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March 15, 2023

PRIVATE

Dine College  
 Business Office  
 PO Box 188  
 Tsaille, Arizona 86556

Attention: Bo Lewis  
 Vice President of Finance and Administration

We are pleased you have engaged KPMG LLP (“KPMG”) to provide tax consulting services to Dine College (“Dine College” or “Client”). This engagement contract confirms the scope and related terms of your engagement of KPMG.

### Scope of Services

We will provide the tax consulting services listed in Appendix I. In performing these services, the following considerations will apply to this engagement.

### Tax Advice Standards

When providing tax services, KPMG applies standards that may be higher than those required by law, regulation, or other professional requirements. We will promptly inform you if, during this engagement, we conclude that a tax return position cannot meet these higher standards.

### Additional Services

If matters exceed the scope of this engagement contract, we will either issue (a) a clarifying addendum to confirm the scope and related terms of any additional services to be provided or (b) a separate engagement contract (for more complex projects). To be of greatest assistance to you, we should be advised in advance of proposed transactions to which such services will relate.

### Fees

#### *Employee Retention Credit Services*

The fee for these services is based on the experience and specialized skill levels of our personnel as well as on the scope and nature of the services provided. The fee for these services will range from \$95,000 to \$115,000

Phase	Fees
Phase I Assessment	\$10,000
Phase II Evaluation and Documentation	\$75,000 – \$95,000
Phase III Compliance and Reporting	\$10,000



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*Other Fees & Expenses*

We will notify you if we encounter circumstances that warrant additional time or expense likely to change previously provided quotes or estimates. If such matters exceed the scope of this engagement contract, we will issue an addendum or separate engagement contract

*Payment Schedule*

The fee for services rendered pursuant to this letter will be progress billed as follows:

<b>Phase</b>	<b>Progress bill to be mailed on</b>	<b>Amount to be billed</b>
Phase I Assessment	Upon commencement of services	\$10,000
Phase II Evaluation and Documentation	Upon commencement of services	\$25,000
	+ 30 days	\$25,000
	+ 60 days	\$25,000
	+ 90 days	Remaining balance due
Phase III Compliance and Reporting	Upon commencement of services	\$10,000

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

To enable the completion of the services under this engagement contract and related activities, the attached **Consents to Disclose and Use Tax Return Information** are hereby agreed to and made part of this letter.

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The attached Standard Terms and Conditions for Advisory and Tax Services (April 2020 Release – updated March 2021) are made part of this letter.

Please contact me at +1 212 872 2187 or ckachins@kpmg.com if you have any questions or need clarification of the services KPMG will provide. If you agree with the terms set forth herein, please sign where indicated below (or otherwise provide your digital or facsimile signature) and return the signed copy to my attention at your earliest convenience so that we may begin work on this engagement.



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Your digital or facsimile signature (if used) on this engagement contract on behalf of Dine College shall be deemed to be your legally valid and binding signature of such contract to the same extent as if you had hand-signed it.

Very truly yours,

KPMG LLP

Christine Kachinsky  
*Partner*

Enclosures:  
Appendix I-Scope of Services  
Consents to Disclose and Use Tax Return Information  
Standard Terms and Conditions for Advisory and Tax Services (April 2020 Release – updated March 2021)

ACCEPTED

Dine College

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## Scope of Services

### *Employee Retention Credit Services*

KPMG will provide tax consulting services with respect to computing and documenting the Employee Retention Credit (“ERC”). KPMG’s approach to providing ERC services includes a three phase analytical process to Dine College’s facts:

1. Phase I Assessment
2. Phase II Evaluation and Documentation
3. Phase III Compliance and Reporting

This engagement contract is intended to apply to the following phases of the project. It is expected that, unless otherwise agreed upon in a separate engagement contract or addendum, Dine College will complete any phases not listed below.

During **Phase I Assessment** we will perform a high level review of Dine College’s facts and circumstances to approximate the level of ERC available to be claimed. To accomplish this objective, our work may include the following:

- Review sample college communications to employees;
- Evaluate qualification as an “Eligible Employer”;
- Evaluate “Qualified Wages”;
- Evaluate how employees’ ability to perform services may be impacted due to COVID-19;
- Assess interaction with other relevant credits;
- Estimate potential ERC;
- Determine procedural aspects of claiming the ERC; and
- Develop a proposed documentation work plan for determination of Phase II next steps.

