

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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|---|---|------------------------|
| _____ |) | |
| In re: |) | Chapter 11 |
| |) | |
| PEGASUS SATELLITE TELEVISION, INC., et al., |) | Case No. 04-20878 |
| |) | |
| Debtors. |) | (Jointly Administered) |
| _____ |) | |

**APPLICATION FOR ORDER AUTHORIZING THE DEBTORS
AND DEBTORS-IN-POSSESSION TO EMPLOY
KPMG LLP AS TAX PLANNING ADVISOR
PURSUANT TO 11 U.S.C. §§ 327(a) AND 328(a) AS OF SEPTEMBER 29, 2004**

Pegasus Satellite Television, Inc. and certain of its subsidiaries and affiliates, each a debtor and debtor-in-possession herein (collectively, the “Debtors”),¹ hereby file this Application (the “Application”) requesting entry of an order authorizing the Debtors to employ and retain KPMG LLC (“KPMG”) as tax planning advisor in these chapter 11 cases pursuant to sections 327(a) and 328(a) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) as of September 29, 2004, the date of the filing of this Application. The facts and circumstances supporting this Application are set forth in the Affidavit of Frank J. Angeleri in Support of the Application for Order Authorizing the Retention and Employment of KPMG LLP as Tax Planning Advisor Pursuant to 11 U.S.C. §§ 327(a) and 328(a) (the “Angeleri Affidavit”),

¹ The Debtors are: Argos Support Services Company, Bride Communications, Inc., BT Satellite, Inc. Carr Rural TV, Inc., DBS Tele-Venture, Inc., Digital Television Services of Indiana, LLC, DTS Management, LLC, Golden Sky DBS, Inc., Golden Sky Holdings, Inc., Golden Sky Systems, Inc., Henry County MRTV, Inc., HMW, Inc., Pegasus Broadcast Associates, L.P., Pegasus Broadcast Television, Inc., Pegasus Broadcast Towers, Inc., Pegasus Media & Communications, Inc., Pegasus Satellite Communications, Inc., Pegasus Satellite Television of Illinois, Inc., Pegasus Satellite Television, Inc., Portland Broadcasting, Inc., Primewatch, Inc., PST Holdings, Inc., South Plains DBS, LP, Telecast of Florida, Inc., WDSI License Corp., WILF, Inc., WOLF License Corp. and WTLH License Corp.

attached hereto as Exhibit A. In further support of this Application, the Debtors respectfully state as follows:

STATUS OF THE CASE AND JURISDICTION

1. On June 2, 2004 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On the Petition Date, the Debtors also jointly filed motions or applications seeking certain typical "first day" orders, including an order to have these cases jointly administered.

2. The Debtors are continuing in possession of their properties and are operating and maintaining their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On June 10, 2004, the United States Trustee for the District of Maine appointed an official committee of unsecured creditors pursuant to section 1102(a) of the Bankruptcy Code (the "Committee").

4. No request has been made for the appointment of a trustee or examiner in these cases.

5. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein is 11 U.S.C. §§ 327(a) and 328(a).

BACKGROUND OF THE DEBTORS

6. As of the Petition Date, Pegasus Satellite Television, Inc. ("PST"), together with its subsidiaries, was the nation's largest independent provider of DIRECTV® programming. Organized in 1996 as a Delaware Corporation, PST is headquartered in

Marlborough, Massachusetts. PST is a wholly owned indirect subsidiary of Pegasus Satellite Communications, Inc.

7. As of the Petition Date, the Debtors' principal operating business was its direct broadcast satellite ("DBS") business. Specifically, the Debtors provided DIRECTV programming services to rural households across the United States and, as of December 31, 2003, had in excess of 1.1 million subscribers and the exclusive right to distribute DIRECTV services to approximately 8.4 million rural households in certain territories within 41 states.

8. In addition to the Debtors' DBS business, Pegasus Broadcast Television, Inc., together with its subsidiaries (collectively, the "Broadcast Debtors"),² are either owners or programmers of eight television stations affiliated with either CBS Television, Fox Broadcasting Company, United Paramount Network, or the WB Television Network.

9. As of March 31, 2004, the Debtors had assets aggregating approximately \$1.6 billion related to their DBS business, which generated net revenues of approximately \$831.2 million during calendar year 2003 and the Debtors had consolidated assets of approximately \$57 million related to their television broadcast business. As of the Petition Date, the Debtors had 942 employees.

