

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

MEDIAMATH HOLDINGS, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 23-10882 (LSS)

(Jointly Administered)

**Ref. Docket No. 311**

**Obj. Deadline: March 14, 2024 at 4:00 p.m. (ET)**

**NOTICE OF FILING OF SUPPLEMENTAL ENGAGEMENT LETTER  
IN CONNECTION WITH THAT CERTAIN ORDER AUTHORIZING THE DEBTORS-  
IN-POSSESSION TO RETAIN AND EMPLOY KPMG LLP TO PROVIDE TAX  
COMPLIANCE AND TAX CONSULTING SERVICES EFFECTIVE  
AS OF THE PETITION DATE**

**PLEASE TAKE NOTICE** that on September 8, 2023, the United States Bankruptcy Court for the District of Delaware (the “**Court**”) entered that certain *Order Authorizing the Debtors and Debtors-in-Possession to Retain and Employ KPMG LLP to Provide Tax Compliance and Tax Consulting Services Effective as of the Petition Date* [Docket No. 311] (the “**Retention Order**”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that the Retention Order approved the Engagement Letter between the Debtors and KPMG (subject to any modifications in the Retention Order), and contemplated that the Debtors might enter into additional engagement letters with KPMG to provide additional services to one or more of the Debtors. Pursuant to paragraph 6 of the Retention Order, the Debtors are required to file such additional engagement letter(s) with the Court and serve such engagement letter(s) upon the U.S. Trustee, counsel to the Prepetition Secured Parties, and counsel to the Committee (collectively, the **“Notice Parties”**). The Retention Order also provides that the Notice Parties have ten (10) days to object to the engagement letter(s). If no objections are received on or before such date, the services provided for in the additional engagement letter(s) shall be authorized and approved without further order of the Court and all additional services will be subject to the provisions of the Retention Order.

**PLEASE TAKE FURTHER NOTICE** that, on February 9, 2024, the Debtors and KPMG entered into an additional engagement letter pursuant to which KPMG will perform

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: MediaMath Holdings, Inc. (2425), MediaMath, Inc. (1297), MediaMath Ventures, LLC (4588), Adroit DS, LLC (0700), Searchlight MM Topco, L.P. (9412), Searchlight MM Topco GP, LLC (N/A), and Searchlight MM Holdings, LLC (5372). The Debtors' address is MediaMath, Inc. c/o Epiq Corporate Restructuring, LLC, P.O. Box 4420, Beaverton, Oregon 97076-4420.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Retention Order.

certain additional tax compliance and tax consulting services for the Debtors (the “**First Supplemental Letter**”). All services described in the First Supplemental Letter will be subject to the provisions of the Retention Order. A copy of the First Supplemental Letter is attached hereto as **Exhibit A**.

**PLEASE TAKE FURTHER NOTICE** that any objections (an “**Objection**”) to the First Supplemental Letter must be filed on or before **March 14, 2024 at 4:00 p.m. (ET)** (the “**Objection Deadline**”) with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, Wilmington, Delaware 19801, and must be served upon the Notice Parties, KPMG, and the Debtors so that such Objection is received on or before the Objection Deadline.

**PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS ARE FILED ON OR BEFORE THE OBJECTION DEADLINE, PURSUANT TO THE RETENTION ORDER, THE FIRST SUPPLEMENTAL LETTER SHALL BE DEEMED APPROVED WITHOUT THE NECESSITY OF A HEARING OR FURTHER ORDER OF THE COURT, AND SHALL BE SUBJECT TO, AND DEEMED APPROVED IN ACCORDANCE WITH, THE PROVISIONS OF THE RETENTION ORDER.**

*[Signature page follows]*

Dated: March 4, 2024  
Wilmington, Delaware

Respectfully Submitted,

/s/ Kristin L. McElroy

**YOUNG CONAWAY STARGATT & TAYLOR, LLP**

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*Counsel for Debtors and Debtors in Possession*

**EXHIBIT A**

**First Supplemental Letter**



KPMG LLP  
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kpmg.com

MediaMath Holdings, Inc.  
4 World Trade Center  
150 Greenwich St, 46th FL  
New York, New York 10007

Attention: Neil Nguyen  
CEO

This Engagement Letter, including the Standard Terms and Conditions and any exhibits, attachments, addenda or appendices attached hereto (collectively, the "Agreement"), dated as of February 9, 2024 (the "Effective Date"), is between MediaMath Holdings, 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 Compliance Services

#### 1.1.1. U.S. Federal, State and Local Income and Franchise Tax Returns

KPMG will prepare the U.S. federal, state and local income and franchise tax returns and supporting schedules for the 2023 tax year(s), as described herein (the "Returns").