This engagement contract is also intended to apply to research, fact gathering, and project development that you previously authorized us to perform.

*For Phase I Assessment Services only:* KPMG will not provide any advice on the interpretation or application of non-tax aspects of the Coronavirus Aid, Relief, and Economic Security Act of 2020; the Consolidated Appropriations Act of 2021; and the American Rescue Plan Act of 2021. Questions related to non-tax aspects of these Acts or any other legal matters should be directed to Dine College’s legal counsel.

During **Phase II Evaluation and Documentation** we will compute and document the ERC. To accomplish this objective, our work may include the following:

- Collect and analyze appropriate data requests, including but not limited to: gross receipts by quarter in 2019, 2020, and 2021; wages/compensation/medical benefits by employee by calendar quarters within 2020 and 2021; corporate communications to employees regarding COVID-19;

and if applicable, 2020 and 2021 Work Opportunity Tax Credit and other employment tax credit claims;

- Evaluate and document as an “Eligible Employer”, including either the “fully or partially suspended test” or the “gross receipts” test;
- Evaluate, compute, and document “Qualified Wages”, including assisting in determining the percentage of time impacted employees spent “not providing services” due to COVID-19;
- Compute the ERC;
- Prepare technical memoranda summarizing: Eligible Employer, Qualified Wages, aggregation rules, procedures performed and data analyzed to compute and document the ERC, and coordination with other legislative provisions/loans and other employment tax credits; and
- Provide consulting related to procedures for claiming the ERC.

During **Phase III Compliance and Reporting** we will assist Dine College with claiming of the computed ERC. To accomplish this objective, our work may include the following:

- Review of the required procedures for reporting changes to previously filed Form 941.
- Assist with preparing and facilitating the filing of Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund for ERC computed in Phase II Evaluation and Documentation, including assistance with all correspondence required with the Internal Revenue Service to perfect a claim for refund or abatement.

The preparation of the Forms 941-X is limited in scope. We will not audit or independently verify the data you submitted on the originally filed Forms 941. We will use the information from the previously filed Forms 941 and incorporate Dine College's claim for the employee retention credit, which was not included on the originally filed returns, to prepare the Forms 941-X. Due to the limited scope of our engagement and the fact that we will not verify a substantial portion of the tax return(s), we will not sign the tax return(s). In the event the services provided by KPMG personnel rise to a level requiring us to sign the tax return(s) or claim(s) as preparer, or requests that KPMG personnel sign the return(s) or claim(s), a separate SOW will be issued. That letter will provide for an increase in fees to correlate to the additional preparation and review procedures to be performed in order for KPMG personnel to sign as tax return preparer.

In performing these services, the following considerations will apply to this engagement.

We will prepare these returns from the information you submit. We will not audit or independently verify the data you submit. However, we may ask for clarification of some of the information. Our engagement cannot be relied on to uncover errors, omissions, or irregularities, should any exist in the underlying information incorporated in the tax return(s). However, we will inform you of any such matters that come to our attention. Because you or your authorized representative has ultimate responsibility for the tax return(s), you or your authorized representative should review the return(s) before you or your authorized representative signs and files the return(s).

All Form(s) are subject to examination by the taxing authorities. In the event of an examination, may be requested to produce documents, records, or other evidence to substantiate the items of income and deduction shown on the Form(s). In preparing the Form(s), we rely on your representations that you understand and have complied with applicable documentation requirements for Dine College's income, expenses, deductions, and credits. If an examination occurs, and if you and we agree to have KPMG assist or represent in the examination, any such additional services and the fee therefore would be set forth in a separate engagement letter.

## **Consents to Disclose and Use Tax Return Information**

In connection with the tax services provided to you under this engagement, KPMG LLP (“KPMG”) may be subject to certain federal and state laws that prohibit KPMG from disclosing your tax return information to third parties, or our use of that information for purposes other than the provision of tax services to you, unless such disclosure or use is otherwise authorized by law or you consent to such disclosure or use. Likewise, federal law generally precludes our disclosing your tax return information to service providers outside the United States without your consent. Accordingly, we request your consent for the disclosures and uses described with more specificity below.

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

To complete the tax services set forth in this engagement contract, which may include tax return preparation services, as well as preliminary engagement preparation and tax return preparation activities for the immediately succeeding tax year, we may disclose some or all of your 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 set forth in the engagement contract to which this consent relates.

