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and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

PARETEUM CORPORATION, *et al.*,  
  
Debtors.<sup>1</sup>

Chapter 11

Case No.: 22-\_\_\_\_ ( )

(Joint Administration Requested)

**DEBTORS' APPLICATION FOR ENTRY  
OF AN ORDER (I) AUTHORIZING AND APPROVING  
THE APPOINTMENT OF KURTZMAN CARSON CONSULTANTS LLC AS CLAIMS  
AND NOTICING AGENT, EFFECTIVE *NUNC PRO TUNC* TO  
THE PETITION DATE, AND (II) GRANTING RELATED RELIEF**

The debtors and debtors in possession (collectively, the "Debtors") in the above captioned Chapter 11 cases (the "Chapter 11 Cases") respectfully state as follows in support of this application (the "Application"):

**Relief Requested**

1. By this Application, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Order"), pursuant to section 156(c) of title 28 of the United States Code, and rule 5075-1(b) of the Local Bankruptcy Rules for the Southern District of New

<sup>1</sup> The Debtors in the Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, if applicable, are: Pareteum Corporation (7538); Pareteum North America Corp. (f/k/a Elephant Talk North America Corp.) (9623); Devicescape Holdings, Inc. (2909); iPass, Inc. (4598); iPass IP LLC (2550); Pareteum Europe B.V.; Artilium Group Ltd. (f/k/a Artilium PLC); Pareteum Asia Pte. Ltd.; and Pareteum N.V. (f/k/a Artilium N.V.). The Debtors' corporate headquarters is located at 1185 Avenue of the Americas, 2nd Floor, New York, NY 10036.



York (the “Local Rules”), (a) appointing Kurtzman Carson Consultants LLC (“KCC”) as the claims and noticing agent (the “Claims and Noticing Agent”) in the Chapter 11 Cases effective *nunc pro tunc* to the Petition Date (as defined below), including assuming full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in the Chapter 11 Cases, and (b) granting related relief. In support of this Application, the Debtors submit the Declaration of Evan Gershbein, Executive Vice President, Corporate Restructuring Services of KCC (the “Gershbein Declaration”), attached hereto as **Exhibit B**.

2. The Debtors’ selection of KCC to act as the Claims and Noticing Agent has satisfied the United States Bankruptcy Court for the Southern District of New York’s (the “Bankruptcy Court”) *Protocol for the Employment of Claims and Noticing Agents Under 28 U.S.C. § 156(c)* (dated November 15, 2011) (the “Claims Agent Protocol”), in that the Debtors have obtained and reviewed engagement proposals from at least two other court-approved claims and noticing agents to ensure selection through a competitive process. Moreover, the Debtors submit, based on all engagement proposals obtained and reviewed, that KCC’s rates are competitive and reasonable given KCC’s quality of services and expertise. The terms of KCC’s retention are set forth in the engagement agreement dated January 4, 2022 attached hereto as **Exhibit C** (the “Engagement Agreement”); *provided, however*, that the Debtors are seeking approval solely of the terms and provisions as set forth in this Application and the Order attached hereto.

3. The Debtors anticipate that there will be thousands of entities to be noticed in these Chapter 11 Cases. Local Rule 5075-1(b) provides that “[i]n a case in which the number of creditors and equity security holders, in the aggregate, is 250 or more, the estate shall retain, subject to approval of the Bankruptcy Court, a claims and noticing agent in accordance with the

Claims Agent Protocol.” In view of the number of anticipated claimants and the complexity of the Debtors’ business, the Debtors submit that the appointment of a claims and noticing agent is required by Local Rule 5075-1(b) and is otherwise in the best interests of the Debtors’ estates and their creditors.

### **Jurisdiction and Venue**

4. The Bankruptcy Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Bankruptcy Court in connection with this Application to the extent that it is later determined that the Bankruptcy Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

5. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The bases for the relief requested herein are section 156(c) of title 11 of the United States Code (the “Bankruptcy Code”), Local Rule 5075-1(b), and the Claims Agent Protocol.

### **Background**

7. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. A detailed description surrounding the facts and circumstances of these Chapter 11 Cases is set forth in the *Declaration of Laura W. Thomas in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”), filed contemporaneously with this Application.<sup>2</sup>

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<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

8. The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrent with the filing of this Application, the Debtors filed a motion requesting procedural consolidation and joint administration of these Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no committees have been appointed or designated.

#### **KCC's Qualifications**

9. KCC is comprised of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. KCC's professionals have experience in noticing, claims administration, solicitation, balloting, and facilitating other administrative aspects of chapter 11 cases and experience in matters of this size and complexity. KCC has provided identical or substantially similar services in the following chapter 11 cases: *In re Rubie's Costume Company, Inc., et al.*, Case Nos. 20-71970 thru 20-71975 (AST); *In re Garrett Motion Inc.*, No. 20-12212 (MEW) (Bankr. S.D.N.Y. Oct. 26, 2020); *In re Avianca Holdings S.A., et al.*, Case No. 20-11133 (Bankr. S.D.N.Y. May 10, 2020); *In re The McClatchy Company, et al.*, Case No. 20-10418 (Bankr. S.D.N.Y. Feb. 13, 2020); *In re Windstream Holdings, Inc., et al.*, Case No. 19-22312 (RDD) (Bankr. S.D.N.Y. Feb. 25, 2019); *In re Waypoint Leasing Holdings Ltd.*, No. 18-13648 (SMB) (Bankr. S.D.N.Y. Nov. 25, 2018); *In re Melinta Therapeutics, Inc., et al.*, Case No. 19-12748 (LSS) (Bankr. D. Del. Dec. 27, 2019); *In re HRI Holding Corp., et al.*, Case No. 19-12415 (MFW) (Bankr. D. Del. Nov. 14,

2019); *In re Pancakes & Pies, LLC, et al. (f/k/a Perkins & Marie Callender's, LLC, et al., Case No. 19-11743 (KG) (Bankr. D. Del. Aug. 6, 2019).*<sup>3</sup>

10. By appointing KCC as the Claims and Noticing Agent in these Chapter 11 Cases, the distribution of notices and the processing of claims will be expedited, and the Office of the Clerk of the Bankruptcy Court (the "Clerk's Office") will be relieved of the administrative burden of processing what may be an overwhelming number of claims.