- Specifically, KPMG will prepare the Returns set forth in the attached list ("Appendix I").

KPMG will also prepare additional income tax returns for any state or local jurisdictions and additional entities not identified herein, subject to fee adjustments as described in the Fees section of this Agreement and approved by Client in writing (email acceptable).

#### 1.1.2. Requests for Extension of Time to File

KPMG will prepare, for filing by Client, requests for extensions of time to file the Returns if all KPMG-requested information has not been received by March 10, 2024.

#### 1.1.3. Succeeding Year Engagement Planning Activities

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

#### 1.1.4. Deliverables

KPMG shall provide the following Deliverables:

- Returns and extensions described herein prepared for approval and filing.
- Additional deliverables and services mentioned in Appendix I.

### 1.2. General Tax Consulting Services

KPMG will provide routine general tax consulting on matters that may arise for which Client seeks advice, written and oral, and that are not the subject of a separate Agreement.

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



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issuance of a separate engagement contract for the discrete tax consulting project are intended to be covered by this engagement contract.

### 1.3. *Term of the Agreement*

The term hereof shall begin on the Effective Date and, unless terminated as contemplated herein, shall continue for 12 months from the Effective Date.

## 2. **Fees**

### 2.1. *Tax Compliance Services*

The fee for services provided hereunder will be based on the following fee schedule:

<i>Federal and State Tax Returns (other than Forms 5471, 8858, 8990, 8992)</i>	<i>\$95,000</i>
<i>Forms 5471, 8858, 8990, 8992 listed in Attachment A</i>	<i>\$85,000</i>
<i>Federal and State Extension Calculations</i>	<i>\$1,000</i>
<i>FBAR Filing</i>	<i>\$6,500</i>
<i>US Partnership Transaction Services</i>	<i>\$50,000</i>

### 2.2. *General Tax Consulting Services*

The fee for services will be based on the actual time incurred to complete the work at 50 percent of our standard hourly rates for the individuals involved in providing the services.

### 2.3. *Other Fees & Expenses*

The following fees and expenses are in addition to the fees for the Services:

Client shall pay a technology fee equal to 3% of total engagement fees.

## 3. **Payment Schedule**

Fees for tax compliance and general tax consulting services will be billed as work is performed.

## 4. **Client Obligations**

Client shall:

- Address in a timely fashion any discrepancies or variances in the information provided to KPMG.
- Retain all documents, records, and other evidence to substantiate the items of income and deduction reported on the Returns and comply with applicable documentation requirements.
- Timely review the Returns and supporting calculations prior to signing the Returns as either Client or Client's authorized representative has ultimate responsibility for the Returns.

## 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



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supporting Client's tax return reporting obligations 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;
  - 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 Returns and related computations and work papers.
- The Returns will be prepared utilizing KPMG's standard tools, technology, processes and work papers. KPMG will not provide manual manipulation or data entry services of tax calculations into Client prepared work papers or schedules.
  - No cosmetic changes will be made to the standard tax return format including any footnotes, statements or disclosures unless required by a material change to the information provided. Cosmetic changes are presentational changes that do not affect calculations or taxable income.

## **6. Other Matters**

### **6.1. Applicable Standards**

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

### **6.2. Electronic Filing**

KPMG will electronically file all Returns and related extensions of time to file such Returns which are required to be electronically filed. If there are Returns that KPMG will not electronically file on Client's behalf, KPMG will provide instructions and filing copies for your paper filing of such Returns and/or extensions.

The KPMG electronic filing identification number ("EFIN") will be included in certain e-filing documentation KPMG will provide to Client for the Returns e-filed using KPMG-licensed software. The KPMG EFIN is proprietary to KPMG and Client acknowledges that it is not authorized to use the KPMG EFIN for any purpose. If Client requests KPMG to e-file Returns using Client-licensed software, Client's EFIN must be used for the e-filing.