RELIEF REQUESTED

10. By this Application, the Debtors seek entry of an order pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, authorizing the employment and retention of KPMG as of September 29, 2004, as tax planning advisor for the Debtors for the purpose of

² The Broadcast Debtors are Bride Communications, Inc., BT Satellite Inc., HMW, Inc., Pegasus Broadcast Associates, L.P., Pegasus Broadcast Television, Inc., Pegasus Broadcast Towers, Inc., Portland Broadcasting, Inc., Telecast of Florida, Inc., WDSI License Corp., WILF, Inc., WOLF License Corp., and WTLH License Corp.

providing tax planning advisory services in these Chapter 11 cases, in accordance with the terms and conditions of the engagement letter annexed hereto as Exhibit B (the “Engagement Letter”).

BASIS FOR RELIEF

11. In light of the size and complexity of these chapter 11 cases, the Debtors require the services of a seasoned and experienced tax planning advisor, and one that is familiar with the chapter 11 process.

12. KPMG is a multi-national accounting firm that provides, among other things, auditing services, accounting advice, financial consulting and advisory services to over 80% of the companies on the Fortune 500 list. In addition, KPMG has provided tax planning and advisory services to clients in a variety of industries, including the cable and satellite television industry.

13. Moreover, KPMG has served, or is serving, as a tax consultant to numerous debtors-in-possession and official creditors’ committees in various chapter 11 proceedings, including Worldcom, Armstrong World Industries and many others. Thus, the Debtors believe that KPMG is well suited and uniquely qualified to serve as the Debtors’ tax planning advisor in these chapter 11 cases. Accordingly, the Debtors respectfully request that the Court approve the employment of KPMG to perform necessary tax planning advisory functions that are essential to the effective and efficient administration of the Debtors’ chapter 11 cases.

SERVICES TO BE RENDERED

14. The Debtors anticipate that KPMG will render tax planning and advisory services to the Debtors as needed throughout the course of these chapter 11 cases. The Debtors have negotiated the terms of the Engagement Letter, which set forth the services KPMG will

provide to the Debtors as well as the manner in which KPMG will be compensated for its services. Subject to further order of the Court, KPMG will be engaged to render, among other things, the following professional services (collectively, the “Services”):

- a. review of any tax returns;
- b. advice and assistance to the Debtors regarding tax planning issues, including, but not limited to, assistance in estimating restrictions on utilization of net operating loss carryforwards, attribute reduction, and state and local taxes;
- c. assistance regarding real and personal property tax matters, including, but not limited to, review of real and personal property tax records, negotiation of values with appraisal authorities, preparation and presentation of appeals to local taxing jurisdictions and assistance in litigation of property tax appeals;
- d. assistance regarding transaction taxes, state and local sales and use taxes;
- e. assistance regarding the preparation of the Debtors’ tax provision as it relates to its financial statements;
- f. assistance regarding any existing or future Internal Revenue Service (the “IRS”), state and/or local tax examinations;
- g. advice and assistance on the tax consequences of proposed chapter 11 plans, including, but not limited to, assistance in the preparation of IRS ruling requests regarding the future tax consequences of alternative plan structures;
- h. assistance regarding the tax structure and tax implications of the anticipated sale of the Debtors’ ownership interest in Pegasus Broadcast Television, Inc. or substantially all of the assets of such entity;
- i. other consulting, advice, research, planning or analysis regarding tax issues as may be requested from time to time; and
- j. analysis and advice on other related tax services for the Debtors, as may be necessary or desirable.

15. The Debtors note that they have already retained PricewaterhouseCoopers (“PwC”) as accountants and auditors and Herbein & Company Inc. (“Herbein”), as corporate taxation advisors in these chapter 11 cases. The services that are provided by PwC are entirely

separate from the services that will be provided by KPMG. The services to be provided by KPMG will not be duplicative of those provided by Herbein, and KPMG will coordinate any services performed at the Debtors' request with the services of Herbein and any other advisors and counsel, as appropriate, to avoid duplication of effort.

DISINTERESTEDNESS OF PROFESSIONALS

16. In connection with the preparation of this Application, KPMG's professionals conducted a review of its professional contacts with the Debtors, their affiliates and certain entities holding large claims against the Debtors that were reasonably known to us. KPMG's review consisted of queries of an internal computer database containing names of individuals and entities that are present or recent former clients of KPMG in order to identify potential relationships.

17. To the best of the Debtors' knowledge, information and belief, KPMG has no connection with, and holds no interest adverse to, the Debtors, their estates, their creditors or any party-in-interest in the matters on which KPMG is proposed to be engaged, except that KPMG has rendered services, and may continue to render services, to certain of the Debtors' creditors or other parties-in-interest as specified in the Angeleri Affidavit, in matters wholly unrelated to these cases. Prior to the Petition Date and this proposed engagement, KPMG has rendered services to the Debtors and certain of their non-Debtor affiliates on certain discrete tax matters.

