of the Deliverables; (iii) the combination or operation of the Deliverables with materials, networks, systems or data not supplied or authorized in writing by KPMG in the Engagement Letter; or (iv) KPMG's compliance with any designs, specifications or instructions provided by, or on behalf of, any of the Client Parties. In case all or part of any Deliverable (including any KPMG Property contained therein) is held, or we believe is likely to be held, to constitute infringement, in addition to our obligations set forth in this Paragraph, we may at our option and expense either: (1) secure for you the right to continue to use such infringing item; or (2) replace such item with a substantially equivalent non-infringing item or modify such item so that it becomes non-infringing. If we believe we are unable to perform any of these options, we shall refund you the amount paid to us for such item as long as you return such item to us and cease all use of the same. This Paragraph states our entire liability and the sole and exclusive remedy with respect to any infringement or claim of infringement covered by this Paragraph 8(a).

- (b) Client shall indemnify, hold harmless and defend the KPMG Parties from and against any Liabilities incurred or suffered by or asserted against any of the KPMG Parties in connection with a third-party claim arising from (i) Advice or (ii) the Client Materials or KPMG's use thereof. The foregoing obligations shall apply regardless of whether the third-party claim alleges a breach of contract, violation of statute, rule, regulation, or tort (including without limitation negligence) by any of the KPMG Parties.
- (c) KPMG shall indemnify, hold harmless and defend the Client Parties from and against any Liabilities for physical injury to, or death of, any person, and damage to or destruction of any tangible property, to the extent resulting from the negligence or willful misconduct of any of the KPMG Parties. Client shall indemnify, hold harmless and defend the KPMG Parties from and against any Liabilities for physical injury to, or death of, any person, and damage to or destruction of any tangible property, to the extent such Liabilities result from the negligence or willful misconduct of any of the Client Parties.
- (d) The Indemnified Party shall promptly notify the Indemnifying Party of any claim for which the Indemnified Party seeks indemnification. The Indemnifying Party shall conduct the defense or settlement of any such claim at the Indemnifying Party's sole expense, and the Indemnified Party shall cooperate with the Indemnifying Party. The party not conducting the defense shall have the right to participate in such defense or settlement at its own expense. The Indemnified Party shall have the right to approve the settlement of any claim that imposes any liability or obligation other than the payment of money damages for which the Indemnifying Party has accepted responsibility.

9. Client's responsibilities.

- (a) You shall reasonably cooperate with us in the performance of the Services and provide us with, or procure for us, the personnel, facilities, systems, software, equipment, and information reasonably necessary for us to perform the Services, as well as fulfill any obligations set forth in the Engagement Letter. If you do not provide us with the foregoing, you acknowledge that our ability to provide the Services may be adversely affected. Client represents that it has all rights, licenses, consents, and permissions necessary for KPMG to receive and use the Client Materials to perform the Services and provide the Deliverables.
- (b) We rely on the materials, information, and assumptions you provide to us to render our Advice. We will not independently investigate or verify the accuracy or completeness of the same. If such materials, information, or assumptions are inaccurate or incomplete, our Services or Advice could be materially affected.
- (c) Client agrees that, while the Services may include advice and recommendations, all decisions in connection with the implementation of such advice and recommendations or to proceed with a proposed transaction are the sole responsibility of, and made by, Client. In particular, you shall be responsible for (i) assuming all management responsibilities and performing all management functions; (ii) overseeing the Services, by designating an individual, preferably within senior management, who possesses suitable skill, knowledge and/or experience; (iii) evaluating the adequacy and results of the Services; (iv) accepting responsibility for the results of the Services; and (v) establishing and maintaining internal controls over the processes with which the Services are concerned, including performing ongoing evaluations of your internal control as part of your monitoring activities.

10. Use of KPMG Resources and Enabling Tools.

- (a) KPMG may engage KPMG Resources to assist in the performance of the Services, for example via subcontracting or contingent workforce personnel. KPMG remains responsible to Client for the performance of such Services, and adherence to obligations of confidentiality, by any KPMG Resources to the same extent KPMG is obligated under the terms of this Agreement. Client agrees it shall not bring any claim relating to the Agreement against any KPMG Resource, other than KPMG.
- (b) KPMG may, with the assistance of KPMG Resources, use information obtained during engagements (i) to analyze trends, perform comparative analysis, and develop and improve benchmarks; (ii) to develop and improve technology and services; and (iii) to improve other services to Client and to provide insights to Client about its business. Such information will not be disclosed to third parties other than KPMG Resources assisting KPMG with these uses unless such information is in an aggregated or anonymized format that does not identify Client.
- (c) KPMG may license certain Enabling Tools for use by Client to facilitate the Services. All other use is prohibited. Client may not redistribute, reproduce (except as necessary to run), modify, commercialize, allow third parties to access (unless authorized by KPMG in writing), or reverse engineer or decompile (except where such rights cannot be limited by applicable law) Enabling Tools. KPMG shall indemnify, hold harmless, and defend Client from and against third-party claims that authorized use of Enabling Tools infringes the Intellectual Property Rights of a third party, subject to any limits or requirements imposed by KPMG's licensors; and Client shall indemnify, hold harmless, and defend KPMG Parties from and against third-party claims