### **6.3. 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.

#### **6.3.1. 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



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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 [including but not limited to, [Include names of members of the KPMG network to the extent known]] and other third-party subcontractors [such as, [Include names of third-party subcontractors to the extent known]] that may otherwise assist in the completion of the Services.

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.

**6.3.2. 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 and to Develop New Services and Technologies**

Supplementary to the terms of the Agreement, KPMG requests Client's specific consent to use Client's tax return information 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 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 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, Client hereby acknowledges that 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"); and Client consents to KPMG's disclosure of the Output to other clients since 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 our 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.

Client hereby consents 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 Client's 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.

**6.3.3. 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.





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**6.3.4. 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.


**6.3.5. 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.

**MediaMath Holdings, Inc.**

DocuSigned by:  
  
3F0F31B5DAB4A3  
Authorized Signature

Neil Nguyen  
CEO

2/28/2024

Date

**KPMG LLP**

  
Authorized Signature

Michael Hamilton  
Managing Director

February 9, 2024

Date

## Appendix I

**Scope of Services***US Tax Compliance Services*

We will prepare federal, state and local, and international income tax returns and supporting schedules for the 2023 tax year. Our records indicate that we should prepare the returns identified on Attachment A of this Appendix.

If agreed by MediaMath in writing (email acceptable), we will also commence work on the applicable federal, state, and local tax return(s) included in this engagement contract for the tax year immediately succeeding the tax year(s) covered by this engagement contract, specifically, the preparation of requests for extension of time to file and the related first quarter estimated tax requirements. We will also provide these services for any state or local jurisdictions and additional majority owned legal entities not identified in this engagement contract including any newly controlled legal entities formed or acquired by MediaMath during the engagement period, and that you approve in writing (email acceptable).

*Tax Consulting Services*

We will provide general tax consulting on matters that may arise for which you seek our advice, both written and oral, and that are not the subject of a separate engagement contract. We will apply the elevated standards described in the "Tax Return Standards" section of this letter with respect to any such advice which would cause KPMG to be considered a tax return preparer under Treasury Regulation § 301.7701-15.

When, in the course of providing general tax consulting services, it is determined that the service would exceed the scope of this letter, 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 this engagement contract.

*US Partnership Transaction Services*

KPMG will provide the following tax provision services to for the 2023 tax year:

- Update post-transaction IRC Section 704(c) workpapers to track Searchlight MM Topco LP's IRC Section 704(c) properties and unrealized built-in-gain or built-in-loss by partner;
- Calculate partners' tax basis and IRC 704(b) capital account post transaction and rollforward to December 31, 2023;
- Allocate Debtors' IRC Section 704(b) and taxable income to partners for tax year 2023, if applicable;
- Analyze Debtors' liability profile and post-transaction liability allocation pursuant to IRC Section 752, if applicable.

**MediaMath, Inc.**  
**12/31/2023 Tax Year**  
**Attachment A**  
**Federal and state and local tax returns**

Federal income tax return(s)			Original Due	Extended Date
Form	Filing Taxpayer(s)	Proforma return(s)	Date	Due
1065	Searchlight MM TopCo LP		3/15	9/15
1120	Searchlight MM Holdings, LLC		4/15	10/15
1120	MediaMath Inc.		4/15	10/15
1120	MediaMath Holdings.		4/15	10/15
8990	Limitation on Business Interest Expense Under Section 163(j)		4/15	10/15
8992	MediaMath Inc.		4/15	10/15
5471	Semasio GmbH		4/15	10/15
	Semasio Lda		4/15	10/15
	Semasio Aps		4/15	10/15
	Mediamath UK Limited		4/15	10/15
	MediaMath Spain, S.L		4/15	10/15
	MediaMath KK Japan		4/15	10/15
	MediaMath Singapore Pte. LTd		4/15	10/15
	MediaMath Germany GmbH		4/15	10/15
	MediaMath Australia Pty Ltd		4/15	10/15
	MediaMath France SARL		4/15	10/15
	Ventures Terminal Mexico, SA de CV		4/15	10/15
8858	MediaMath Publicade Digital Ltda.		4/15	10/15
8990	Semasio GmbH		4/15	10/15
	Semasio Lda		4/15	10/15
	Semasio Aps		4/15	10/15
PFIC testing	Wishmedia Co, Ltd.		4/15	10/15