### **Services to Be Provided**

11. This Application pertains only to the work to be performed by KCC under the Clerk's Office's delegation of duties permitted by 28 U.S.C. § 156(c) and Local Rule 5075-1, and any work to be performed by KCC outside of this scope is not covered by this Application or by any order granting approval hereof. Specifically, KCC will perform the following tasks in its role as Claims and Noticing Agent, as well as all quality control relating thereto:

- a. prepare and serve required notices and documents in these Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules in the form and manner directed by the Debtors and/or the Bankruptcy Court, including (i) notice of the commencement of these Chapter 11 Cases and the initial meeting of creditors under section 341(a) of the Bankruptcy Code, (ii) notice of any claims bar date, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement and confirmation of the Debtors' plan or plans of reorganization, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any plan, and (vii) all other notices, orders, pleadings, publications, and other documents that the Debtors or Bankruptcy Court may deem necessary or appropriate for an orderly administration of these Chapter 11 Cases;
- b. maintain an official copy of the Debtors' schedules of assets and liabilities and statements of financial affairs (collectively, the "Schedules"), listing the Debtors' known creditors and the amounts owed thereto;
- c. maintain (i) a list of all potential creditors, equity holders, and other parties in interest and (ii) a "core" mailing list consisting of all parties described

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<sup>3</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this application. Copies of these orders are available upon request to the Debtors' counsel.

in Bankruptcy Rule 2002(i), (j), and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; and update and make said lists available upon request by a party in interest or the Clerk's Office;

- d. furnish a notice to all potential creditors of the last date for filing proofs of claim and a form for filing a proof of claim, after such notice and form are approved by the Bankruptcy Court, and notify said potential creditors of the existence, amount, and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- e. maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- f. for *all* notices, motions, orders, or other pleadings or documents served, prepare and file or cause to be filed with the Clerk's Office an affidavit or certificate of service within seven (7) business days of service which includes (i) either a copy of the notice served or the docket number(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service, and (iv) the date served;
- g. process all proofs of claim received, including those received by the Clerk's Office, check said processing for accuracy, and maintain the original proofs of claim in a secure area;
- h. provide an electronic interface for filing proofs of claim;
- i. (i) maintain the official claims register for each Debtor (collectively, the "Claims Registers") on behalf of the Clerk's Office on a case-specific website; (ii) upon the Clerk's Office's request, provide the Clerk's Office with certified, duplicate unofficial Claims Registers; and (iii) specify in the Claims Registers the following information for each claim docketed: (A) the claim number assigned; (B) the date received; (C) the name and address of the claimant and agent, if applicable, who filed the claim; (D) the amount asserted; (E) the asserted classification(s) of the claim (*e.g.*, secured, unsecured, priority, etc.); (F) the applicable Debtor; and (G) any disposition of the claim;
- j. provide public access to the Claims Registers, including complete proofs of claim with attachments, if any, without charge;
- k. implement necessary security measures to ensure the completeness and integrity of the Claims Registers, if any, and the safekeeping of the original claims;

- l. record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- m. relocate, by messenger or overnight delivery, all of the proofs of claim filed directly with the Bankruptcy Court to KCC's offices, not less than weekly;
- n. upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk's Office copies of the Claims Registers for the Clerk's Office's review (upon the Clerk's Office's request);
- o. monitor the Bankruptcy Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed, and make necessary notations on and/or changes to the claims register and any service or mailing lists, including to identify and eliminate duplicative names and addresses from such lists;
- p. identify and correct any incomplete or incorrect addresses in any mailing or service lists;
- q. assist in the dissemination of information to the public and respond to requests for administrative information regarding these Chapter 11 Cases as directed by the Debtors or the Bankruptcy Court, including through the use of a case website and/or call center;
- r. if these Chapter 11 Cases are converted to cases under chapter 7 of the Bankruptcy Code, contact the Clerk's Office within three (3) days of notice to KCC of entry of the order converting the cases;
- s. thirty (30) days prior to the close of these Chapter 11 Cases, to the extent practicable, request that the Debtors submit to the Bankruptcy Court a proposed order dismissing KCC as Claims and Noticing Agent and terminating its services in such capacity upon completion of its duties and responsibilities and upon the closing of the Chapter 11 Cases;
- t. within seven (7) days of notice to KCC of entry of an order closing these Chapter 11 Cases, provide to the Bankruptcy Court the final version of the Claims Registers as of the date immediately before the close of the Chapter 11 Cases; and
- u. at the close of these Chapter 11 Cases, box and transport all original documents, in proper format, as provided by the Clerk's Office, to the Federal Archives Record Administration, located at Central Plains Region, 200 Space Center Drive, Lee's Summit, Missouri 64064, or any other location requested by the Clerk's Office.

### **Professional Compensation**

12. The Debtors respectfully request that the reasonable and documented fees and expenses incurred by KCC and undisputed by the Debtors in the performance of the above services be treated as administrative expenses of the Debtors' chapter 11 estates pursuant to 28 U.S.C. § 156(c) and section 503(b)(1)(A) of the Bankruptcy Code, and be paid in the ordinary course of business without further application to or order of the Bankruptcy Court. KCC agrees to maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and to serve monthly invoices on the Debtors, the office of the United States Trustee, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors, and any party-in-interest who specifically requests service of the monthly invoices. If any dispute arises relating to the Engagement Agreement or monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute; if resolution is not achieved, the parties may seek resolution of the matter from the Bankruptcy Court.

13. Prior to the Petition Date, the Debtors provided KCC an advance in the amount of \$30,000. KCC seeks to first apply the advance to all prepetition fees and expenses incurred under the Engagement Agreement, and thereafter, to have the advance replenished to the original advance amount, and thereafter, to hold the advance under the Engagement Agreement during these chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Agreement. Following termination of the Engagement Agreement, KCC shall return to the Debtors any amount of the advance that remains following application of the advance to the payments of unpaid fees and expenses under the Engagement Agreement.