arising from Client's or its authorized users unauthorized use of Enabling Tools. Enabling Tools are not intended to be used as a system of record, repository, or hosting service, and Client access to the Deliverables and other documents will be removed from the Enabling Tools within a reasonable period of time (no less frequently than annually for audit clients and their affiliates) following the conclusion of the engagement to which they relate. Client shall download such Deliverables and documents for its records. Client acknowledges that use of Enabling Tools may be subject to additional terms specified in the Engagement Letter or other agreement. Enabling Tools are provided on an "as is" "as available" basis.

11. Confidentiality.

- (a) The Receiving Party shall hold the Disclosing Party's Confidential Information in confidence and not disclose the Disclosing Party's Confidential Information to any other party without the Disclosing Party's prior written permission. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to the extent that it is (i) required or necessary to be disclosed pursuant to law, rule or regulation or, subject to appropriate conditions of confidentiality, to fulfill professional obligations and standards (including quality and peer review) or to submit and process insurance claims; (ii) to KPMG Resources performing the applicable Services, or (iii) in the case of the KPMG Parties, to the KPMG Resources providing internal, administrative, clerical, analytical and/or regulatory compliance operations and functions, and information technology support. The Receiving Party shall protect the Disclosing Party's Confidential Information as it protects its own confidential information but in no event shall use less than reasonable care.
- (b) Upon request after completion of the Services, the Receiving Party will deliver to the Disclosing Party or destroy all of the Disclosing Party's Confidential Information and all copies thereof, except for copies retained in work paper files or records (i.e., engagement documentation), anything that may be stored in back up media or other electronic data storage systems, latent data and metadata.
- (c) If the Receiving Party receives a Legal Demand requiring it to disclose the Disclosing Party's Confidential Information, the Receiving Party shall, unless prohibited by law or such Legal Demand, provide prompt written notice to the Disclosing Party of such Legal Demand in order to permit it to seek a protective order. The Receiving Party shall be entitled to comply with such Legal Demand to the extent required by law, subject to any protective order or the like that may have been entered in the matter.
- (d) In a proceeding or investigation to which we are not a named party or respondent, if you request or we are required or authorized to produce documents or personnel as witnesses or for interviews, or otherwise to make information or materials relating to the Services available to you or a third party, you shall reimburse us for our time, at our standard hourly rates, and expenses, including reasonable attorneys' fees, incurred in responding to such request or requirement.

12. Third-party relationships.

KPMG is a large firm and part of a network of independent Member Firms that provide services to and have business relationships with many different entities, including entities who may have business interests that differ from Client's business interests. In accordance with applicable professional standards, prior to agreeing to provide Services requested by Client based upon the information provided by Client, KPMG will perform an internal search for any potential or actual conflicts of interest with the Services contemplated herein. Where such a potential conflict of interest is identified, KPMG would, subject to confidentiality, disclose the nature of such relationship to Client, including any planned safeguards, and seek Client's consent at such time.

13. Assignment, waiver, and severability.

- (a) Subject to Paragraph 10, neither party may assign, transfer or delegate any of its rights, obligations, claims or proceeds from claims arising under or relating to this Agreement (including by operation of law, in which case the assigning party will, to the extent legally permissible, give as much advance written notice as is reasonably practicable thereof) without the prior written consent of the other party, such consent not to be unreasonably withheld, conditioned or delayed. Any assignment, transfer or delegation in violation hereof shall be null and void.
- (b) Failure of a party to exercise or enforce any of its rights hereunder is not a waiver of such rights.
- (c) In the event that any term or provision of this Agreement shall be held to be invalid, void or unenforceable, then the remainder of that provision is modified to the extent reasonably necessary to reflect the intent of the parties and this Agreement shall not be affected, and each such term and provision shall be valid and enforceable to the fullest extent permitted by law.

14. Governing law.

The Agreement and all disputes and claims between the parties (whether based in contract, tort, statute, rule, regulation or otherwise and whether pending in court or in an arbitral forum) shall be governed by and construed in accordance with the substantive and procedural laws of the State of New York, including without limitation its statutes of limitations, without regard to the conflict of laws provisions of New York or any other state or jurisdiction.