18. KPMG has further represented to the Debtors that to the best of its knowledge, no partner, principal or staff person of KPMG has any connection with or holds any interest adverse to the Debtors, their estates, their creditors or any other party-in-interest, or the Office of the United States Trustee or any person employed in the Office of the United States

Trustee, in the matters for which KPMG is proposed to be retained except as disclosed in the Angeleri Affidavit.

19. While KPMG's partners and principals may have business associations with certain of the Debtors' creditors or parties-in-interest herein, such associations have no connection to these Chapter 11 cases.

20. KPMG will conduct an ongoing review of its files to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new facts or circumstances are discovered, KPMG will supplement its disclosure to the Court.

21. Accordingly, to the best of the Debtors' knowledge, information and belief, KPMG is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code. Pursuant to section 1107(b) of the Bankruptcy Code, KPMG's representation of the Debtors pre-petition would not disqualify it from being retained by the Debtors pursuant to section 327(a) of the Bankruptcy Code.

22. The Debtors' knowledge, information and belief regarding certain of the matters set forth in this application are based on, and made in reliance upon, the Angeleri Affidavit.

PROFESSIONAL COMPENSATION

23. Section 328 of the Bankruptcy Code provides, in relevant part, that a debtor "with the court's approval, may employ or authorize the employment of a professional person under section 327 on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis." 11 U.S.C. § 328(a).

24. The hourly rates, subject to periodic adjustment, for the Services rendered by KPMG to the Debtors in these cases will be as follows:

| Professional Level | Standard Hourly Rate | Hourly Rate for this Engagement |
|----------------------------|----------------------|---------------------------------|
| Partner | \$700 - \$825 | \$550-\$600 |
| Senior Manager/Manager | \$500 - \$625 | \$375-\$500 |
| Senior Associate/Associate | \$250 - \$325 | \$225-\$350 |

These hourly rates are adjusted annually. Such rate adjustments will be disclosed to this Court and the Debtors.

25. KPMG will also seek reimbursement for necessary and reasonable out-of-pocket expenses incurred, which shall include, but are not limited to, travel, lodging, meals, photocopying, delivery service, postage, vendor charges and other out-of-pocket expenses incurred in providing professional services.

26. To the extent KPMG will also render services to affiliated non-debtor entities, KPMG will distinguish in its time records between time spent on Pegasus debtor entities and non-debtor entities. To the extent that is not possible, KPMG's fees and expenses in connection with the Services will be allocated in accordance with the terms of the Final Order Authorizing the Debtors to Continue Performing Under the Support Services Agreement with Pegasus Communications Management Company, dated July 22, 2004.

BILLING AND DISCLOSURE

27. All of KPMG's fees and expenses in these cases relating to the Services allocated to the Debtors will be subject to approval of the Court upon proper application by KPMG in accordance with sections 330 and 331 of the Bankruptcy Code, Bankruptcy Rule 2016, the Local Rules of this Court and any orders of the Court, the fee and expense guidelines established by the United States Trustee and the Order Under 11 U.S.C. §§ 331 and 105(a)

Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals entered by the Court on June 24, 2004, and all other applicable requirements.

28. In accordance with section 504 of the Bankruptcy Code, there is no agreement or understanding between KPMG and any other entity, other than a member, partner or regular associate of KPMG , for the sharing of compensation received or to be received for services rendered in connection with these proceedings.

29. The Debtors believe that the fees of KPMG are fair and reasonable in light of industry practice, market rates both in and out of Chapter 11 cases, KPMG's experience in reorganizations, the scope of work to be performed pursuant to KPMG's retention and KPMG's importance to these cases.

DISPUTE RESOLUTION PROVISIONS

30. The Debtors and KPMG have agreed, subject to the Courts approval of this Application, that any dispute or claim arising out of or relating to the Engagement Letter between the parties, the services provided thereunder, or any other services provided by or on behalf of KPMG to the Debtors or at its request shall be resolved in accordance with the dispute resolution procedures set forth in the Engagement Letter, or by this Bankruptcy Court, which constitute the sole methodologies for the resolution of all such disputes. Mediation, if selected, may take place at a location to be designated by the parties. Arbitration shall take place in New York, New York. Either party may seek to enforce any written agreement reached by the parties during mediation, or to confirm and enforce any final award entered in arbitration, in any court of competent jurisdiction.

NOTICE

31. Notice of this Motion has been given to all parties on the All Notices List as required by (and as defined in) the Order Establishing Case Management Procedures and Hearing Schedule dated July 9, 2004.

