

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

In re:

PROSOMNUS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

(Jointly Administered)

Re: Docket No. 157

**AFFIDAVIT OF ADAM STEINBERGER IN SUPPORT OF ORDINARY COURSE
RETENTION OF ANDERSEN TAX LLC**

I, Adam Steinberger, being duly sworn, state the following:

1. I am a Managing Director of Andersen Tax LLC (the “**Firm**”), which maintains offices at 1051 E. Hilldale Boulevard, Suite 700E, Foster City, California 94404.

2. Neither I, the Firm, nor any professional thereof, insofar as I have been able to ascertain, has any connection with the above-captioned debtors and debtors in possession (the “**Debtors**”), their creditors, any other party-in-interest, their respective attorneys and accountants, the United States Trustee or any person employed in the office of the United States Trustee, or any judge in the Bankruptcy Court or District Court for the District of Delaware or any person employed in the offices of the same, except as set forth in this affidavit.

3. The Firm, through me and other professionals and paraprofessionals employed by the Firm, has provided certain tax consulting services to the Debtors.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: ProSomnus, Inc. (8216), ProSomnus Holdings, Inc. (3855), and ProSomnus Sleep Technologies, Inc. (0766). The location of the Debtors’ principal place of business and the Debtors’ mailing address is 5675 Gibraltar Dr., Pleasanton, California 94588.



4. The Debtors have requested, and the Firm has agreed, to continue to provide services to the Debtors pursuant to section 327 of Title 11 of the United States Code (the “**Bankruptcy Code**”) with respect to such matters. Additionally, the Debtors have requested, and the Firm proposes, to render the following services to the Debtors:

5. Preparation of income tax provision and income tax returns as described in Exhibits A and B hereto, consultation services related to the Chapter 11 Cases (as such term is defined herein), net operating loss limitation analysis under IRC Section 382, alternative modeling, and other general related consultation.

6. The Firm's current customary rates range from \$1,100 to \$1,300 per hour for director/managing director, from \$750-\$1,100 per hours for managers/senior managers, and from \$350-\$750 per hour for associates/senior associates. In the normal course of business, the Firm revises its regular rates on July 1st or January 1st of each year and requests that, effective January 1st of each successive year, the aforementioned rates be revised to the regular rates which will be in effect at that time.

7. In the past year, the Debtors paid \$350,000 as retainer for services to be performed, of which services approximating \$320,000 have been performed and \$87,970 has been invoiced.

8. Except as set forth herein, no promises have been received by the Firm as to compensation in connection with the Chapter 11 Cases other than in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware and any orders of this Court.

9. As of the Petition Date, the Firm is party to an agreement that provides for indemnification (as set forth in the attached Job Arrangement Letter and Engagement Term attached hereto as Exhibit C).


10. Except for the principals or professionals of the Firm, the Firm has no agreement with any entity to share any compensation received from the Debtors.

11. The Firm and its professionals may have in the past, currently, and may in the future provide services to entities that are creditors of the Debtors in matters unrelated to the matters with respect to which the Firm is to be engaged by the Debtors. As part of its customary practice, the Firm is retained in cases, proceedings and transactions involving many different parties, some of which may represent or be claimants or employees of the Debtors, or other parties-in-interest in the Debtors' above-captioned chapter 11 cases (the "Chapter 11 Cases"). The Firm performed a search for all parties-in-interest that were identified by the Debtors against the list of all known clients of the Firm commencing in February 2018 through the date hereof. That search identified some parties-in-interest that have been or continue to be clients of the Firm. The Firm is not aware of any services the Firm provides to such clients that may conflict with the Firm's tax advisory services to Debtors if the Firm is authorized to perform such services by the Court.

12. However, neither I, the Firm, nor any professional thereof, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates in the matters upon which the Firm is to be engaged.

13. The foregoing constitutes the statement of the Firm pursuant to Bankruptcy Code sections 329 and 504 and Bankruptcy Rule 2014.

14. I declare under penalty of perjury under the laws of the United States of America that, to the best of my knowledge and belief, and after reasonable inquiry, the foregoing is true and correct.