14. Additionally, under the terms of the Engagement Agreement, the Debtors have agreed to indemnify and hold harmless KCC and its members, directors, officers, employees, representatives, affiliates, consultants, subcontractors, and agents under certain



circumstances specified in the Engagement Agreement, except in circumstances resulting from KCC's bad faith, gross negligence or willful misconduct. The Debtors believe that such an indemnification obligation is customary, reasonable, and necessary to retain the services of a Claims and Noticing Agent in these chapter 11 cases.

**Disinterestedness**

15. Although the Debtors do not propose to employ KCC under section 327 of the Bankruptcy Code pursuant to this Application, KCC has nonetheless reviewed its electronic database to determine whether it has any relationships with the creditors and parties in interest provided by the Debtors, and, to the best of the Debtors' knowledge, information, and belief, and except as disclosed in the Gershbein Declaration, KCC has represented that it neither holds nor represents any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed.

16. Moreover, in connection with its retention as Claims and Noticing Agent, KCC represents in the Gershbein Declaration, among other things, that:

- a. KCC is not a creditor of the Debtors;
- b. KCC will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these Chapter 11 Cases;
- c. by accepting employment in these chapter 11 cases, KCC waives any rights to receive compensation from the United States government in connection with these Chapter 11 Cases;
- d. in its capacity as the Claims and Noticing Agent in these Chapter 11 Cases, KCC will not be an agent of the United States and will not act on behalf of the United States;
- e. KCC will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these Chapter 11 Cases;

- f. KCC is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is engaged;
- g. in its capacity as the Claims and Noticing Agent in these Chapter 11 Cases, KCC will not intentionally misrepresent any fact to any person;
- h. KCC shall be under the supervision and control of the Clerk’s Office with respect to the receipt and recordation of claims and claim transfers;
- i. KCC will comply with all requests of the Clerk’s Office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- j. none of the services provided by KCC as the Claims and Noticing Agent in these Chapter 11 Cases shall be at the expense of the Clerk’s Office.

17. KCC will supplement its disclosure to the Bankruptcy Court if any facts or circumstances are discovered that would require such additional disclosure.

**Compliance with Claims and Noticing Agent Protocol**

18. This Application complies with the Claims Agent Protocol and substantially conforms to the standard section 156(c) application in use in this district. To the extent that there is any inconsistency between this Application, the Order, and the Engagement Agreement, the Order shall govern.

**Basis for Relief**

19. Section 156(c) of title 28 of the United States Code, which governs the staffing and expenses of bankruptcy courts, authorizes the Bankruptcy Court to use “facilities” or “services” other than the Clerk’s Office for administration of bankruptcy cases. It states:

Any court may utilize facilities or services, either on or off the court’s premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such

conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C. § 156(c).

20. In addition, Local Rule 5075-1(a) provides as follows:

The Court may direct, subject to the supervision of the Clerk, the use of agents either on or off the Court's premises to file Court records, either by paper or electronic means, to issue notices, to maintain case dockets, to maintain Judges' calendars, and to maintain and disseminate other administrative information where the costs of such facilities or services are paid for by the estate.

Local Rule 5075-1(a).

21. The Court has promulgated the Claims Agent Protocol "to ensure the use of competitive process in the selection of claims and noticing agents in instances where the Court has authorized such use under 28 U.S.C. § 156(c)." In compliance with the Claims Agent Protocol, the Debtors obtained and reviewed engagement proposals from three court-approved claims and noticing agents, including KCC. The Debtors provided each court-approved claims and noticing agent the basic facts about these Chapter 11 Cases and asked each agent to submit a written proposal based upon such facts. The Debtors then asked each agent case-specific pricing questions. Ultimately, the Debtors selected KCC as their claims and noticing agent based on its capability and favorable price terms.

22. Local Rule 5075-1(b) requires the retention, pursuant to an order of the Bankruptcy Court, of an approved claims and noticing agent in a case having 250 or more creditors and/or equity security holders, which is the case with these Chapter 11 Cases.

23. Given the number of creditors and other parties in interest involved in these Chapter 11 Cases, the Debtors seek an order appointing KCC as their Claims and Noticing Agent *nunc pro tunc* to the Petition Date pursuant to 28 U.S.C. § 156(c) and Local Rule 5075-1 to relieve the Bankruptcy Court and the Clerk's Office of administrative burdens.

24. At the Debtors' request, KCC has been serving in a claims and noticing agent capacity since prior to the Petition Date with assurances that the Debtors would seek approval of its appointment effective *nunc pro tunc* to the Petition Date, so that KCC may be compensated for its pre-application services in these Chapter 11 Cases. The Debtors believe that no party in interest will be prejudiced by the granting of the *nunc pro tunc* employment, as provided herein, because KCC has provided and continues to provide valuable services to the Debtors' estates in the interim period.

25. Courts in this district have routinely approved *nunc pro tunc* employment for claims and noticing agents in a similar manner to that requested herein. *See, e.g., In re Chassix Holdings, Inc.*, Case No. 15-10578 (MEW) (Bankr. S.D.N.Y. Apr. 20, 2015) (approving *nunc pro tunc* employment to perform bankruptcy administration services); *In re dELiA\*s, Inc.*, Case No. 14-23678 (RDD) (Bankr. S.D.N.Y. Feb. 10, 2015) (same); *In re NII Holdings, Inc.*, Case No. 14-12611 (SCC) (Bankr. S.D.N.Y. Oct. 14, 2014) (same); *In re MPM Silicones, LLC*, Case No. 14-22503 (RDD) (Bankr. S.D.N.Y. May 16, 2014) (same); *In re Sbarro LLC*, Case No. 14-10557 (MG) (Bankr. S.D.N.Y. Apr. 7, 2014) (same).

26. Based on the foregoing, the Debtors submit that they have satisfied the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. Accordingly, the Debtors respectfully request entry of the Order, pursuant to 28 U.S.C. § 156(c) and Local Rule 5075-1, approving this application to retain and employ KCC as the Claims and Noticing Agent in these Chapter 11 Cases, effective *nunc pro tunc* to the Petition Date.