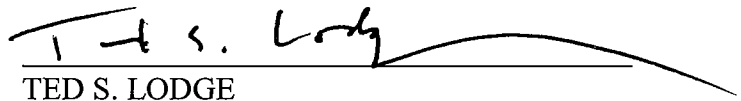
NO PREVIOUS RELIEF REQUESTED

32. No application for the relief requested herein has been made by the Debtors to this or any other court.

WHEREFORE, for the foregoing reasons, the Debtors hereby respectfully request that the Court enter an order approving the retention of KPMG as tax planning advisor to the Debtors as of September 29, 2004 pursuant to sections 327(a) and 328(a) of the Bankruptcy Code and pursuant to the terms and conditions reflected herein, and in the Engagement Letter, and grant such other and further relief as may be just and proper.

Dated: Bala Cynwyd, Pennsylvania
September 29, 2004

PEGASUS SATELLITE COMMUNICATIONS,
INC.
(for itself and on behalf of its debtor subsidiaries)
Debtors and Debtors in Possession



TED S. LODGE
President, Chief Operating Officer and Counsel
Pegasus Satellite Communications, Inc.



KPMG LLP
1601 Market Street
Philadelphia, PA 19103-2499

Telephone 267 256 7000
Fax 267 256 7200

September 23, 2004

Our ref Pegasus Satellite Tax Consulting Eng
Letter 092304.doc

Contact Frank Angeleri

Mr. Joseph Pooler
Chief Financial Officer
Pegasus Satellite Communications, Inc.
225 City Avenue
Bala Cynwyd, PA 19004

Tax Services Engagement

Dear Joe,

We are pleased you have engaged KPMG LLP ("KPMG") to provide tax consulting services for Pegasus Satellite Communications, Inc. and its subsidiaries (collectively the "Debtors" or the "Company"). This letter confirms the scope and related terms of your engagement of KPMG.

We are being engaged to render, among other things, the following services as requested by the Debtors:

- i. Review any tax returns;
- ii. Advice and assistance to the Debtors regarding tax planning issues, including, but not limited to, assistance in estimating restrictions on utilization of net operating loss carryforwards, attribute reduction, and state and local taxes;
- iii. Assistance regarding transaction taxes, state and local sales and use taxes;
- iv. Assistance regarding real and personal property tax matters, including, but not limited to, review of real and personal property tax records, negotiation of values with appraisal authorities, preparation and presentation of appeals to local taxing jurisdictions and assistance in litigation of property tax appeals;
- iv. Assistance regarding any existing or future Internal Revenue Service ("IRS"), state and/or local tax examinations;





- v. Other consulting, advice, research, planning or analysis regarding tax issues as may be requested from time to time;
- vii. Advice and assistance on the tax consequences of proposed chapter 11 plans, including, but not limited to, assistance in the preparation of IRS ruling requests regarding the future tax consequences of alternative plan structures;
- viii. Assistance regarding the preparation of the Debtors' tax provision as it relates to its financial statements;
- ix. Assistance regarding the tax structure and tax implications of the anticipated sale of the Debtors ownership interest in Pegasus Broadcast Television, Inc. or substantially all of the assets of such entity; and
- x. Analysis and advice on other related tax services for the Debtors, as may be necessary or desirable.

Fees

Our fees for this engagement will be based on the complexity of the issues and the time required of the individuals who will be performing the services.

Our rates for this engagement are as follows:

| | |
|----------------------------|-------------|
| Partner | \$550-600 |
| Senior Manager/Manager | \$375-\$500 |
| Senior Associate/Associate | \$225-350 |

In addition, we will bill for out-of-pocket expenses. These expenses may include such items as travel, lodging, meals, telephone, videoconferencing, word-processing, graphics, and administrative support.



In the normal course of business, KPMG revises its hourly rates on October 1 of each year. We request that the rates listed above be revised to reflect the changes that will be in effect at such time.

We understand that billings for our fees and expenses must be made in accordance with the requirements of the Bankruptcy Code, the United States Trustee's "GUIDELINES FOR REVIEWING APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FILED UNDER 11 U.S.C. § 330", applicable local rules of the Maine Bankruptcy Court and with the procedures for interim compensation and reimbursement of expenses for professionals which may be established in the Debtors' case.

Our agreement to provide the professional services described in this letter is subject to the satisfactory completion of certain prospective client evaluation and conflicts of interest check procedures with regard to the Debtors and the Interested Parties identified by your bankruptcy counsel.

The attached Standard Terms and Conditions are made a part of this engagement letter, except as modified hereunder. In accordance with the terms of this engagement letter, the following modifications to the attached Standard Terms and Conditions are agreed to by the Company:

Section 2 – Payment of Invoices -- The first sentence of this section is deleted.

Section 6 -- Limitation on Damages is deleted

Section 9 – Indemnification

Section 19(a) – Alternative Dispute Resolution – The first sentence is amended to insert the following after the words "Exhibit A" – "or by the Bankruptcy Court presiding over the Debtors' case, during the pendency of such case,".