By: 
Adam Steinberger
1051 E. Hilldale Blvd, Suite 700E
Foster City, CA 94404



Strictly Confidential

April 3, 2024

Brian Dow
Chief Financial Officer
ProSomnus, Inc.
5675 Gibraltar Drive
Pleasanton, CA 94588

Re: Tax Services

Dear Brian:

This letter, which includes the *Andersen Tax LLC – Engagement Terms, exhibits, and enclosures* attached hereto and made a part hereof (collectively, the “Agreement”), confirms that Andersen Tax LLC (“Andersen”) has been engaged to provide **ProSomnus, Inc.** the services described herein (“Work”) related to the performance of Tax Provision services detailed on **Exhibit A**, preparation of the tax returns detailed on **Exhibit B** (collectively, the “Client”), and Tax Consulting service to be provided hereunder.

Scope of Our Services

Income Tax Provision Services

Andersen will provide to Client the Work described on **Exhibit A**, which may be modified from time to time by the parties’ mutual written consent, subject to the terms of this Agreement.

Client management is responsible for establishing and maintaining its tax systems and procedures and directing the tax function. It will: (1) designate the appropriate individual to be responsible for the tax function; (2) determine the scope and frequency of all Work to be performed; (3) provide us with accurate, timely information and appropriate resources to enable us to perform Work; (4) maintain books and records as required by law and as are necessary to support any positions taken on any tax return included within the scope of this engagement in the event of any taxing authority examination, and (5) determine which tax procedures are adequate for management’s purposes.

Client shall have full responsibility for all decisions on all tax accounting matters, tax accounting procedures, internal controls and the calculation of its tax provision and the effective tax rate, as well as decisions with respect to the appropriate application of U.S. and foreign generally accepted accounting principles (GAAP), as to which Client’s independent auditors should concur. Client hereby represents that it has the expertise to evaluate critically the Services. Client will, as reasonably requested by Andersen, direct its independent auditors to meet with Andersen along with Client personnel to discuss the tax provision and any accounting issues that Andersen may identify.

Andersen’s advice and Work are only applicable to the specific facts presented to it by Client. This Agreement expressly authorizes Client to disclose every aspect of our advice and Work to any of Client’s auditors, without limitation. However, because Andersen’s advice is solely for the benefit of Client and is not to be relied upon by any other persons, as part of any such disclosure Client must inform their auditors that they may not rely upon such advice without Andersen’s written consent. If Client wishes to share Andersen’s advice of Work with any other third party, they must seek Andersen’s written permission prior to making any disclosure.

Brian Dow, CFO
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April 3, 2024
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Client consents to disclosure of its tax return information to Andersen, its employees and affiliates, for the purpose of rendering tax and tax accounting services to Client. Andersen will not disclose or otherwise use this information for any purpose other than that described in this Agreement or as allowed under the laws of the applicable jurisdiction.

Tax Compliance Services

Preparation of the tax returns for the year ending **December 31, 2023** for the entities listed in Exhibit B.

Consulting Services

Our work will consist of providing tax consulting services primarily through the provision of oral advice and consultation; however, depending on the specific advice, the answer may occasionally be provided in written form through e-mail or otherwise.

Information That We Require

Andersen appreciates the prompt provision of Client's tax return information so the Work can be completed timely and efficiently. Andersen assumes that the tax return information provided by Client will be accurate, complete, and that all appropriate records and data will be included. Delay in receipt of Client's tax return information can result in increased costs, such as the need to file unanticipated extensions and estimate tax liability using available information to meet filing deadlines.

Use of Tax Information

If you have previously provided us with your 7216 consent for use and/or disclosure of your tax return information, and that consent form is still valid, then Exhibits B & C will not be included.

7216 Consent to Use Tax Information

Andersen takes the privacy and confidentiality of tax return information seriously. As required by the regulations under Internal Revenue Code Sec. 7216, Andersen seeks every client's consent for the use of their tax return information internally for purposes *other than the preparation of their tax return*. Such purposes may include considering and sharing tax planning opportunities or other services, facilitating other services that Andersen has been engaged to perform, or sending information to clients – such as client alerts or newsletters – that may be of interest and relevance to their tax or financial situation. Any such use of Client tax return information will be solely for internal use by Andersen. A separate consent form for the above stated purposes has been provided in **Exhibit C**.

7216 Consent to Disclose Tax Information

Client may desire Andersen to share their tax return information with other third parties, such as its attorney, accountant, or other professional advisors. In compliance with Internal Revenue Code Sec. 7216, a separate consent form for this purpose has been provided in **Exhibit C**. If Andersen is assisting in the preparation of foreign tax returns, this consent form will be included in this Agreement so that Andersen may discuss Client's tax matters with a member firm of Andersen Global.