#### **Notice**

27. The Debtors will provide notice of this Application to the following parties and/or their respective counsel, as applicable: (a) the U.S. Trustee; (b) counsel to the administrative agent under the DIP credit facility, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New

York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com), Shmuel Klahr (Shmuel.klahr@us.dlapiper.com), Nadia Saleem (Nadia.Saleem@us.dlapiper.com), and Gregory Juell (gregory.juell@us.dlapiper.com); (c) counsel to the administrative agent under the Bridge Loan, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com), Shmuel Klahr (Shmuel.klahr@us.dlapiper.com), Nadia Saleem (Nadia.Saleem@us.dlapiper.com), and Gregory Juell (gregory.juell@us.dlapiper.com); (d) counsel to the administrative agent under the Debtors' Prepetition Senior Notes, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com), Shmuel Klahr (Shmuel.klahr@us.dlapiper.com), Nadia Saleem (Nadia.Saleem@us.dlapiper.com), and Gregory Juell (gregory.juell@us.dlapiper.com); (e) counsel to the administrative agent under the Junior Convertible Notes, Attn: Geoffrey van der Hauw (g.van.der.hauw@lexence.com); (f) counsel to the Stalking Horse Bidders, (i) DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com), Shmuel Klahr (Shmuel.klahr@us.dlapiper.com), Nadia Saleem (Nadia.Saleem@us.dlapiper.com), and Gregory Juell (gregory.juell@us.dlapiper.com), and (ii) Geoffrey van der Hauw (g.van.der.hauw@lexence.com); (g) the parties identified on the Debtors' consolidated list of 30 largest unsecured creditors; (h) the United States Attorney's Office for the Southern District of New York; (i) the Internal Revenue Service; (j) the Securities and Exchange Commission; (k) the attorneys general for the states where the Debtors conduct business operations; (l) the Federal Communications Commission; and (m) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002.

28. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

29. No prior request for the relief sought in this Application has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as is just and proper.

Dated: May 15, 2022  
New York, New York

PARETEUM CORPORATION, *ET AL.*  
*Debtors and Debtors in Possession*  
*By their Proposed Counsel*  
TOGUT, SEGAL & SEGAL LLP,  
By:

*/s/ Frank A. Oswald* \_\_\_\_\_  
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**Exhibit A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

PARETEUM CORPORATION, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No.: 22-\_\_\_\_ ( )

(Joint Administration Requested)

**ORDER (I) AUTHORIZING AND APPROVING  
THE APPOINTMENT OF KURTZMAN CARSON CONSULTANTS LLC AS CLAIMS  
AND NOTICING AGENT TO THE DEBTORS, EFFECTIVE *NUNC  
PRO TUNC* TO THE PETITION DATE, AND (II) GRANTING RELATED RELIEF**

Upon the application (the “Application”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), pursuant to 28 U.S.C. §156(c), and Local Rule 5075-1, (a) appointing Kurtzman Carson Consultants LLC (“KCC”) as the claims and noticing agent (the “Claims and Noticing Agent”) in the Chapter 11 Cases effective *nunc pro tunc* to the date of the commencement of these Chapter 11 Cases (the “Petition Date”), including assuming full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in the Chapter 11 Cases, and (b) granting related relief, all as more fully set forth in the Application; and upon the First Day Declaration and the Gershbein Declaration; and this Bankruptcy Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of*

<sup>1</sup> The Debtors in the Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, are: Pareteum Corporation (7538); Pareteum North America Corp. (f/k/a Elephant Talk North America Corp.) (9623); Devicescape Holdings, Inc. (2909); iPass, Inc. (4598); iPass IP LLC (2550); Pareteum Europe B.V.; Artidium Group Ltd. (f/k/a Artidium PLC); Pareteum Asia Pte. Ltd.; and Pareteum N.V. (f/k/a Artidium N.V.). The Debtors’ corporate headquarters is located at 1185 Avenue of the Americas, 2nd Floor, New York, NY 10036.

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



*New York*, dated January 31, 2012; and that this Bankruptcy Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Bankruptcy Court may enter a final order consistent with Article III of the United States Constitution; and this Bankruptcy Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Bankruptcy Court having found that the relief requested in the Application is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Bankruptcy Court having found that the Debtors' notice of the Application and opportunity for a hearing on the Application were appropriate under the circumstances and no other notice need be provided; and this Bankruptcy Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing before this Bankruptcy Court (the "Hearing"); and this Bankruptcy Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Bankruptcy Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. Notwithstanding the terms of the Engagement Agreement attached to the Application, the Application is approved solely as set forth in this Order.
2. The Debtors are authorized to retain KCC as the Claims and Noticing Agent effective *nunc pro tunc* to the Petition Date under the terms of the Engagement Agreement, and KCC is authorized and directed to perform noticing services and to receive, maintain, record, and otherwise administer the proofs of claim filed in these Chapter 11 Cases, and all related tasks, all as described in the Application.

3. KCC shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these Chapter 11 Cases and is authorized and directed to maintain official claims registers for each of the Debtors, to provide public access to every proof of claim unless otherwise ordered by the Bankruptcy Court, and to provide the Clerk's Office with a certified duplicate thereof upon the request of the Clerk's Office.

4. KCC is authorized and directed to provide an electronic interface for filing proofs of claim—to the extent necessary—and to obtain a post office box or address for the receipt of proofs of claim.

5. KCC is authorized to take such other action to comply with all duties set forth in the Application.

6. The Debtors are authorized to compensate KCC in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by KCC and the rates charged for each, and to reimburse KCC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for KCC to file fee applications or otherwise seek Bankruptcy Court approval for the compensation of its services and reimbursement of its expenses.

7. KCC shall maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and shall serve monthly invoices on the Debtors, the office of the United States Trustee, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors, and any party in interest who specifically requests service of the monthly invoices.

8. The parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Engagement Agreement or monthly invoices; *provided, however*, that the

parties may seek resolution of the matter from this Bankruptcy Court if resolution is not achieved.

9. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of KCC under this Order shall be an administrative expense of the Debtors' estates.

10. KCC may apply its advance to all prepetition fees and expenses incurred under the Engagement Agreement, which advance shall be replenished to the original advance amount, and thereafter, KCC may hold its advance under the Engagement Agreement during the chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

11. The Debtors shall indemnify KCC in accordance with the terms of the Engagement Agreement, as modified pursuant to this Order.