Section 19(b) -- Alternative Dispute Resolution – The first sentence is amended to insert the following at the end thereof – "or by the Bankruptcy Court presiding over the Debtors' case, during the pendency of such case,".

Please sign the enclosed copy of this engagement letter to confirm our agreement and return it to us within 30 days. If you have any questions, please call me.



*Pegasus Satellite Communications, Inc.
Tax Services Engagement
September 23, 2004*

Very truly yours,

KPMG LLP

Frank J. Angeleri
*Partner
Federal Tax*

ACCEPTED:

Pegasus Satellite Communications, Inc.

Authorized Signature

Title

Date

KPMG LLP
Standard Terms and Conditions
Tax Services

1. **Services.** It is understood and agreed that KPMG's services (the "Engagement") may include advice and recommendations; but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, Client. References herein to Client shall refer to the addressee of the Proposal or Engagement Letter to which these Standard Terms and Conditions are attached (the "Engagement Letter"). Unless expressly provided for, KPMG's services do not include representing Client in the event of a challenge by the Internal Revenue Service (IRS) or other tax or revenue authorities.
2. **Payment of Invoices.** Client agrees to pay properly submitted invoices within thirty (30) days of the invoice date, or such other due date as may be indicated in the Engagement Letter. KPMG shall have the right to halt or terminate entirely its services under the Engagement Letter until payment is received on past due invoices. All fees, charges and other amounts payable to KPMG under the Engagement Letter do not include any sales, use, excise, value added or other applicable taxes, tariffs or duties, payment of which shall be Client's sole responsibility, excluding any applicable taxes based on KPMG's net income or taxes arising from the employment or independent contractor relationship between KPMG and its personnel.
3. **Term.** Unless terminated sooner in accordance with its terms, the Engagement shall terminate on the completion of KPMG's services thereunder. In addition, either party may terminate the Engagement Letter at any time by giving written notice to the other party not less than 30 calendar days before the effective date of termination. In the event of such notification, Client agrees to pay KPMG for time charges at standard hourly rates and expenses incurred to the date of termination to the extent the amount so computed exceeds payments previously made by Client for the Engagement.
4. **Ownership.**
 - (a) **KPMG Property.** KPMG has created, acquired, owns or otherwise has rights in, and may, in connection with the performance of services under the Engagement Letter, employ, provide, modify, create, acquire or otherwise obtain rights in, various concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques, models, templates; software, user interfaces and screen designs; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems (collectively, the "KPMG Property"). KPMG retains all ownership rights in the KPMG Property. Client shall acquire no right or interest in such property, except for the license expressly granted in the next paragraph. In addition, KPMG shall be free to provide services of any kind to any other party as KPMG deems appropriate, and may use the KPMG Property to do so. KPMG acknowledges that KPMG Property shall not include any of Client's confidential information or tangible or intangible property, and KPMG shall have no ownership rights in such property.
 - (b) **Ownership of Deliverables.** Except for KPMG Property, and upon full and final payment to KPMG under the Engagement Letter, the tangible items specified as deliverables or work product in the Engagement Letter including any intellectual property rights appurtenant thereto (the "Deliverables") will become the property of Client. If any KPMG Property is contained in any of the Deliverables, KPMG hereby grants Client, a royalty-free paid-up, non-exclusive, perpetual license to use such KPMG Property in connection with Client's use of the Deliverables.
5. **Limitation on Warranties.** THIS IS A SERVICES ENGAGEMENT. KPMG WARRANTS THAT IT WILL PERFORM SERVICES UNDER THE ENGAGEMENT LETTER IN GOOD FAITH, WITH QUALIFIED PERSONNEL IN A COMPETENT AND WORKMANLIKE MANNER. KPMG DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
6. **Limitation on Damages.** Except for each party's indemnification obligations as set forth below, neither Client nor KPMG shall be liable to the other for any actions, damages, claims, liabilities, costs, expenses or losses in any way arising out of or relating to the services performed under the Engagement Letter for an aggregate amount in excess of the fees paid or owing to KPMG for services rendered by KPMG under the Engagement Letter. In no event shall either party be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs). The provisions of this Paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort or otherwise.
7. **Infringement.**
 - (a) KPMG hereby agrees to indemnify, hold harmless and defend Client from and against all claims, liabilities, losses, expenses (including reasonable attorneys' fees), fines, penalties, taxes or damages (collectively "Liabilities") asserted by any third party against Client to the extent such Liabilities result from the infringement by the Deliverables of any third party's patents issued as of the date of the Engagement Letter, trade secrets, trademarks or copyrights. The preceding indemnification provision shall not apply to any infringement arising out of the following:
 - (i) use of the Deliverables other than in accordance with applicable documentation or instructions supplied by KPMG or other than in accordance with Paragraph 8(a) below;