Please review the consent form(s) carefully and let your Andersen tax advisor know of any questions. Once satisfied with the content of this consent please sign, date, then return the form to Andersen via electronic signature, email, fax,

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or U.S. Mail. If you have previously provided us with your consent for use or disclosure of your tax return information, and that consent form is still valid, then such consent form will not be attached.

Reportable Transactions

There are significant penalties (up to \$100,000 for individuals and \$200,000 for entities) that may apply to taxpayers that fail to provide to the IRS and some states, such as California and New York, any requested information about their “reportable transactions” including those that the IRS has designated as “listed transactions” or potentially abusive tax shelters. The term “reportable transaction” can apply to many different investments or arrangements. Although they are often complex and/or result in large losses, not all of them have a significant tax-avoidance purpose. Some can first become reportable one or more years after they were initiated.

Andersen would be pleased to make separate arrangements to assist Client in determining whether there has been participation, directly or through a partnership or other entity, in any “reportable transactions” that must be disclosed to the IRS or to one or more states. In the absence of such an arrangement, however, Andersen cannot and does not take responsibility for discovering or identifying those “reportable transactions.” The billing arrangements discussed in this Agreement do not include any services related to preparing any disclosures that may be required. Please contact your Andersen tax advisor for further information or to discuss the terms of a separate engagement to assist with the identification of any “reportable transactions.”

Foreign Bank Account Reporting (FBAR) and Other FinCEN Reports

The FBAR obligation for foreign bank and financial accounts is established by the Bank Secrecy Act (BSA). The BSA provides that U.S. persons must keep records and file reports (i.e., FinCEN Form 114, Report of Foreign Bank and Financial Accounts) in respect of transactions with foreign financial agencies. Form 114 is NOT an income tax return (or a tax form that is part of an income tax return). Rather, it is filed with the U.S. Department of the Treasury separate from any income tax return. Form 114 is due on April 15 and an extension of not more than six months may be obtained. NOTE: This report MUST be filed electronically.

If **Exhibit B** includes preparation of Form 114, the attached **Exhibit D** describes certain additional terms and limitations concerning Andersen’s responsibilities with regard to any FBAR obligations Client may have. Please review Exhibit E and sign and return it to your Andersen tax advisor. Andersen cannot assist with Client’s FBAR obligations until **Exhibit E** has been signed and returned. After receipt of this form, Andersen will file Form 114 electronically.

If **Exhibit B** does not list Form 114 and **Exhibit D** is not attached to this Agreement, then Andersen understands that it has no responsibility for identifying any FBAR obligations or for preparing any Forms 114 for Client. Andersen would be pleased to make separate arrangements to assist in this regard. In the absence of such an arrangement, however, Andersen cannot and does not take responsibility for discovering or identifying any FBAR obligations or for preparing and filing any Forms 114 for Client.

The Corporate Transparency Act (“CTA”) goes into effect January 1, 2024. Andersen does not provide services related to the CTA or its reporting requirements relating to reporting beneficial ownership information (“BOI Reports”). Therefore, our obligations hereunder expressly exclude CTA compliance and preparation of BOI Reports.

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Filing and Tax Payment Obligations

While the legal obligation to file a tax return and pay any tax due cannot be shifted from the taxpayer to a paid tax return preparer, Andersen will assist Client in meeting these obligations by preparing the tax returns identified in **Exhibit B**, including any related extension requests, or quarterly estimated tax payment vouchers that Client requests Andersen prepare (collectively, "Tax Returns") using tax return preparation software that is capable of e-filing Tax Returns where permissible. In order to e-file certain of these Tax Returns, Andersen must receive a signed e-file signature authorization form ("Authorization Form") for each of the jurisdictions where required. Andersen will provide Client with the Authorization Form(s) necessary for e-filing. The Authorization Form should be signed by the same individual who is authorized to sign Client's Tax Returns (including the spouse, if Andersen is preparing any individual Tax Returns for a Client whose filing status is married, filing jointly). If the Authorization Form(s) (or an adequate substitute) Andersen provides to Client are not signed and returned to Andersen promptly; Andersen understands that the Client is agreeing to file its own Tax Returns and arrange for payment of any tax due.