State and local income tax return(s)			Original Due	Extended Date
	Filing Taxpayer(s)	Jurisdiction	Date	Due
	MediaMath Inc.	California	4/15	11/15
		Florida	4/15	11/1
		Illinois	4/15	11/15
		Iowa	4/15	10/30
		Massachusetts	4/15	10/15
		Michigan	4/15	12/31
		New Jersey	5/15	11/15
		New York City	4/15	10/16
		New York State	4/15	10/16
		North Carolina	4/15	10/16
		Pennsylvania	4/15	11/15
		Oregon	4/15	11/15
		Tennessee	4/15	11/15
		Texas	5/15	8/15

Miscellaneous filing(s)			Original Due
Form	Filing Requirement	Jurisdiction	Date
8802	MediaMath, Inc.	Federal	4/15
FBAR	MediaMath, Inc.	Federal	4/15

MediaMath, Inc.  
12/31/2023 Tax Year  
Attachment B  
Compliance Scope Analysis

Please note that, if requested, KPMG may be able to assist with certain items identified as client responsibility.

	In-scope KPMG Compliance Tasks	Client Responsibility / KPMG Out-of-scope Compliance Tasks
<b>Domestic tax compliance a information gathering and management</b>		
Identify points of contact within the organization to provide KPMG contacts with access to systems and other information		x
Provide standard information templates and data requests	x	
Provide uniform general ledger data as required to obtain a consolidating legal entity trial balance for all domestic and foreign entities		x
Manipulate data as required to obtain legal entity trial balance		x
Manipulate data as required to provide KPMG with import-ready files for use with engagement technology tools		x
Provide information related to US balance sheet and income statement eliminations which tie to financial statements, including for SMLLC rollups		x
Reconcile worldwide net income reported on the financial statements to domestic net income reported on the federal income tax return		x
Rollforward retained earnings which tie to the financial statements for each separate legal entity and identify distributions and contributions affecting retained earnings		x
Provide detail for all tax positions, methodology, and supporting documentation		x
Provide detail related to current and prior year IRS tax adjustments		x
Provide detail related to current and prior year state tax adjustments and state notices or tax audit settlements received		x
Review and update legal entity chart or legal entity listing (including any investments in foreign entities, whether wholly or partially owned at any time during TY 2022)		x
Summarize, in an agreed upon format, information to be reported on Schedule G and Schedule K of Form 1120, relating to legal entity ownership and changes to the legal entity ownership resulting from acquisitions, dispositions and reorganizations based on the legal entity chart of legal entity listing prepared by Client	x	
Prepare descriptions of transactions or tax positions to be reported on Schedule UTP, Form 8886 or Form 8275 or 8275-R.		x
Maintain tax compliance calendar, in an agreed upon format	x	
Provide transfer pricing reports prepared internally or by another service provider		x
Provide foreign currency translation rates to be utilized		x
<b>Preparation of tax workpapers</b>		
Provide prior year tax return workpapers, as requested		x
Determine and agree upon schedule of "audit ready" workpapers and documentation	x	x
Prepare tax workpapers for each separate legal entity, as necessary, using KPMG workpaper technology	x	
Calculate Schedule M-3 adjustments similar to prior-year's activity	x	
Review Client calculated Schedule M-3 adjustment support for tax technical appropriateness and computational accuracy		x
Discuss and agree to changes in Client calculated Schedule M-3 adjustments	x	
Calculate Schedule M-3 adjustments which are new or materially different from prior-year's activity due to change in business activity or tax law		x
<b>Depreciation, depletion and amortization</b>		
Maintain and rollforward fixed assets & intangibles which tie to the financial statements for book purposes		x
Provide fixed assets & intangibles list/register for federal and state tax purposes carrying over from prior year for domestic entities whether or not included in Att. A		x
Maintain and rollforward fixed assets & intangibles for federal and state tax purposes for domestic entities included on Att. A	x	
Maintain and rollforward fixed assets & intangibles for federal and state tax purposes for domestic entities not included on Att. A		x
Maintain ADS books of fixed assets for entities included on Att. A		x
Maintain ADS books of fixed assets for entities not included on Att. A		x
Cost segregation analysis		x
Quantifying research and experimental expenditures for capitalization under section 174		x
Calculate depletion adjustment		x
<b>Inventory and UNICAP</b>		
Calculate Sec. 263A adjustment(s) for entities whether or not included on Att. A		x
Interest capitalization analysis		x
Prepare LIFO tax computation		x
<b>Meals &amp; Entertainment (M&amp;E) and Qualified Transportation Fringe Benefits/Parking</b>		
Calculate disallowed M&E and Parking expenses based on income statement accounts identified by CLIENT	x	x
<b>Tax consequences for new acquisitions, mergers, dispositions, and/or debt modifications</b>		
Calculate applicable purchase price allocation for acquisitions and/or dispositions		x
Identification of transactions for which statements and elections need to be filed (e.g., Sec. 332, 351, 368, & 367 statements, GRAs, etc.)		x
Determine tax consequences of debts acquired or retired, and debt modifications		x
<b>Form 5471 – Controlled Foreign Corporations</b>		
Provide TY 2022 international transactions resulting in Subpart F inclusions		x
Accounting methods selection and related earnings and profits (E&P) and taxable income calculations for new controlled foreign corporations (CFCs)		x
Quantifying effects of impermissible accounting methods, and related method changes		x
Calculate current year E&P and foreign corporation taxable income under US tax principles based on previously adopted accounting methods		x
Provide other gross foreign source income		x
Calculate tested income inclusive of relevant expense allocation		x
Computing complex E&P or taxable income adjustments including UNICAP and other inventory items, depreciation, pension expenses, and stock-based compensation		x