To complete any tax services set forth in this engagement contract, we may also disclose some or all of your tax return information to certain third-party contractors located within the United States we may retain under KPMG’s oversight to assist in the delivery of our services.

You hereby consent to the disclosure of your tax return information to the third parties who are located within and outside the United States, as described above.

### *Request for Consent to Use and Disclose Your Tax Return Information Within or Outside the United States to Develop Analytics that May Enhance the Services We Offer to You and Other Clients and to Develop New Services and Technologies*

Supplementary to the terms of your engagement contract, we request your specific consent to use your tax return information for other purposes, such as improving the delivery or quality of services or technology to Dine College and other clients, thought leadership projects and to allow Dine College and other clients to evaluate various business transactions and opportunities. More particularly, we request your consent to allow us to produce anonymized statistical compilations, to analyze tax return information, to develop benchmarks as well as new services and technology, and to allow us to evaluate our performance on your behalf and on behalf of our other clients (“Data Analytics Services”). We also request your specific consent to disclose your tax return information 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 us in performing the type of Data Analytics Services described above. In addition, we 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”).

Finally, we also request your consent to disclose the Output to other clients for whom we 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 you and such other clients. These materials will be intended to help you and our other KPMG network clients understand where each of you stands relative to peers, to identify transactions that may be beneficial for your businesses, and to suggest areas in which we or other members of the KPMG network might work with you or our other clients to achieve your 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.

You hereby consent to: (i) the use by KPMG and the third parties identified herein of any and all tax return information including any such information contained in your federal, state and foreign income tax returns set forth in this engagement contract and supporting schedules for the development and provision of the Data Analytics Services; (ii) the disclosure of such information to the members of the KPMG network and other third-party service providers assisting KPMG with the development and delivery of Data Analytics Services; and (iii) the disclosure to KPMG's and other KPMG network members' clients and potential clients of the Output from the Data Analytics Services.

*Representation Regarding Protection of Tax Return Information From Unauthorized Disclosure or Use*

Consistent with the terms of your engagement contract, 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 your tax return information from unauthorized disclosure or use.

*Duration of the Consent*

If you agree to the disclosure and use of your tax return information for the purposes set forth above and in the terms of your engagement contract, your consent is valid for seven (7) years in order for KPMG to complete all services set forth herein, 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 you with future tax-related needs or to comply with legal, regulatory, and professional standards.

*Right to Refuse to Provide Consent*

You have the right to decline to provide any or all of the consents requested herein or to request a more limited disclosure of your tax return information than that provided in any such consent. However, we reserve the right to decline to provide any tax return preparation services described in the engagement contract to which this consent relates in the absence of consent or if we conclude that the more limited disclosure you authorize will interfere with the efficient and effective performance of such tax return preparation services.



# Standard Terms and Conditions for Advisory and Tax Services

## 1. Definitions.

- (a) "Advice" means any advice, recommendations, information, Deliverables or other work product 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 with access in connection with the Services and that may be used by us in providing the Services and Deliverables pursuant to the Engagement Letter.
- (f) "Client Parties" means Client, its parent company and their affiliates, and their respective directors, officers, employees, and agents.
- (g) "Confidential Information" means all confidential information received by one party in the course of providing or receiving Services (the "Receiving Party") from the other party (the "Disclosing Party"). Confidential Information does not include any of the foregoing that: (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 permitted to be disclosed by Paragraphs 17(a) or (b); or (5) is received by the Receiving Party from a third party without restriction and without a breach of an obligation of confidentiality.
- (h) "Deliverables" means the tangible items specified as deliverables or work product in the Engagement Letter.
- (i) "Engagement Letter" means the engagement letter to which these Standard Terms and Conditions are attached.
- (j) "Indemnified Party" means the party entitled to indemnification.
- (k) "Indemnifying Party" means the party obligated to indemnify.
- (l) "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.
- (m) "KPMG Firms" means KPMG, Member Firms and the legal entities comprising KPMG International.
- (n) "KPMG Parties" means the KPMG Firms, and their respective partners, principals, employees, and agents.
- (o) "KPMG Property" means the KPMG property contained in the Advice or Deliverables.
- (p) "Member Firms" the other members of the international KPMG network of independent firms and entities controlled by, or under common control with, one or more KPMG member firms.
- (q) "Model" means a model, electronic file or spreadsheet with embedded macros owned, created or licensed by any of the KPMG Parties.