If Client opts to file their own Tax Returns (either by written notification to Andersen, or in the event that Client does not sign and return the Authorization Form), Andersen will provide an electronic copy of the Tax Returns for Client to print and sign, which will include filing instructions that indicate (i) the date by which the Tax Return must be received by the appropriate taxing authority, and (ii) the address to where the Client must mail its Tax Returns with any payment(s) due. If applicable, Andersen will also send Client the appropriate e-filing opt-out statement that Andersen is required to retain with Client's Tax Return work papers. Andersen recommends that Tax Returns be submitted through certified U.S. mail. If paper filing is not authorized for one or more of the filings identified in **Exhibit B**, and Client has assumed responsibility for filing its Tax Returns, it is also the Client's responsibility to ensure that the filing is accomplished in the manner required by the applicable jurisdiction. Hard copies of the Tax Returns are available upon request.

Andersen does not process payments or refunds that may be related to Client's Tax Returns. Client agrees not to provide Andersen with any financial account numbers, other than account numbers that are required by law to be disclosed with certain filings (e.g. Foreign Financial Accounts or FinCEN Form 114 reporting). If a payment is due with any Tax Return, it is Client's responsibility to arrange for payment by check or by electronic payment methods. If a refund is allowed, the refund check will be mailed to the address identified on the Tax Return. Client should notify Andersen in writing if it wishes to receive the refund at an address other than the one that appears on the Tax Return, or if electronic direct deposit is preferred. Client agrees to alert Andersen in writing if a payment to the tax authorities is made and the funds are not withdrawn from Client's account within ten (10) business days from the date payment is scheduled to be made. Andersen assumes no responsibility for failure to file penalties, failure to pay penalties, or any related interest where the conditions described herein have not been met.

Billing Arrangement

Our Services will be billed at Andersen's standard hourly rates or other negotiated fee arrangement. Andersen requires an advance retainer of \$100,000 before beginning the Work; which will be applied pro-rata to Client's invoices as the Work progresses. Andersen will submit interim billings net of the retainer applied, as appropriate, as work progresses. Andersen's invoices are due and payable upon receipt. Andersen reserves the right to suspend Work where payment of an invoice is past due.

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Although by no means a complete list, some of the circumstances that may result in additional fees include:

- Incomplete tax information
- Significant or complex transactions
- Assistance with calculating and claiming the R&D tax credit
- Issues that require significant tax research
- Preparation of any tax return not specifically named herein
- Sale of business property
- Start-up of new business
- Need to disclose reportable transaction(s)
- Preparation of federal and state extensions
- Calculation of estimated taxes and extensions, including a nexus analysis
- Accounting Methods
- Impact of tax reform legislation, if any
- Changes in Tax law, including Section 174 Analysis
- IRC Section 382 or R&D tax credit study

In addition, please note that the Work provided under this Agreement does not include performance of any transfer pricing documentation and/or analysis to determine if related-party transactions meet the “arm’s length standard.” Andersen would be pleased to make separate arrangements to assist in that regard if such documentation is not already in place or arranged. The lack of contemporaneous documentation for transfer pricing purposes may expose Client to penalties under Sec. 6662(c) (20% penalty for a substantial valuation misstatement) or Sec. 6662(h) (40% penalty for a gross valuation misstatement).


Certain of the Work described herein may have been the subject of prior agreements between the Parties hereto. To the extent the Work was covered by a prior agreement, this Agreement supersedes the prior agreement except to the extent certain obligations survive termination of such prior agreement which obligations shall survive notwithstanding anything in this Agreement to the contrary (e.g. limits on liability and indemnification and payment obligations).

Andersen will endeavor to alert Client of any basis for a claim for refund or potential future tax-savings opportunities identified during the normal course of the Work; however, Andersen cannot assume responsibility for discovering potential claims for refund.

By providing us the necessary information to provide the tax provision and compliance services for those entities listed in **Exhibit A & B** or signing and returning this Agreement, Client accepts the terms of this Agreement. Please call or write your Andersen tax advisor if you have any questions.

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Very truly yours,
Andersen Tax LLC

By 
Name: Adam Steinberger
Title: Managing Director

ASC&Comp111023

Enclosures: *Andersen Tax LLC—Engagement Terms*

I have reviewed this Agreement and I have the authority to bind Client, including all persons and/or entities listed below and on **Exhibit B** to the terms and conditions of this Agreement.

ProSomnus, Inc.

Printed Name: Brian Dow

Signature: 
F598F3073169449...