**MediaMath, Inc.**  
**12/31/2023 Tax Year**  
**Attachment B**  
**Compliance Scope Analysis**

Please note that, if requested, KPMG may be able to assist with certain items identified as client responsibility.

	In-scope KPMG Compliance Tasks	Client Responsibility / KPMG Out-of-scope Compliance Tasks
Subpart F income computations		x
Calculate Subpart F on intercompany transactions and associated Section 78 gross up		x
Determination and calculation of QBAI under the alternative depreciation system (ADS) and consideration of dual use property considerations		x
Calculating section 986(c) gain or loss on distributions of previously taxed E&P (PTEP)		x
Section 988 foreign gain /loss computation for non-U.S. denominated transactions		x
PTEP modeling		x
Calculating section 987 gain/loss, including QBU and functional currency determinations		x
DASTM computations (Argentinian entities)		x
Allocating and apportioning taxes required for the 2019 version of Form 5471 Schedules E and E-1		x
Schedules J and P: Restating beginning of year balances for PTEP, including determining amounts first required on the 2019 version of Form 5471 and ongoing tracking of PTEP (CFC and US shareholder level)		x
Schedule O and related transactional reporting (inclusive of calculations to properly reflect transactions in E&P and taxable income)		x
Various statements and disclosures		x
Analyzing and maintaining hybrid deduction account		x
Analyzing Rev. Proc. 2019-40 and related documentation to determine and complete requirements for any new CFCs given repeal of section 958(b)(4), which had previously prevented downward attribution under section 318(a)(3)		x
<b>Form 8858 – Foreign disregarded entities and foreign branches</b>		
Identifying qualified business units (QBUs)		x
Identifying and analyzing permanent establishments and quantifying related activity (inclusive of expense allocation and apportionment)		x
Identification of dual consolidated losses and determining whether the loss can be deducted (e.g., there is a positive cumulative register or a domestic use election can be made).		x
Schedule I: Transferred loss amount		x
Schedule J: Expanded information related to foreign taxes		x
Determining disregarded reallocation transactions and computing reattributions		x
<b>Limitation on Business Interest Expense under Sec. 163(j) (Form 8990)</b>		
Section 163(j) interest limitation calculations and completion of related Form(s) 8990		x
Determine preference to apply the proposed CFC group method, analysis under final and proposed regulations, and related disclosures if adopting the section 163(j) proposed regulations		x
Determine whether to elect to apply new 163(j) limitation rules under the CARES Act for 2019		x
Provide separate company Sec. 163(j) limitations and carryforwards, if applicable		x
<b>Form 8991 and BEAT</b>		
Data collection and analysis to quantify amount of BEAT payments including determination of COGS		x
Provide base erosion tax payments		x
Consulting on classification of expenses on the Form 1120		x
Fact finding and analysis to determine application of common law doctrines		x
Analysis to determine amounts qualifying for services cost method (SCM) exception		x
Post year-end tax accounting method planning to reduce BEAT liability (inclusive of the ability to capitalize certain expenses)		x
Modeling the implications of the voluntary surrender of certain deductions		x