12. All requests by KCC for the payment of indemnification as set forth in the Engagement Agreement shall be made by means of an application to this Bankruptcy Court and shall be subject to review by this Bankruptcy Court to ensure that payment of such indemnity conforms to the terms of the Engagement Agreement and is reasonable under the circumstances of the litigation or settlement in respect of which indemnity is sought; *provided, however*, that in no event shall KCC be indemnified in the case of its own bad faith, self-dealing, breach of fiduciary duty (if any), gross negligence or willful misconduct.

13. In the event that KCC seeks reimbursement from the Debtors for attorneys' fees and expenses in connection with the payment of an indemnity claim pursuant to the Engagement Agreement, the invoices and supporting time records for the attorneys' fees and expenses shall be included in KCC's own applications, both interim and final, but determined by this Bankruptcy Court after notice and a hearing.

14. In the event KCC is unable to provide the services set out in this Order, KCC will immediately notify the Clerk's Office and the Debtors' attorney and, upon approval of this Bankruptcy Court, cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk's Office and the Debtors' attorney.

15. The Debtors may submit a separate retention application, pursuant to section 327 of the Bankruptcy Code and/or any applicable law, for work that is to be performed by KCC but is not specifically authorized by this Order.

16. KCC shall not cease providing claims processing services during these chapter 11 cases for any reason, including nonpayment, without an order of this Bankruptcy Court; *provided, however*, that KCC may seek such an order on expedited notice by filing a request with this Bankruptcy Court with notice of such request to be served on the Debtors, the office of the United States Trustee, and any official committee of creditors appointed in these cases by facsimile or overnight delivery; *provided, further*, that except as expressly provided herein, the Debtors and KCC may otherwise terminate or suspend other services as provided under the Engagement Agreement.

17. After entry of an order terminating KCC's services as the Claims and Noticing Agent, upon the closing of these cases, or for any other reason, KCC shall be responsible for archiving all proofs of claim with the Federal Archives Record Administration, if applicable.

18. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

19. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

20. The Debtors and KCC are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

21. In the event of any inconsistency between the Engagement Agreement, the Application, and this Order, this Order shall govern.

22. Notwithstanding any term in the Engagement Agreement to the contrary, the Bankruptcy Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

New York, New York  
Dated: \_\_\_\_\_, 2022

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THE HONORABLE [\_\_\_\_\_] ]  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**Gershbein Declaration**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

PARETEUM CORPORATION, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No.: 22-\_\_\_\_ ( )

(Joint Administration Requested)

**DECLARATION OF EVAN GERSHBEIN IN SUPPORT OF THE DEBTORS’  
APPLICATION FOR ENTRY OF AN ORDER (I) AUTHORIZING AND APPROVING  
THE APPOINTMENT OF KURTZMAN CARSON CONSULTANTS LLC AS CLAIMS  
AND NOTICING AGENT, EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE,  
AND (II) GRANTING RELATED RELIEF**

I, Evan Gershbein, under penalty of perjury, declare as follows:

1. I am Executive Vice President of Corporate Restructuring Services of Kurtzman Carson Consultants LLC (“KCC”), a chapter 11 administrative services firm whose headquarters are located at 222 N. Pacific Coast Highway, 3rd Floor, El Segundo, California 90245. Except as otherwise noted, I have personal knowledge of the matters set forth herein, and if called and sworn as a witness, I could and would testify competently thereto.

2. I submit this declaration (this “Declaration”) in support of the *Debtors’ Application for Entry of an Order (I) Authorizing and Approving the Appointment of Kurtzman Carson Consultants LLC as Claims and Noticing Agent, Effective Nunc Pro Tunc to the Petition Date, and (II) Granting Related Relief* (the “Application”), filed by the Debtors contemporaneously herewith.<sup>2</sup>

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<sup>1</sup> The Debtors in the Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, are: Pareteum Corporation (7538); Pareteum North America Corp. (f/k/a Elephant Talk North America Corp.) (9623); Devicescape Holdings, Inc. (2909); iPass, Inc. (4598); iPass IP LLC (2550); Pareteum Europe B.V.; Artilium Group Ltd. (f/k/a Artilium PLC); Pareteum Asia Pte. Ltd.; and Pareteum N.V. (f/k/a Artilium N.V.). The Debtors’ corporate headquarters is located at 1185 Avenue of the Americas, 2nd Floor, New York, NY 10036.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Application.

3. KCC is comprised of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. KCC's professionals have experience in noticing, claims administration, solicitation, balloting, and facilitating other administrative aspects of chapter 11 cases and experience in matters of this size and complexity. KCC has provided identical or substantially similar services in the following chapter 11 cases: *In re Garrett Motion Inc.*, No. 20-12212 (MEW) (Bankr. S.D.N.Y. Oct. 26, 2020); *In re Avianca Holdings S.A., et al.*, Case No. 20-11133 (Bankr. S.D.N.Y. May 10, 2020); *In re The McClatchy Company, et al.*, Case No. 20-10418 (Bankr. S.D.N.Y. Feb. 13, 2020); *In re Windstream Holdings, Inc., et al.*, Case No. 19-22312 (RDD) (Bankr. S.D.N.Y. Feb. 25, 2019); *In re Waypoint Leasing Holdings Ltd.*, No. 18-13648 (SMB) (Bankr. S.D.N.Y. Nov. 25, 2018); *In re Melinta Therapeutics, Inc., et al.*, Case No. 19-12748 (LSS) (Bankr. D. Del. Dec. 27, 2019); *In re HRI Holding Corp., et al.*, Case No. 19-12415 (MFW) (Bankr. D. Del. Nov. 14, 2019); *In re Pancakes & Pies, LLC, et al. (f/k/a Perkins & Marie Callender's, LLC, et al.)*, Case No. 19-11743 (KG) (Bankr. D. Del. Aug. 6, 2019).

4. As agent and custodian of Bankruptcy Court records pursuant to 28 U.S.C. § 156(c), KCC will perform, at the request of the Office of the Clerk of the Bankruptcy Court (the "Clerk's Office"), the services specified in the Application and the Engagement Agreement, and, at the Debtors' request, any related administrative, technical, and support services as specified in the Application and the Engagement Agreement. In performing such services, KCC will charge the Debtors the rates set forth in the Engagement Agreement, which is attached as **Exhibit C** to the Application.