Date: 4/18/2024 | 1:30:48 PM PDT

Title: Chief Financial Officer

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EXHIBIT A: Description of Tax Provision Services

Andersen will assist with preparing income tax provisions as requested.

The Work related to the preparation of the tax provision will include, but not be limited to the following:

- Prepare the current year federal, state and local income tax liability, considering the following:
 - Identification of current-year temporary and permanent book/tax differences
 - Applicable enacted tax rates
 - Support for tax adjustments
 - State allocation and apportionment methods
 - Effect of recent federal, state and local income tax legislation and other developments
 - Effects of carrybacks and carryforwards
 - Reconciliation of prior-year provision to tax return
 - Adjustments made for the tax effects of items not included in income (e.g., other comprehensive income)
 - Tax account rollforward schedules
 - Documentation of material differences identified, if any
 - Summary of tax-accounting methods for book and tax
 - Review company prepared (or 3rd party prepared) support and documentation for change in ownership under Section 382 for loss corporations
- Recognition and measurement of deferred tax assets and liabilities including the following:
 - Computations to determine deferred balances
 - Comparison of prior-year to current-year temporary and permanent book/tax differences
 - Consideration of the effects of carrybacks and carryforwards
 - Valuation allowance analysis and support
- Assisting Client to prepare the year end U.S. tax provision calculation and drafting proposed journal entries for review and approval by Client personnel based on discussions with Client personnel and its accounting firm
- Assisting Client in drafting proposed language for the year end financial statement income tax disclosures based on input provided by Client and its accounting firm
- Review for reasonableness of the Client-prepared U.S. GAAP tax provisions for Client's foreign subsidiaries
- Assisting Client to prepare workpapers summarizing world-wide tax expense and tax balance sheet amounts
- Review reasonableness of GILTI computations
- Review reasonableness of FDII computations
- Review reasonableness of BEAT computations
- Review/assist with documentation regarding permanent reinvestment positions
- Review tracking of previously taxed income (PTI) computations

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- Review treatment of GILTI, FDII and BEAT for state purposes

- Assisting Client to prepare a reconciliation/rollforward of deferred tax balances and taxes payable based on the 2023 U.S. and state corporate income tax return for review and approval by Client

- Assisting Client with the following areas related to uncertain tax positions described within ASC 740:
 - Evaluation of existing positions under the recognition thresholds for recording uncertain tax positions
 - Documenting the process for identifying and evaluating other material uncertain positions
 - Documenting, to the extent required, highly certain tax positions
 - Calculating the resulting liabilities and related interest/penalties
 - Review of qualitative and quantitative disclosures required under ASC 740-10-50 (uncertain tax positions)

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EXHIBIT B: Filings Andersen Will Prepare for the year ending December 31, 2023

<u>Taxpayer's Name</u>	<u>Tax Returns</u>	<u>Expected Filing Date</u>	<u>Payment/Refund Remittance Responsibility</u>	<u>Tax Return Filing Responsibility</u>
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ProSomnus, Inc. & Subsidiaries

- *ProSomnus, Inc.*
- *ProSomnus Sleep Technologies, Inc.*
- *ProSomnus Holdings, Inc.*

Federal Form 1120		10/15/2024	Client	Andersen/E-Filing
California Form 100		11/15/2024	Client	Andersen/E-Filing
Colorado Form DR 0112		10/15/2024	Client	Andersen/E-Filing
Michigan Form 4891		10/15/2024	Client	Andersen/E-Filing
Minnesota Form M4		10/15/2024	Client	Andersen/E-Filing
New Jersey Form CBT-100		10/15/2024	Client	Andersen/E-Filing
Texas Form 05-158A/B		10/15/2024	Client	Andersen/E-Filing
Utah Form TC-20		10/15/2024	Client	Andersen/E-Filing

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EXHIBIT C: IRC Section 7216 Consent to Use Tax Return Information

Federal law requires this consent form be provided to you. Unless authorized by law, we cannot use your tax return information for purposes other than the preparation and filing of your tax return without your consent.

You are not required to complete this form to engage our tax return preparation services. If we obtain your signature on this form by conditioning our services on your consent, your consent will not be valid. Your consent is valid for the amount of time that you specify. If you do not specify the duration of your consent, your consent is valid for one year from date of signature.

If you wish to request a more limited use of your tax return information, please inform your Andersen advisor. Your consent may be withdrawn at any time.