Collecting information from other taxpayers where the client is part of applicable taxpayer group.		x
<b>Global Intangible Low-Taxed Income (GILTI; Form 8992)</b>		
Compute GILTI and associated Section 78 gross up		x
Provide separate company information to support state tax return preparation		x
Reporting when US shareholder is a domestic partnership		x
Calculating GILTI at the US shareholder level for state tax purposes		x
<b>Form 8993 and FDII</b>		
Determination and calculation of QBAI		x
Analyzing FDII inputs including identifying and validating revenue streams, analyzing cost center data to determine non-861 expenses apportioned against FDDEI, etc.		x
Provide FDDEI eligible gross income		x
Various consultations related to applicable of the proposed documentation requirements		x
Allocating and apportioning expenses under section 861 principles		x
Calculating FDII at the US shareholder level for state tax purposes		x
Allocate and apportion expenses for FDII and FTC purposes based on historic methodologies		x
<b>Form 1118 – Foreign tax credits</b>		
Consideration of ability reduce foreign tax overall - local country income tax or withholding tax		x
Various analyses required under finalized and proposed regulations under section 904 and 861		x
Additional consideration of proposed regulations for stewardship cost (i.e. computation of stock basis of members of the U.S. consolidated group)		x
Factual development needed to source income and expenses, including Treaty resourcing analysis		x
Withholding tax considerations on distributions of PTEP including determination, tracking, and analysis of excess limitation account		x
Determination and characterization of asset basis including CFC stock basis for section 861 apportionment (including CFC stock basis studies as well as modeling impact of using alternative tax value method to value US assets for these computations)		x
Analyzing of current tax expense to determine current year creditability of such foreign tax		x
Determination and computations related to section 905(c) foreign tax redeterminations for changes in tax expense related to a prior period		x
Quantifying of section 174 expenses (separate from section 41 costs used for R&D credit), including identifying related book-to-tax adjustments from financial statement amounts and related section 861 apportionment for R&E (consideration of scenario planning to change the result)		x
Analyzing SG&A detail and supplemental factual development needed to determine stewardship		x
Detection and analysis regarding changes to prior section 965 inclusion and related installments		x

MediaMath, Inc.  
12/31/2023 Tax Year  
Attachment B  
Compliance Scope Analysis

Please note that, if requested, KPMG may be able to assist with certain items identified as client responsibility.		
	In-scope KPMG Compliance Tasks	Client Responsibility / KPMG Out-of-scope Compliance Tasks
Federal and state tax credits		
Calculate federal and state research & development (R&D) tax credit(s)		x
Review Client provided federal and state tax credit calculations for tax technical appropriateness and computational accuracy		x

**MediaMath, Inc.**  
**12/31/2023 Tax Year**  
**Attachment B**  
**Compliance Scope Analysis**

Please note that, if requested, KPMG may be able to assist with certain items identified as client responsibility.