5. KCC represents, among other things, the following:

a. KCC is not a creditor of the Debtors;



- b. KCC will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these Chapter 11 Cases; by accepting employment in these Chapter 11 Cases, KCC waives any rights to receive compensation from the United States government in connection with these Chapter 11 Cases;
- c. in its capacity as the Claims and Noticing Agent in these Chapter 11 Cases, KCC will not be an agent of the United States and will not act on behalf of the United States;
- d. KCC will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these Chapter 11 Cases;
- e. KCC is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is engaged;
- f. in its capacity as the Claims and Noticing Agent in these Chapter 11 Cases, KCC will not intentionally misrepresent any fact to any person;
- g. KCC shall be under the supervision and control of the Clerk’s Office with respect to the receipt and recordation of claims and claim transfers;
- h. KCC will comply with all requests of the Clerk’s Office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- i. none of the services provided by KCC as the Claims and Noticing Agent in these Chapter 11 Cases shall be at the expense of the Clerk’s Office.

6. To the best of my knowledge, and based solely upon information provided to me by the Debtors, and except as provided herein, neither KCC, nor any of its professionals, has any materially adverse connection to the Debtors, their creditors or other relevant parties. KCC may have relationships with certain of the Debtors’ creditors as vendors or in connection with cases in which KCC serves or has served in a neutral capacity as claims and noticing agent and/or administrative advisor for another chapter 11 debtor.

7. KCC has reviewed its electronic database to determine whether it has any relationships with the list of entities provided by the Debtors. Based on the results of such

search, at this time, KCC is not aware of any relationship that would present a disqualifying conflict of interest. Should KCC discover any new relevant facts or relationships bearing on the matters described herein during the period of its retention, KCC will use reasonable efforts to promptly file a supplemental declaration.

8. KCC, as well as its personnel, has and will continue to have relationships personally or in the ordinary course of business with certain vendors, professionals, financial institutions, and other parties in interest that may be involved in the Debtors' chapter 11 cases. KCC may also provide professional services to entities or persons that may be creditors or parties in interest in these Chapter 11 Cases, which services do not directly relate to, or have any direct connection with, these Chapter 11 Cases or the Debtors.

9. KCC, and its personnel in their individual capacities, regularly utilize the services of law firms, investment banking and advisory firms, accounting firms and financial advisors. Such firms engaged by KCC or its personnel may appear in chapter 11 cases representing the Debtors or parties in interest. All engagements where such firms represent KCC or its personnel in their individual capacities are unrelated to the Chapter 11 Cases.

10. KCC is an indirect subsidiary of Computershare Limited ("Computershare"). Computershare is a financial services and technologies provider for the global securities industry. Within the Computershare corporate structure, KCC operates as a separate, segregated business unit. As such, any relationships that Computershare and its affiliates maintain do not create an interest of KCC that would be adverse to the Debtors' estates or any class of creditors or equity security holders. Computershare performs administrative services for iPass, Inc.

11. Based on the foregoing, I believe that KCC is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code. Moreover, to the best of my knowledge

and belief, neither KCC nor any of its partners or employees hold or represent an interest materially adverse to the Debtors or their estates with respect to any matter upon which KCC is to be engaged.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief.

New York, New York  
Dated: May 15, 2022

/s/ Evan Gershbein  
Evan Gershbein  
Executive Vice President  
Kurtzman Carson Consultants LLC

**Exhibit C**

**Engagement Agreement**



## KCC AGREEMENT FOR SERVICES

This Agreement is entered into as of the 4th day of January 2022, between Pareteum Corporation (together with its affiliates and subsidiaries, the “Company”),<sup>1</sup> and Kurtzman Carson Consultants LLC (together with its affiliates and subcontractors, “KCC”). In consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### Terms and Conditions

#### I. SERVICES

A. KCC agrees to provide the Company with consulting services regarding noticing, claims management and reconciliation, plan solicitation, balloting, disbursements and any other services agreed upon by the parties or otherwise required by applicable law, government regulations or court rules or orders.

B. KCC further agrees to provide (i) computer software support and training in the use of the support software, (ii) KCC’s standard reports as well as consulting and programming support for the Company requested reports, (iii) program modifications, (iv) data base modifications, and/or (v) other features and services in accordance with the fees outlined in a pricing schedule provided to the Company (the “KCC Fee Structure”).

C. Without limiting the generality of the foregoing, KCC may, upon request by the Company, (i) provide a communications plan including, but not limited to, preparation of communications materials, dissemination of information and a call center staffed by KCC and/or (ii) provide confidential on-line workspaces or virtual data rooms and publish documents to such workspaces or data rooms (which publication shall not be deemed to violate the confidentiality provisions of this Agreement).

D. The price listed for each service in the KCC Fee Structure represents a bona fide proposal for such services, which may be accepted in whole or in part. Services will be provided when requested by the Company or required by applicable law, government regulations or court rules or orders. Services are mutually exclusive and are deemed delivered and accepted by the Company when provided by KCC.

E. The Company acknowledges and agrees that KCC will often take direction from the Company’s representatives, employees, agents and/or professionals (collectively, the “Company Parties”) with respect to the services being provided under this Agreement. The parties agree that KCC may rely upon, and the Company agrees to be bound by, any requests, advice or information provided by the Company Parties to the same extent as if such requests, advice or information were provided by the Company. The Company agrees and understands that KCC shall not provide the Company or any other party with any legal advice.

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<sup>1</sup> The term Company shall include, to the extent applicable, the Company, as debtor and debtor in possession in its chapter 11 case, together with any affiliated debtors and debtors in possession whose chapter 11 cases are jointly administered with the Company’s chapter 11 case.



## KCC AGREEMENT FOR SERVICES

### II. PRICES, CHARGES AND PAYMENT

A. KCC agrees to charge and the Company agrees to pay KCC for its services at the rates and prices set by KCC that are in effect as of the date of this Agreement and in accordance with the KCC Fee Structure. KCC's prices are generally adjusted periodically to reflect changes in the business and economic environment and are inclusive of all charges. KCC reserves the right to reasonably increase its prices, charges and rates; provided, however, that if any such increase exceeds 15%, KCC will give thirty (30) days written notice to the Company.