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Tax Services

- (ii) any alteration, modification or revision of the Deliverables not expressly agreed to in writing by KPMG; or
 - (iii) the combination of the Deliverables with materials not supplied or approved by KPMG.
- (b) In case any of the Deliverables or any portion thereof is held, or in KPMG's reasonable opinion is likely to be held, in any such suit to constitute infringement, KPMG may, within a reasonable time, at its option either:
- (i) secure for Client the right to continue the use of such infringing item; or
 - (ii) replace, at KPMG's sole expense, such item with a substantially equivalent non-infringing item or modify such item so that it becomes non-infringing.

In the event KPMG is, in its reasonable discretion, unable to perform either of the options described in (i) or (ii) above, Client shall return the Deliverable to KPMG, and KPMG's sole liability shall be to refund to Client the amount paid to KPMG for such item; provided that the foregoing shall not be construed to limit KPMG's indemnification obligation set forth in Paragraph 7(a) above.

- (c) The provisions of this Paragraph 7 state KPMG's entire liability and Client's sole and exclusive remedy with respect to any infringement or claim of infringement.

8. Reliance on Advice and Disclosure.

- (a) Except as otherwise required by law, as permitted by the Engagement Letter, or as provided in Paragraph 8(b) below with respect to any proposed or completed transaction, Client acknowledges and agrees that any advice, recommendations, information or work product provided to Client by KPMG in connection with this Engagement is for the confidential use of Client, may not be relied upon by any third party and Client will not disclose or permit access to such advice, recommendations, information or work product to any third party or summarize or refer to such advice, recommendations, information or work product or to KPMG's Engagement without, in each case, KPMG's prior written consent.
- (b) No provision in these terms or the Engagement Letter is or is intended to be construed as a condition of confidentiality under Internal Revenue Code (IRC) sections 6011, 6111, 6112 or the regulations thereunder, or under any similar or analogous provisions of the laws of a state or other jurisdiction. Client (and each employee, representative, or other agent of Client) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of any transaction within the scope of

this Engagement that reduces or defers federal tax and all materials of any kind (including opinions and other tax analyses) that are provided to Client relating to such tax treatment and tax structure. If a state or other jurisdiction adopts provisions that are similar or analogous to those in IRC sections 6011, 6111, or 6112 or the regulations thereunder, the authorization to disclose in the preceding sentence also shall apply to any transaction within the scope of this Engagement that is subject to such provisions of that state or other jurisdiction.

9. Indemnification.

- (a) Each party agrees to indemnify, hold harmless and defend the other party from and against any and all Liabilities for physical injury to, or illness or death of, any person or persons regardless of status, and damage to or destruction of any tangible property, which the other party may sustain or incur to the extent such Liabilities result from the negligence or willful misconduct of the indemnifying party.
- (b) In furtherance of the provisions of Paragraph 8(a) above, Client will indemnify, defend and hold harmless KPMG from and against any and all Liabilities suffered by or asserted against KPMG in connection with a third party claim to the extent resulting from such party's use or possession of or reliance upon KPMG's advice, recommendations, information or work product as a result of Client's use or disclosure of such advice, recommendations, information or work product other than as permitted by Paragraph 8(b) above.
- (c) The party entitled to indemnification (the "Indemnified Party") shall promptly notify the party obligated to provide such indemnification (the "Indemnifying Party") of any claim for which the Indemnified Party seeks indemnification. The Indemnifying Party shall have the right to 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 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.

10. Cooperation; Use of Information.

- (a) Client agrees to cooperate with KPMG in the performance of the services under the Engagement Letter and shall provide KPMG with timely access to and use of Client's personnel, facilities, equipment, data and information to the extent necessary for KPMG to perform the services under the Engagement Letter. The Engagement Letter may set forth additional obligations of Client in connection with the Engagement. Client acknowledges that Client's failure to assign Client

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personnel having skills commensurate with their role with respect to this Engagement could adversely affect KPMG's ability to provide the services under the Engagement Letter.