I, [Brian Dow] authorize Andersen Tax LLC (“Andersen”) to use internally: all information contained within tax return(s) prepared for me by Andersen; information furnished to Andersen for or in connection with the preparation of my tax return(s), and/or information derived or generated by Andersen from the information furnished to Andersen for the following purposes:

- To assist Andersen in introducing to, or discussing with, me tax planning opportunities or other services;
- To facilitate the provision of services by Andersen unrelated to tax preparation for which Andersen has been, or may be engaged by me, and
- To receive Andersen newsletters, press releases, announcements, and other communications not directly related to tax return preparation.

The duration of this consent will continue as indicated below, unless Andersen Tax LLC is notified in writing to no longer use your tax return information for purposes identified above.

Please select ONE of the following two options:

Remains effective while Andersen Tax LLC is engaged
 Other (please specify): _____

Signature:  _____

Date: 4/18/2024 | 1:30:48 PM PDT

If you believe your tax return information has been disclosed or used improperly in a manner unauthorized by law without your permission, you may contact the Treasury Inspector General for Tax Administration (TIGTA) by telephone at 1-800-366-4484, or by email to:

complaints@tigta.treas.gov

ANDERSEN TAX LLC - ENGAGEMENT TERMS

These engagement terms (“Terms”) apply to the engagement described in any arrangement letter (“Job Arrangement Letter” or “JAL”) referencing them, and to any advice, information, work, services and/or deliverables thereunder (collectively, “Work”) and shall supersede any inconsistent terms in such JAL. A JAL and these Terms are collectively, the “Agreement”. Capitalized terms not defined in these Terms shall have the meanings set forth in the JAL. The term “Parties” shall collectively refer to Andersen Tax LLC and the Client, and each individually shall be referred to as “Party”. These Terms shall apply to any Work performed for Client where there is no applicable JAL.

Cooperation and Participation

Andersen Tax LLC (“Andersen”) shall be entitled to rely on all information, decisions, and approvals provided by Client or Client’s advisors, consultants, employees, or legal counsel (collectively, “Client Agents”) as reliable, accurate, complete, and current. Client agrees to provide Andersen with timely information relevant to the Work that Andersen will provide or perform and agrees to provide Andersen with any reasonable assistance as may be required to properly perform the engagement. Client agrees to bring to Andersen’s attention any changes in Client’s information as originally presented as soon as such information becomes available. Client also agrees to bring to Andersen’s attention any matters that may reasonably be expected to require further consideration to determine the proper treatment of any relevant item. Client shall not rely on any Work it believes or has reason to believe is based on incorrect or incomplete information that has been provided to Andersen by Client or Client Agents. Client’s management shall be solely responsible for applying independent business judgment with respect to Andersen’s Work, including decisions on implementation or other course(s) of action, and shall be solely and exclusively responsible for those decisions.

Confidentiality

Andersen will maintain the confidentiality of Client information of a confidential nature (“Confidential Information”) using the same degree of care it uses in maintaining its own confidential information but in no event less than a reasonable degree of care. Client’s use of Andersen’s Work under this Agreement, except for copies of filed tax returns, shall in any event be restricted to the item’s stated purpose, if any, and otherwise to Client’s internal business use only. Andersen retains ownership of its workpapers and will keep copies of any Work performed for Client to support the Work performed for Client as required for internal record keeping purposes and for compliance with applicable law and professional standards. Andersen retains all rights to the ideas, tools, concepts, techniques, industry data and know-how used or developed hereunder subject to its confidentiality obligations. Notwithstanding anything herein to the contrary, no restriction in this Agreement is intended to be nor shall be construed as a limitation on the disclosure by Client of the tax treatment or tax structure of any transaction.

Andersen Global

Andersen is the U.S. member firm of Andersen Global, a Swiss verein (“AG”) comprised of legally separate, independent member firms located throughout the world and which are listed at andersen.com (each, a “Member Firm”). Andersen is not responsible for or precluded in any fashion by the actions of any other Member Firm. Unless prohibited by applicable law, Andersen may provide Client information to other Member Firms as well as external third parties (“Vendors”) providing services on our or their behalf, who may collect, use, transfer, store or otherwise process (collectively, “Process”) it in various jurisdictions in which they operate to facilitate performance of the Work, comply with regulatory requirements, assess client acceptance and continuance, check conflicts, provide financial, accounting and other administrative support services or for quality and risk management purposes. The Member Firms and Vendors shall be subject to confidentiality obligations substantially similar to those set forth herein.