- (r) "Services" means the services KPMG shall perform as set forth in the Engagement Letter.
- (s) "Third-Party Materials" means third-party hardware, software and other third-party items used by or provided to us in connection with the Services.

## **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.
- (c) You agree that, while our Services may include advice and recommendations, we do not make management decisions or perform management functions.
- (d) KPMG is owned by professionals who hold CPA licenses as well as by professionals who are not licensed CPAs. Depending on the Services we are providing, non-CPA holders may provide the Services under the Agreement.

## **3. Our fees.**

- (a) Unless otherwise agreed to in the Engagement Letter, we will bill you monthly in arrears for the fees incurred for the applicable Services. You agree to pay our invoices within 30 days after receipt. Prior to September 15th of any year, you shall pay all outstanding invoices issued.
- (b) Unless otherwise agreed to in the Engagement Letter, we will also bill you for our reasonable out-of-pocket expenses. 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) 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. This does not include any applicable taxes based on our net income or applicable employment taxes, which are our sole responsibility.

## **4. Use of our advice.**

- (a) We may provide our Advice to you orally or in draft form, but you should only rely on the final written Deliverable if provided.
- (b) After we have completed the Services, we will not update our Advice unless you separately engage us to do so in writing.
- (c) Our Advice is intended for your sole benefit and we do not authorize any party other than you to rely upon such Advice or make any claims against us relating thereto. Any Deliverable bearing the "KPMG" name or logo made available to a third party must be made available only in its entirety.

## **5. Termination.**

Either party may terminate the Agreement at any time by giving at least 30 days' prior written notice to the other party. In addition, either party may terminate the Agreement 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. Any provisions of the Agreement which are intended to survive termination or expiration will survive and continue to bind the parties.

## **6. Limitation on damages.**

Except for the parties' respective indemnification obligations set forth herein or either party's gross negligence or willful misconduct, the total liability of the Client Parties and the KPMG Parties to one another, on account of any actions, damages, claims, liabilities, costs, expenses or losses in any way arising out of or



relating to the Services provided in this engagement shall be limited to the amount of fees paid or owing to KPMG under the Engagement Letter for such Services. In no event shall any of the Client Parties or any of the KPMG Parties be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs). Any damages awarded against any of the Client Parties or any of the KPMG Parties based on a third party claim subject to indemnification hereunder shall not be subject to the disclaimer in the previous sentence. 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) Upon full and final payment to KPMG of fees owed for the Services, you will own the copyright interest in the Deliverables. To the extent that any KPMG Property is contained in any of the Deliverables, we hereby grant you a royalty-free, non-exclusive, non-transferable license to use such KPMG Property solely in connection with your use of the Deliverables. We may retain for our files copies of each of the Deliverables, subject to our confidentiality obligations to you.
- (b) We may use Models to assist us in providing the Services. If you request a working copy of any such Model, we may, at our discretion, make such Model available to you on an as-is basis. Such Model shall be considered a "Deliverable", subject to the provisions of Paragraph 4 above. You are responsible for obtaining the right to use any third party products necessary to use or operate such Model.

## 8. Indemnification

- (a) KPMG will indemnify, hold harmless and defend the Client Parties from and against any claims, liabilities, losses, expenses (including reasonable attorneys' fees), fines, penalties, taxes and damages (collectively "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 trademarks, copyrights or patents issued in the United States as of the date the Deliverables are delivered to Client. KPMG has no obligation under this Paragraph for any infringement 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 not expressly agreed to in writing by us; or (iii) the combination or operation of the Deliverables with materials not supplied or approved in writing by KPMG. 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 either: (1) secure for you, at our expense, the right to continue to use such infringing item; or (2) replace, at our expense, 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 Client Parties' sole and exclusive remedy with respect to any infringement or claim of infringement.
- (b) Client will 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 KPMG's Advice. 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 will 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 will 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 may 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 nonetheless 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. Cooperation; Use of information.

- (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.
- (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 Advice could be materially affected.
- (c) You agree to (i) assume all management responsibilities and perform all management functions; (ii) oversee the Services, by designating an individual, preferably within senior management, who possesses suitable skill, knowledge and/or experience; (iii) evaluate the adequacy and results of the Services; (iv) accept responsibility for the results of the Services; and (v) establish and maintain 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.
- (d) With respect to any Client Materials to which we are provided with access in connection with the Services, you hereby grant to us a non-exclusive, transferable, sublicensable, paid-up, royalty-free right and license to use, copy, modify, and make derivative works of, and transmit such Client Materials to the extent necessary for us to provide the Services to you.