- (b) KPMG will base its conclusions on the facts and assumptions that Client submits and will not independently verify this information. Inaccuracy or incompleteness of the information the Client provides could have a material effect on KPMG's conclusions. In rendering its advice, KPMG may consider, for example, the applicable provisions of the Internal Revenue Code of 1986, and ERISA, as amended, and the relevant state and foreign statutes, the regulations thereunder, income tax treaties, and judicial and administrative interpretations, thereof. These authorities are subject to change, retroactively and/or prospectively, and any such changes could affect the validity of KPMG's advice. KPMG will not update its advice for subsequent changes or modification to the law and regulations, or to the judicial and administrative interpretations thereof, unless Client separately engages KPMG to do so in writing after such changes or modifications.
- (c) If the Engagement involves tax planning matters the potential benefits of which are no longer possible to achieve because of legislative, regulatory, or other administrative change or judicial decision, Client's sole remedy is the right to terminate the Engagement in accordance with Paragraph 3 above.
- (d) Treasury regulations under IRC section 6011 require taxpayers to disclose to the IRS their participation in reportable transactions. Client agrees to use its best efforts to promptly inform KPMG of any transaction covered by this Engagement that is required to be disclosed as a reportable transaction to the IRS or to any state or other jurisdiction adopting similar or analogous provisions. Treasury regulations under IRC section 6112 provide that KPMG must retain lists of investors in reportable and registerable transactions if we are a material advisor with respect to the transactions and states or other jurisdictions may adopt similar or analogous provisions. Therefore, if KPMG determines that Client has participated in a reportable or registerable transaction, KPMG may place Client's name and information on a list. This list may later be requested by the IRS or other tax authority and KPMG ultimately may be required to provide it; however, KPMG will advise Client if KPMG provides Client's information to the IRS or other tax authority.
- (e) Information relating to advice KPMG provides to Client, including communications between KPMG and Client and material KPMG creates in the course of providing advice, may be privileged and protected from disclosure to the IRS or other governmental authority. Should such an authority seek disclosure from KPMG of written or oral communications relating to such advice, KPMG will discuss with Client opportunities for asserting the privilege. As KPMG is not able to assert the privilege on Client's behalf with respect to any communications for which privilege has been waived, Client agrees to notify KPMG of any such waivers, whether resulting from communications with KPMG or third parties in the same or a related matter. Client also understands that privilege may not be available for communications with an audit client and that KPMG personnel providing audit and non-audit services will discuss matters that may affect the audit to the extent required by applicable professional standards.
11. **Force Majeure.** Neither Client nor KPMG shall be liable for any delays resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.
12. **Limitation on Actions.** No action, regardless of form, arising out of or relating to this engagement, may be brought by either party more than one year after the cause of action has accrued, except that an action for non-payment may be brought by a party not later than one year following the date of the last payment due to such party under the Engagement Letter.
13. **Independent Contractor.** It is understood and agreed that each of the parties hereto is an independent contractor and that neither party is or shall be considered an agent, distributor or representative of the other. Neither party shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other.
14. **Survival.** The provisions of Paragraphs 1, 2, 4, 6, 7, 8, 9, 10, 12, 16, 17, 18, 19, and 21 hereof shall survive the expiration or termination of this engagement.
15. **Assignment.** Neither party may assign, transfer or delegate any of its rights or obligations without the prior written consent of the other party, such consent not to be unreasonably withheld.
16. **Member Firms and Consent to Share Information.** To the extent any of the services under the Engagement Letter will be performed in or relate to a jurisdiction outside of the United States, Client acknowledges and agrees that such services, including any applicable tax advice, may be performed by the member firm of KPMG International practicing in such jurisdiction. Client consents to KPMG's disclosure to a member firm, affiliate or third party and such member firm's, affiliate's or third party's use of information, including tax return information, received from Client for the purpose of preparing, assisting in preparing, or obtaining or providing services in connection with preparing, any tax return of Client or rendering other tax or accounting services to Client.
17. **Severability.** In the event that any term or provision of this Agreement shall be held to be invalid, void or unenforceable, then the remainder of this Agreement shall

KPMG LLP
Standard Terms and Conditions
Tax Services

not be affected, and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

18. **Governing Law.** The Engagement Letter and these Standard Terms and Conditions shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws provisions thereof.

19. **Alternative Dispute Resolution**

- (a) Any dispute or claim arising out of or relating to the Engagement Letter between the parties, the services provided thereunder, or any other services provided by or on behalf of KPMG or any of its subcontractors or agents to Client or at its request (including any dispute or claim involving any person or entity for whose benefit the services in question are or were provided) shall be resolved in accordance with the dispute resolution procedures set forth in Exhibit A, which constitute the sole methodologies for the resolution of all such disputes. By operation of this provision, the parties agree to forego litigation over such disputes in any court of competent jurisdiction. Mediation, if selected, may take place at a location to be designated by the parties. Arbitration shall take place in New York, New York. Either party may seek to enforce any written agreement reached by the parties during mediation, or to confirm and enforce any final award entered in arbitration, in any court of competent jurisdiction.
- (b) Notwithstanding the agreement to such procedures, either party may seek injunctive relief to enforce its rights with respect to the use or protection of (i) its confidential or proprietary information or material or (ii) its names, trademarks, service marks or logos, solely in the courts of the State of New York or in the courts of the United States located in the State of New York. The parties consent to the personal jurisdiction thereof and to sole venue therein only for such purposes.