Data Protection

1. Definitions. The following terms shall have the meanings set out below and similar terms shall be construed accordingly: (A) “Applicable Data Protection Laws” means all applicable data privacy and security laws, legislation, regulations and regulatory guidance, each as updated or replaced from time to time. (B) “Personal Information” means any information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with an individual or as other like terms are defined under Applicable Data Protection Laws, such as personal data and personally identifiable information. (C) “Data Subject” means a natural person or consumer whose Personal Information is processed and who receives rights and protections under Applicable Data Protection Laws. (D) “Receiving Party” means the Party receiving or being made available Personal Information from Disclosing Party under the Agreement. (E) “Disclosing Party” means the Party disclosing or making available Personal Information to the Receiving Party under the Agreement. All other terms used in this Agreement and not defined herein have the respective meanings ascribed to such terms and related terms under Applicable Data Protection Laws.

2. Purpose of Disclosure. Personal Information is disclosed under the Agreement only for the following limited and specific purposes: to provide tax, valuation, financial advisory, related consulting services and/or other similar services to its clients (“Permitted Purposes”). The Receiving Party may only use the Personal Information for the Permitted Purposes.

3. Compliance with Applicable Data Protection Laws. Receiving Party agrees to comply with, and provide the same level of privacy protection as required by, all Applicable Data Protection Laws in connection with Personal Information disclosed and received under the Agreement. Receiving Party shall notify Disclosing Party no later than five (5) business days after it makes a determination that it can no longer meet its obligations Applicable Data Protection Laws and this Agreement. Receiving Party grants Disclosing Party the right to take reasonable and appropriate steps to help ensure that Receiving Party uses the Personal Information transferred under this Agreement in a manner consistent with

Disclosing Party's obligations under Applicable Data Protection Laws. Disclosing Party has the right, upon five (5) business days' notice, to take reasonable and appropriate steps to stop and remediate Receiving Party's unauthorized use of Disclosing Party's Personal Information. Disclosing Party shall ensure that the Personal Information that is provided to Receiving Party by or on behalf of Disclosing Party and that Disclosing Party's instructions to Receiving Party regarding Receiving Party's use of the Personal Information do not breach Disclosing Party's obligations under Applicable Data Protection Laws or violate any consents provided by the applicable individuals with respect to their Personal Information.

4. Notices and Consents. If Disclosing Party is providing Personal Information about a Data Subject, Disclosing Party represents and warrants that it has provided all required privacy notices, information and disclosures to the Data Subject, including obtaining any consents necessary under Applicable Data Protection Laws, including explicit consents for any special categories of Personal Information and/or criminal convictions or offenses that include Personal Information, before disclosing the Data Subject's Personal Information to Receiving Party. Disclosing Party further represents that it will advise the Data Subject that his/her Personal Information will be used by Receiving Party in accordance with its privacy policy. If Andersen is the Receiving Party, its privacy policy is located at www.andersen.com/privacy-notice-services.

Disclosing Party further acknowledges and agrees that Receiving Party will retain any Personal Information that is provided to Receiving Party by or on behalf of Disclosing Party for the purposes and for the time periods described in the document retention policies applicable to Receiving Party and the other Member Firms and as may be required by laws applicable to Receiving Party and the other Member Firms.

Electronic Communications

The Parties agree to the use of e-mail, voice mail and other electronic methods to transmit and receive information, including confidential information, between the Parties and between Andersen and outside specialists or other entities engaged by either us or you. Andersen shall not be liable for any loss, damage, expense, inconvenience, or harm resulting from the loss, delay, interception, corruption, or alteration of any electronic communication due to any reason beyond our reasonable control.

Taxpayer Privileges and Third Party Proceedings

The Parties acknowledge that certain documents and other communications involving and/or disclosed to or by Andersen may be subject to one or more claims of privilege by or on behalf of Client (examples include but are not limited to the attorney-client privilege, if counsel is present, and the IRC §7525 tax-advisory privilege). Client is solely responsible for managing the recognition, establishment, maintenance, and/or waiver of these potential protections and for involving legal counsel as it deems necessary. In that regard, Andersen shall cooperate with Client's reasonable written instructions regarding same, unless prohibited by law or where Andersen has been requested by state or federal authorities not to divulge the existence of any legal process. In all events, Client agrees that Andersen shall have no obligation to identify or assert any claims of privilege on Client's behalf or to incur any legal expense defending against any demands of any party to produce Client documents or participate in any legal process.