	In-scope KPMG Compliance Tasks	Client Responsibility / KPMG Out-of-scope Compliance Tasks
<b>Other CLIENT specific components of taxable income</b>		
Calculate Section 987 gain or loss on remittances from foreign disregarded entities and application of Section 987 regulations		x
Provide rollforward of historical tax basis (in USD) in foreign company PTEP layers		x
Calculate Section 986(c) exchange gain or loss on distributions of PTI		x
Detection and analysis regarding changes to prior section 965 inclusion and related installments		x
<b>State and local specific considerations</b>		
Determine state filing requirements for each legal entity and identify possible filing requirements in new jurisdictions		x
Determine Client's filing methodologies, including modeling and "as-if" return preparation scenarios		x
Gather and reconcile apportionment & allocation (A&A) data to tie to financial statements and Federal tax return(s); account for variances identified		x
Review State A&A PBC for completeness, comparison to prior year state returns and current year federal returns	x	
Prepare or review state sourcing or allocation methods, including application of state sourcing methodologies, computation of throwback sales, and applying changes in state apportionment laws		x
Prepare state modifications based on readily available information (i.e. from the financial statements, trial balance, or Federal tax return)	x	
Prepare and review "state modifications" which require additional information (e.g. depreciation and expense disallowance calculations)	x	x
Analyze entities included in state filing group(s) (e.g. foreign operating companies)		x
Review and analyze consolidated elimination entries detail for differences in state filing group(s) from federal consolidated filing group(s)		x
Calculate prior year state tax deduction true-up		x
Analyze state tax rules for treatment of nonrecurring items specific to Client		x
Unitary study/analysis		x
<b>Prepare tax returns and disclosures</b>		
<b>Please refer to Attachment A for the complete listing of U.S. federal, state, city and local income tax returns included within the scope of our engagement</b>		
U.S. federal income tax returns and related forms and disclosures not included on Att. A		x
U.S. state, city and local income and franchise tax returns and related forms and disclosures not included on Att. A		x
Preparation of extension and/or quarterly estimate calculations and associated Forms/Vouchers not included on Att. A		x
Prepare federal or state NOL schedules (assuming rolled over from prior year)	x	
Prepare federal or state NOL schedules (including creating new schedules not rolled over from prior year)		x
Prepare tax forms and disclosure statements to report acquisitions, dispositions, mergers and/or debt modifications		x
Prepare recurring whitepaper statements, elections and disclosures to be attached to federal, state and information returns that are not related to mergers, dispositions, acquisitions, or other similar transactions	x	
Quantifying effects of impermissible accounting methods, and related method changes and preparation of Form 3115		x
<b>Client's review of deliverables (KPMG tax work papers and tax returns)</b>		
Prepare tax work papers for review by Client directly within KPMG workpaper technology	x	
Prepare Excel or PDF-based deliverable packages for review by Client, as requested		x
Rerun of work papers and calculations due to changes in information received or errors found in data provided by Client		x
Rerun of returns due to change in information received or changes after Client has signed off on return		x
Sign all federal, state, city and local tax returns as paid preparers	x	
<b>Tax processing</b>		
Electronic filing (e-file) of returns included on Att. A that are mandated to be e-filed by taxing authorities	x	
Process paper filing copy of returns included on Att. A that are mandated to be e-filed by taxing authorities		x
Process filing copy of returns not included on Att. A - e-filed or paper filing		x
Provide Client with electronic (Adobe PDF) copy of returns included on Att. A	x	
Process paper copy of returns included on Att. A for Client's records		x
Prepare certified mailers		x
Prepare EFT and check requests & coordinate with accounts payable/check signing parties		x
Provide Client with final set of workpapers, & soft copies of deliverables	x	
<b>Miscellaneous services</b>		
Assist with notices related to errors made on tax returns filed by KPMG	x	
Assist with notices related to positions taken on returns or errors/questions from the jurisdiction		x
Assist gathering information for federal and state audits		x
Identify new federal and state income tax credit opportunities and calculate benefit		x
Consulting on opting out of withholding or e-filing		x
Maintain E&P calculations		x
Maintain corporate holdings investment basis information/calculations		x
<b>Continuous improvement</b>		
Provide insights and suggestions for improved compliance methodologies	x	x
Conduct tax status update meetings with appropriate Client personnel, at an agreed upon cadence	x	x
Communicate areas of potential tax planning or opportunities	x	x
Identification, preliminary design, mockups and discussions of process enhancement opportunities	x	x
Provide ongoing timely updates of tax law changes that are relevant to Client	x	

MediaMath, Inc.  
12/31/2023 Tax Year  
Attachment B  
Compliance Scope Analysis

Please note that, if requested, KPMG may be able to assist with certain items identified as client responsibility.		
	In-scope KPMG Compliance Tasks	Client Responsibility / KPMG Out-of-scope Compliance Tasks
Post season debrief between KPMG and Client to identify process improvements	x	x





## 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 15<sup>th</sup> of any calendar year shall be due no later than September 15<sup>th</sup> 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.