## 10. Use of KPMG Resources.

- (a) The KPMG, Member Firms and third parties, which may be located in other territories (collectively, the "KPMG Resources"), may access and use your information to provide certain internal, administrative and/or regulatory compliance operations and functions, including maintaining independence, performing conflict checks and information technology support, including cloud hosting.
- (b) In addition, we may use KPMG Resources to directly assist in the performance of the Services (including providing tax advice), for example via subcontracting or contingent workforce personnel.
- (c) Finally, we may use KPMG Resources to enhance, improve or create our products and services (for example, by performing internal research, training cognitive systems, conducting data analytics, benchmarking, and developing thought leadership projects and whitepapers) (collectively "Ancillary Purpose").
- (d) You agree that you have the right to share and we may disclose your Confidential Information to such KPMG Resources and these KPMG Resources may have access to and use your Confidential Information for the purposes described in this Paragraph 10.
- (e) Your information will be de-identified if it is used or disclosed outside of the KPMG Resources for an Ancillary Purpose. We have technical, legal and/or other safeguards, measures and controls in place to protect your Confidential Information from unauthorized disclosure or use. Any Services performed by a KPMG Resource shall be performed in accordance with the terms of the Agreement, including Paragraph 11, but we shall remain responsible to you for the performance of such Services and for the use or disclosure of your Confidential Information in an unauthorized manner due to breach of the Agreement or failure of any KPMG Resources to exercise reasonable care.



- (f) Any claim relating to the Services under the Agreement may only be made against KPMG and not any other KPMG Firm or third party referred to above.

## **11. Confidentiality.**

- (a) The Receiving Party shall hold the Disclosing Party's Confidential Information in confidence and shall not disclose it 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 permitted herein, required or necessary to be disclosed pursuant to a statutory or regulatory provision or court or administrative order, 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. 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 validly issued legal or regulatory demand or request, subpoena or other legal process ("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. So long as the Receiving Party gives notice as provided herein, 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 or to you other than in our performance of the Services, you shall reimburse us for our time, at our standard hourly rates, and expenses, including reasonable attorneys' fees and expenses, incurred in responding to such request or requirement.

## **12. Independent contractor.**

Each of the parties hereto is an independent contractor and neither party is or shall be considered an agent, distributor or representative of the other. Unless otherwise agreed to by the parties, 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.

## **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 the 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 the Agreement shall be held to be invalid, void or unenforceable, then the remainder of the 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) Use of Names and Logos. We may list you as a customer in our internal and external 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 on the Deliverables and documents prepared for you internally (e.g., internal presentations, etc.) or for internal KPMG presentations and intranet sites. Except as permitted by law or as set forth in this Paragraph 16(a), neither party shall acquire hereunder any right to use the name or logo of the other party or any part thereof, and any such use shall require the express written consent of the owner party.
- (b) 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 ("ITAR"), Export Administration Regulations ("EAR"), 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 EAR.



- (c) Non-Solicitation. During the term of the Agreement and for one year thereafter, neither party shall solicit for 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 which result from a general solicitation for employment, including without limitation, through the Internet, newspapers, magazines and radio.
- (d) Email. The parties may communicate with each other by email or otherwise transmit documents in electronic form during the course of providing the Services. Each party accepts the inherent risks of these forms of communication (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices).
- (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 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 ("Condition"). The Party delayed or unable to perform ("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.

## 17. Additional terms for engagements involving tax services.

- (a) Notwithstanding anything to the contrary set forth herein, no provision in the 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) Treasury regulations under IRC section 6011 require taxpayers to disclose to the IRS their participation in reportable transactions and IRC section 6707A imposes strict penalties for noncompliance with IRC section 6011. IRC section 6111 and the laws of various states require a material advisor with respect to a reportable transaction to make a return containing specified information concerning the transaction to the IRS or a designated state tax authority by a prescribed date, and IRC section 6707 imposes penalties for noncompliance with IRC section 6111. IRC section 6112 and the laws of various states require the material advisor to maintain, and make available to the IRS or designated state tax authority upon request, a list containing prescribed information with respect to persons advised and other information with respect to the reportable transaction, and IRC section 6708 imposes penalties for noncompliance with IRC section 6112. 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 IRS or to any state or other jurisdiction 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 adopting similar or analogous provisions thereto.



- (c) Unless expressly provided for, 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. 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.