B. In addition to fees and charges for services, the Company agrees to pay KCC's reasonable transportation, lodging, and meal expenses incurred in connection with services provided under this Agreement.

C. In addition to all fees for services and expenses hereunder, the Company shall pay to KCC (i) any fees and charges related to, arising out of, or as a result of any error or omission made by the Company or the Company Parties, as mutually determined by KCC and the Company, and (ii) all taxes that are applicable to this Agreement or that are measured by payments made under this Agreement and are required to be collected by KCC or paid by KCC to a taxing authority.

D. Where the Company requires services that are unusual or beyond the normal business practices of KCC, or are otherwise not provided for in the KCC Fee Structure, the cost of such services shall be charged to the Company at a competitive rate.

E. KCC agrees to submit its invoices to the Company monthly and the Company agrees that the amount invoiced is due and payable upon the Company's receipt of the invoice. KCC's invoices will contain reasonably detailed descriptions of charges for both hourly (fees) and non-hourly (expenses) case specific charges. Where total invoice amounts are expected to exceed \$10,000 in any single month and KCC reasonably believes it will not be paid, KCC may require advance payment from the Company due and payable upon demand and prior to the performance of services hereunder. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, the Company further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) of the total amount unpaid every thirty (30) days. In the case of a dispute in the invoice amount, the Company shall give written notice to KCC within ten (10) days of receipt of the invoice by the Company. The undisputed portion of the invoice will remain due and payable immediately upon receipt of the invoice. Late charges shall not accrue on any amounts in dispute or any amounts unable to be paid due to Court order or applicable law. Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions) must be paid at least three (3) days in advance of those fees and expenses being incurred. Certain fees and charges may need to be adjusted due to availability related to the COVID-19 (novel coronavirus) global health issue.

F. In the event that the Company files for protection pursuant to chapter 11 of the United States Bankruptcy Code (a "Chapter 11 Filing"), the parties intend that KCC shall be employed pursuant to 28 U.S.C. § 156(c) to the extent possible and otherwise in accordance with applicable Bankruptcy law and that all amounts due under this Agreement shall, to the extent possible, be paid as administrative expenses of the Company's chapter 11 estate. As soon as practicable following a Chapter 11 Filing (and otherwise in accordance with applicable law and rules and



## KCC AGREEMENT FOR SERVICES

orders of the Bankruptcy Court), the Company shall cause pleadings to be filed with the Bankruptcy Court seeking entry of an order or orders approving this Agreement (the "Retention Order"). The form and substance of the pleadings and the Retention Order shall be reasonably acceptable to KCC. If any Company chapter 11 case converts to a case under chapter 7 of the Bankruptcy Code, KCC will continue to be paid for its services in accordance with the terms of this Agreement. The parties recognize and agree that if there is a conflict between the terms of this Agreement and the terms of the Retention Order, the terms of the Retention Order shall govern during the chapter 11 or other proceeding.

G. To the extent permitted by applicable law, KCC shall receive a retainer in the amount of \$30,000.00 (the "Retainer") that may be held by KCC as security for the Company's payment obligations under the Agreement. The Retainer is due upon execution of this Agreement. In the event of a Chapter 11 Filing, KCC will first apply the Retainer to all pre-petition invoices, and thereafter, will have the Retainer replenished to the original amount. KCC shall be entitled to hold the Retainer until the termination of the Agreement. Following termination of the Agreement, KCC shall return to the Company any amount of the Retainer that remains following application of the Retainer to the payment of unpaid invoices.

### III. RIGHTS OF OWNERSHIP

A. The parties understand that the software programs and other materials furnished by KCC pursuant to this Agreement and/or developed during the course of this Agreement by KCC are the sole property of KCC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. The Company agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement.

B. The Company further agrees that any ideas, concepts, know-how or techniques relating to data processing or KCC's performance of its services developed or utilized during the term of this Agreement by KCC shall be the exclusive property of KCC. Fees and expenses paid by the Company do not vest in the Company any rights in such property, it being understood that such property is only being made available for the Company's use during and in connection with the services provided by KCC under this Agreement.

### IV. NON-SOLICITATION

The Company agrees that neither it nor its subsidiaries or other affiliated companies shall directly or indirectly solicit for employment, employ or otherwise retain employees of KCC during the term of this Agreement and for a period of twelve (12) months after termination of this Agreement unless KCC provides prior written consent to such solicitation or retention.

### V. CONFIDENTIALITY

Each of KCC and the Company, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the services provided under this Agreement; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency



## KCC AGREEMENT FOR SERVICES

or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information.

### VI. SUSPENSION OF SERVICE AND TERMINATION

A. This Agreement shall remain in force until terminated or suspended by either party (i) upon thirty (30) days' written notice to the other party or (ii) immediately upon written notice for Cause (defined herein). As used herein, the term "Cause" means (i) gross negligence or willful misconduct of KCC that causes serious and material harm to the Company's reorganization under chapter 11 of the Bankruptcy Code, (ii) the failure of the Company to pay KCC invoices for more than sixty (60) days from the date of invoice, or (iii) the accrual of invoices or unpaid services in excess of the retainer held by KCC where KCC reasonably believes it will not be paid.

B. In the event that this contract is terminated, regardless of the reason for such termination, KCC shall coordinate with the Company and, to the extent applicable, the clerk of the Bankruptcy Court, to maintain an orderly transfer of record keeping functions and KCC shall provide all necessary staff, services and assistance required for an orderly transfer. The Company agrees to pay for such services in accordance with KCC's then existing prices for such services. If such termination occurs following entry of the Retention Order, the Company shall immediately seek entry of an order (in form and substance reasonably acceptable to KCC) that discharges KCC from service and responsibility in the Company's bankruptcy case.