15. Alternative dispute resolution.

- (a) Any dispute or claim between the parties shall be submitted first to non-binding mediation. Mediation shall take place at a location to be designated by the parties using the Mediation Procedures of the Rules for Non- Administered Arbitration of the International Institute for Conflict Prevention and Resolution (the "IICPR"), with the exception of paragraph 2 (Selecting the Mediator).
- (b) If mediation is not successful within 90 days after the initial request for mediation, then such dispute shall be submitted to binding arbitration in accordance with the IICPR. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, validity, or enforceability of these dispute resolution procedures shall be

governed by the Federal Arbitration Act and resolved by the arbitrators. By operation of this provision, the parties agree to forego litigation over such disputes in any court of competent jurisdiction.

- (c) Arbitration shall take place in New York, New York and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1, et seq. Party-selected arbitrators shall be selected from the lists of neutrals maintained by either the IICPR or by JAMS, Inc., but the chair of the arbitration panel does not have to be selected from those specific lists. The arbitration panel shall have no power to award non-monetary or equitable relief of any sort except as provided in IICPR Rule 13 (Interim Measures of Protection). Damages that are inconsistent with Paragraph 6 above shall be unavailable in arbitration or any other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitration panel have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction.
- (d) Either party may seek to enforce any written agreement reached by the parties during mediation, or to confirm, enforce or vacate any final award entered in arbitration, in any court of competent jurisdiction, provided that such party will file such motion under seal unless prohibited under applicable court rules.
- (e) Notwithstanding the agreement to such procedures, either party may seek equitable relief to enforce its rights in any court of competent jurisdiction.

16. Miscellaneous

- (a) Independent Contractor. KPMG's relationship with Client is that of an independent contractor and neither party is an agent, distributor or representative of the other. Unless otherwise agreed to by the parties in writing, 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 on behalf of, or in the name of, the other.
- (b) Use of Names and Logos. We may reference you as a customer in our marketing materials, including KPMG websites and social media, indicating the general services rendered (e.g., "Client is an Audit, Advisory and/or Tax client of KPMG LLP."). In addition, you give us the right to use your logo for internal KPMG presentations and intranet sites. Except as permitted herein, neither party shall acquire any right to use the name or logo of the other party or any part thereof unless required by law.
- (c) Export Control. Each party acknowledges and agrees that it shall comply with all applicable United States export control laws and regulations in the performance of each party's respective activities under the Engagement Letter. Client shall not provide KPMG, or grant KPMG access to, (i) information (including technical data or technology), verbally, electronically, or in hardcopy, (ii) software or (iii) hardware, that is controlled for export by the United States government under the Arms Export Control Act of 1976, Export Control Reform Act of 2018, the International Traffic in Arms Regulations, Export Administration Regulations, Department of Energy Part 810 Regulations or Nuclear Regulatory Commission Part 110 Regulations, except information, software or hardware that is classified as EAR99 under the Export Administration Regulations.
- (d) Non-Solicitation. During the term of the Agreement and for one year thereafter, neither party shall solicit or hire as an employee, consultant or otherwise any of the other party's personnel who have had direct involvement with the Services, without such other party's express written consent. This prohibition shall not apply to any offers of employment that result from a general solicitation for employment, including without limitation, through the Internet, newspapers, magazines and radio.
- (e) Force Majeure. Except for the obligation of a party to make payments required hereunder, neither party shall be responsible for any delay or failure in performance of any part of this Agreement or the Services to the extent that such delay or failure is caused by reason of a Condition. The Delayed Party, shall be excused from such performance on a day-to-day basis during the continuance of such Condition (and the other party shall likewise be excused from performance of its obligations on a day-to-day basis during the same period); provided, however, that the Delayed Party shall use commercially reasonable efforts to avoid or remove such Condition, and both parties shall proceed promptly with the performance of their obligations under this Agreement whenever such Condition is removed or ceases. If the Condition continues for more than ninety (90) days, then the party affected may terminate this Agreement upon written notice to the Delayed Party.
- (f) Personnel. KPMG is owned by professionals who hold CPA licenses as well as by professionals who are not licensed CPAs. Depending on the Services KPMG is providing, non-CPA holders may provide the Services under the Agreement.
- (g) Disclaimer. Except as expressly stated in this Agreement, KPMG expressly disclaims and makes no warranties of any kind or nature with respect to the Services or Deliverables, express or implied, including warranties of merchantability, fitness for a particular purpose or use, or non-infringement.
- (h) Order of Precedence. In the event of a conflict between the provisions of these Standard Terms and Conditions for Advisory and Tax Services and the specific provisions in the Engagement Letter, the terms of these Standard Terms and Conditions for Advisory and Tax Services shall control except to the extent the Engagement Letter expressly references the provisions of these Standard Terms and Conditions for Advisory and Tax Services which they modify.

17. Additional terms for engagements involving tax services.

This Section 17 shall apply only to KPMG's performance of tax Services.