20. **Miscellaneous.**

- (a) Client should consult with legal counsel for the purpose of advising on non-tax legal aspects of matters on which KPMG provides tax advice and drafting any legal documents or agreements that may be required in connection therewith. KPMG will provide Client's legal counsel with tax-related advice that is deemed necessary by Client's legal counsel to draft such documents or agreements. To the extent services of legal counsel or other professional service providers are required, Client is responsible for engaging and paying such service providers.
- (b) KPMG may communicate with Client by electronic mail or otherwise transmit documents in electronic form during the course of this Engagement. Client 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) and agrees that it may rely only upon a final hardcopy version of a document or other communication that KPMG transmits to Client.

- (c) For engagements where services will be provided by KPMG through offices located in California, Client acknowledges that certain of KPMG's personnel who may be considered "owners" under the California Accountancy Act and implementing regulations (California Business and Professions Code section 5079(a); 16 Cal. Code Regs. sections 51 and 51.1) and who may provide services in connection with this engagement, may not be licensed as certified public accountants under the laws of any of the various states.

21. **Entire Agreement.** These terms, and the Engagement Letter including Exhibits, constitute the entire agreement between KPMG and Client with respect to this engagement and supersede all other oral and written representations, understandings or agreements relating to this Engagement.

Exhibit A

Dispute Resolution Procedures

The following procedures are the sole methodologies to be used to resolve any controversy or claim ("dispute"). If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

Mediation

Any party may request mediation of a dispute by providing a written Request for Mediation to the other party or parties. The mediator, as well as the time and place of the mediation, shall be selected by agreement of the parties. Absent any other agreement to the contrary, the parties agree to proceed in mediation using the CPR Mediation Procedures (Effective April 1, 1998), with the exception of paragraph 2 which shall not apply to any mediation conducted pursuant to this agreement. As provided in the CPR Mediation Procedures, the mediation shall be conducted as specified by the mediator and as agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with facilitation by the mediator, to reach a consensual resolution of the dispute. The mediation shall be treated as a settlement discussion and shall be confidential. The mediator may not testify for any party in any later proceeding related to the dispute. No recording or transcript shall be made of the mediation proceeding. Each party shall bear its own costs in the mediation. Absent an agreement to the contrary, the fees and expenses of the mediator shall be shared equally by the parties.

Arbitration

Arbitration shall be used to settle the following disputes: (1) any dispute not resolved by mediation 90 days after the issuance by one of the parties of a written Request for Mediation (or, if the parties have agreed to enter or extend the mediation, for such longer period as the parties may agree) or (2) any dispute in which a party declares, more than 30 days after receipt of a written Request for Mediation, mediation to be inappropriate to resolve that dispute and initiates a Request for Arbitration. Once commenced, the arbitration will be conducted either (1) in accordance with the procedures in this document and the Rules for Non-Administered Arbitration of the CPR Institute for Dispute Resolution ("CPR Arbitration Rules") as in effect on the date of the engagement letter or contract between the parties, or (2) in accordance with other rules and procedures as the parties may designate by mutual agreement. In the event of a conflict, the provisions of this document and the CPR Arbitration Rules will control.

The arbitration will be conducted before a panel of three arbitrators, two of whom may be designated by the parties using either the CPR Panels of Distinguished Neutrals or the Arbitration Rosters maintained by any JAMS Office in the United States. If the parties are unable to agree on the composition of the arbitration panel, the parties shall follow the screened selection process provided in Section B, Rules 5, 6, 7, and 8 of the CPR Arbitration Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or any dispute concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the Federal Arbitration Act and resolved by the arbitrators. No potential arbitrator shall be appointed unless he or she has agreed in writing to abide and be bound by these procedures.

The arbitration panel shall issue its final award in writing. The panel shall have no power to award non-monetary or equitable relief of any sort. Damages that are inconsistent with any applicable agreement between the parties, that are punitive in nature, or that are not measured by the prevailing party's actual damages, 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.

Discovery shall be permitted in connection with the arbitration only to the extent, if any, expressly authorized by the arbitration panel upon a showing of substantial need by the party seeking discovery.

All aspects of the arbitration shall be treated as confidential. The parties and the arbitration panel may disclose the existence, content or results of the arbitration only as provided in the CPR Arbitration Rules. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests.

The award reached as a result of the arbitration will be binding on the parties, and confirmation of the arbitration award may be sought in any court having jurisdiction.