C. Any data, programs, storage media or other materials furnished by the Company to KCC or received by KCC in connection with the services provided under the terms of this Agreement may be retained by KCC until the services provided are paid for, or until this Agreement is terminated with the services paid in full. The Company shall remain liable for all fees and expenses imposed under this Agreement as a result of data or physical media maintained or stored by KCC. KCC shall dispose of the data and media in the manner requested by the Company. The Company agrees to pay KCC for reasonable expenses incurred as a result of the disposition of data or media. If the Company has not utilized KCC's services under this Agreement for a period of at least ninety (90) days, KCC may dispose of the data or media, and be reimbursed by the Company for the expense of such disposition, after giving the Company thirty (30) days' notice. Notwithstanding any term herein to the contrary, following entry of the Retention Order, the disposition of any data or media by KCC shall be in accordance with any applicable instructions from the clerk of the Bankruptcy Court, local Bankruptcy Court rules and orders of the Bankruptcy Court.

### VII. SYSTEM IMPROVEMENTS

KCC strives to provide continuous improvements in the quality of service to its clients. KCC, therefore, reserves the right to make changes in operating procedure, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the KCC data center serving the Company, so long as any such changes do not materially interfere with ongoing services provided to the Company in connection with the Company's chapter 11 case.





## KCC AGREEMENT FOR SERVICES

### VIII. BANK ACCOUNTS

At the Company's request and subject to Court approval following any chapter 11 filing, KCC may be authorized to establish accounts with financial institutions in the name of and as agent for the Company. To the extent that certain financial products are provided to the Company pursuant to KCC's agreement with financial institutions, KCC may receive compensation from such financial institutions for the services KCC provides pursuant to such agreement.

### IX. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

A. The Company shall indemnify and hold KCC, its affiliates, members, directors, officers, employees, consultants, subcontractors and agents (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to KCC's performance under this Agreement. Such indemnification shall exclude Losses resulting from KCC's gross negligence or willful misconduct. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third-parties against any Indemnified Party. The Company shall notify KCC in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that the Company becomes aware of with respect to the services provided by KCC under this Agreement. The Company's indemnification obligations hereunder shall survive the termination of this Agreement.

B. Except as provided herein, KCC's liability to the Company or any person making a claim through or under the Company for any Losses of any kind, even if KCC has been advised of the possibility of such Losses, whether direct or indirect and unless due to gross negligence or willful misconduct of KCC, shall be limited to the total amount billed or billable to the Company for the portion of the particular work which gave rise to the alleged Loss. In no event shall KCC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement. In no event shall KCC's liability to the Company for any Losses, whether direct or indirect, arising out of this Agreement exceed the total amount billed to the Company and actually paid to KCC for the services contemplated under the Agreement; provided, however, that this limitation shall not apply to the Company during any chapter 11 case in which the Company is a debtor.

C. The Company is responsible for the accuracy of the programs, data and information it or any Company Party submits for processing to KCC and for the output of such information. KCC does not verify information provided by the Company and, with respect to the preparation of schedules and statements, all decisions are at the sole discretion and direction of the Company. The Company reviews and approves all schedules and statements filed on behalf of, or by, the Company; KCC bears no responsibility for the accuracy or contents therein. The Company agrees to initiate and maintain backup files that would allow the Company to regenerate or duplicate all programs and data submitted by the Company to KCC.

D. The Company agrees that except as expressly set forth herein, KCC makes no representations or warranties, express or implied, including, but not limited to, any implied or



## KCC AGREEMENT FOR SERVICES

express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.

### X. FORCE MAJEURE

KCC will not be liable for any delay or failure in performance when such delay or failure arises from circumstances beyond its reasonable control, including without limitation acts of God, acts of government in its sovereign or contractual capacity, acts of public enemy or terrorists, acts of civil or military authority, war, riots, civil strife, terrorism, blockades, sabotage, rationing, embargoes, epidemics, pandemics, outbreaks of infectious diseases or any other public health crises, earthquakes, fire, flood, other natural disaster, quarantine or any other employee restrictions, power shortages or failures, utility or communication failure or delays, labor disputes, strikes, or shortages, supply shortages, equipment failures, or software malfunctions.

### XI. INDEPENDENT CONTRACTORS

The Company and KCC are and shall be independent contractors of each other and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of this Agreement.

### XII. NOTICES

All notices and requests in connection with this Agreement shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited in the U.S. Mail, postage pre-paid or on the day it is given if sent by facsimile or electronic mail or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth below:

Kurtzman Carson Consultants LLC  
222 N. Pacific Coast Highway, 3rd Floor  
El Segundo, CA 90245  
Attn: Drake D. Foster  
Tel: (310) 823-9000  
Fax: (310) 823-9133  
E-Mail: [dfoster@kccllc.com](mailto:dfoster@kccllc.com)

Pareteum Corporation  
1185 Avenue of the Americas  
2nd Floor  
New York, NY 10036  
Attn: Laura Thomas  
Tel: (703) 930-4282  
Email : [legal@pareteum.com](mailto:legal@pareteum.com)

Or to such other address as the party to receive the notice or request so designates by written notice to the other.

### XIII. APPLICABLE LAW

The validity, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.



## KCC AGREEMENT FOR SERVICES

### XIV. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings, other agreements, and communications oral and written between the parties relating to the subject matter of this Agreement. The Company represents that it has the authority to enter into this Agreement, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement may be modified only by a written instrument duly executed by an authorized representative of the Company and an officer of KCC.

### XV. COUNTERPARTS; EFFECTIVENESS

This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, which delivery may be made by exchange of copies of the signature page by facsimile or electronic mail.

### XVI. ASSIGNMENT

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned without written consent by KCC to a wholly-owned subsidiary or affiliate of KCC.

### XVII. ATTORNEYS' FEES

In the event that any legal action, including an action for declaratory relief, is brought to enforce the performance or interpret the provisions of this Agreement, the parties agree to reimburse the prevailing party's reasonable attorneys' fees, court costs, and all other related expenses, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.

[SIGNATURE PAGE FOLLOWS]



**KCC AGREEMENT FOR SERVICES**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the first date mentioned above.

Kurtzman Carson Consultants LLC

BY: Evan Gershbein DATE: 1/4/22  
TITLE: EVP, Corporate Restructuring Services

Pareteum Corporation

BY: Alexander Korff DATE: January 4, 2022  
TITLE: Corporate Secretary