- (a) Notwithstanding anything to the contrary set forth herein, no provision in this Agreement is or is intended to be construed as a condition of confidentiality within the scope of the Internal Revenue Code of 1986 (the "IRC") section 6011 as implemented through Treasury Regulation 1.6011-4(b)(3)(i) (without regard to references to payment or receipt of a minimum fee) or under any similar or analogous provisions of the laws of a state or other jurisdiction. In particular, Client, its directors, officers, employees and agents may disclose to any and all persons, without limitation of any kind, tax information KPMG provides to Client, including all materials such as tax opinions, memoranda, or other written tax advice that describes or otherwise relates

to, either or both of the tax treatment and tax structure of any transaction on which KPMG's services are provided. Client will use commercially reasonable efforts to inform KPMG of any conditions of confidentiality imposed by third party advisors with respect to any transaction on which KPMG's services are requested. Such notification must occur prior to KPMG providing any advice with respect to the transaction.

- (b) Client expressly permits KPMG and any relevant KPMG Resource involved in provision of Services hereunder to make disclosures required pursuant to IRC sections 6011, 6111 and 6112 and/or similar or analogous requirements of any state or other jurisdiction (domestic or foreign). Client will use commercially reasonable efforts to inform KPMG if Client is required to disclose any transaction covered by the Engagement Letter as a reportable transaction to the Internal Revenue Service ("IRS") or to any state or other jurisdiction (domestic or foreign) adopting similar or analogous provisions to IRC section 6011. KPMG will use commercially reasonable efforts to inform Client if KPMG provides Client's identifying information to the IRS under IRC section 6111 or 6112, or to any state tax authority or other jurisdiction (domestic or foreign) adopting similar or analogous provisions thereto.
- (c) Unless expressly provided for in the Engagement Letter, KPMG's Services do not include representing Client in the event of a challenge by the IRS or other tax or revenue authorities.
- (d) In rendering tax advice, KPMG may consider, for example, the applicable provisions of the IRC, and the Employee Retirement Income Security Act of 1974, each as amended, and the relevant state, local and foreign statutes, the regulations thereunder, income tax treaties, and judicial and administrative interpretations, thereof. These authorities are subject to change, retroactively or prospectively, and any such changes could affect the validity of KPMG's advice.

18. Additional terms for systems implementation Services.

This Section 18 shall apply only to KPMG's performance of Services related to the implementation of third-party systems or software.

- (a) Client shall accept or reject the Deliverable within ten (10) business days (or such other time period set forth in the Engagement Letter) after delivery (the "Acceptance Period") in accordance with this Section 18(a). If Client determines that the Deliverable does not materially conform to the specifications set forth in the Engagement Letter or agreed to in writing (the "Specifications"), then Client shall provide KPMG with a written notice of rejection specifying the material non-conformities between the Deliverable and the applicable Specifications ("Defects"). KPMG shall, at no additional cost to Client, correct the Defects after which Client shall be entitled to repeat the acceptance process set forth herein (each a "Work-out Period"). If after three Work-Out Periods the Deliverable does not conform in all material respects with the applicable Specifications, then at KPMG's option, KPMG may terminate the Engagement Letter and promptly provide Client with a refund of any amounts paid by Client for the defective Deliverable(s) and Client will promptly return such Deliverable(s) to KPMG. The Deliverables will be deemed accepted if the Client either fails to reject the Deliverables before the end of an Acceptance Period or uses the Deliverables in a production environment. To the extent any accepted Deliverable differs from the applicable Specifications, then such Specifications are hereby deemed modified to conform to the accepted Deliverable.
- (b) KPMG warrants to Client that for a period of ninety (90) days after the final Deliverable has been accepted pursuant to Section 18(a) ("Warranty Period") that Deliverable will conform to its Specifications in all material respects; provided that the foregoing warranty shall not apply to the extent the non-conformity arises out of (i) use of the Deliverable other than in accordance with applicable documentation or instructions, (ii) any modification of the Deliverable not expressly authorized in writing by KPMG, or (iii) the Client Materials. Any claim for breach of warranty arising out of or related to a Deliverable, including under this Agreement, must be made in writing to KPMG within the Warranty Period with respect to that Deliverable. Client's exclusive remedies, and KPMG's entire liability, for any breach of warranty arising out of or related to the Deliverables shall be, at KPMG's option, (A) the repair and replacement of the Deliverable or (B) the refund to Client of the amount paid to KPMG for the Deliverable (in which case Client shall promptly return the Deliverable to KPMG and shall have no further right to use the Deliverable).

19. Entire agreement; Amendment.

This Agreement constitutes the final, complete and exclusive agreement between the parties with respect to the subject matter of the foregoing and supersedes all other previous and contemporaneous oral and written agreements relating to that subject matter. Any amendments to the Agreement must be made in writing.