Unless expressly provided for, Andersen's Work does not include giving testimony or appearing or participating in discovery proceedings, in administrative hearings, in court, or in other legal or regulatory inquiries or proceedings. Further, Andersen's costs, expenses and time spent in legal and regulatory matters or proceedings arising from this Agreement and with respect to which it is not a party and the Work is not at issue, such as subpoenas, testimony, bankruptcy filings or proceedings, consultation involving private litigation, arbitration, government or industry regulation inquiries, whether made at Client's request, the request of a third party or by subpoena or equivalent, will be billed to Client separately at Andersen's then current rates. The terms of this paragraph shall also apply to any third-party proceedings that arise after the termination of this Agreement.

Agreed Upon Scope of Work

Andersen shall be obligated only for Work specified in the JAL referencing these Terms, and only for changes in such scope of Work as are set forth in writing and duly executed by the Parties hereto.

To the extent all specific details, including any changes in the scope of the Work, are not documented in the JAL, the Parties shall work diligently and in good faith to document them.

External Factors and Standards of Performance

Client acknowledges that the Work will involve analysis, judgment and other performance from time to time in a context where the participation of Client or others is necessary, where answers often are not certain or verifiable in advance and where facts and available information change with time. Evaluation of Andersen's performance of its obligations shall be based solely on its substantial conformance with this Agreement and any standards or specifications expressly set forth in this Agreement and all applicable professional standards, and any claimed nonconformance and applicability shall be clearly and convincingly shown. It is understood that unless Client and Andersen agree otherwise, in writing, Andersen shall have no responsibility to update the Work after its completion. Andersen reserves the right to in whole or in part decline to perform the Work if information comes to Andersen's attention indicating that performing such Work could cause Andersen to be in violation of applicable law, regulations or standards or in a conflict of interest, or to suffer reputational damage.

Business Risk Allocations

The terms of this Business Risk Allocations section shall apply regardless of the nature of any claim asserted, including contract, statute, any form of negligence, tort, strict liability, or otherwise, whether of Andersen or any Beneficiary, and whether or not Andersen or any Beneficiary was advised of the possibility of the damage or loss asserted, but shall not apply to the extent finally judicially determined to be contrary to any applicable law. Such terms shall also continue to apply after any termination of this Agreement and during any dispute between the Parties. In all events, any claim brought against Andersen with respect to Work under this Agreement shall be brought within twelve months from the date such Work has been completed, without regard to when such claim is discovered.

The liability of Andersen (which liability has been finally, judicially determined), relating to, in connection with, or arising from, these Terms, any JAL, and/or any Work shall in no event, except to the extent of the gross negligence or willful misconduct of Andersen, exceed the fees it receives hereunder for the portion of the Work giving rise to liability.

In no event shall either Party's liability to the other Party include any special, consequential, indirect, incidental, punitive or exemplary damages or loss, including regardless of whether they are direct or indirect, any lost profits, savings, or business opportunity.

Except to the extent of the gross negligence or willful misconduct of Andersen, Client shall and does hereby indemnify the affiliates, managing directors, directors and personnel of Andersen (the "Beneficiaries") and Andersen against all costs, losses, fees, expense, damages and liabilities, including reasonable attorneys' fees and defense costs, associated with any claim, civil or criminal action, and/or governmental investigation or inquiry, including any subpoena or other court process issued relating to, in connection with, or arising from, any Work for any engagement brought by any third party or by Client's Related Party Interests (as defined herein).

Client agrees that Beneficiaries who perform Work, shall not have any liability to Client relating to, arising from, or in connection with, any Work performed within the scope of their employment. Client therefore agrees not to bring a claim of **any nature** against Beneficiaries relating to, arising from, or in connection with the Work performed within the scope of their employment, except where such a claim cannot be excluded by law.

No Third Party Rights

Except as explicitly provided in the Section below under Affiliates, the Work is only for the Client and no third party is an intended or implied third party beneficiary under this Agreement, nor is it entitled to have access to, rely on, or make any use of the Work. Any intent to benefit any third party is specifically disclaimed.

Affiliates

Recognizing that at times Andersen's work may pertain not only to Client but also to a parent, various of its subsidiaries, other affiliates, advisors and contractors, or to family members or related trusts, partnerships, partners, companies, estates or foundations (collectively, "Related Party Interests"), and that one or more of these Related Party Interests may wish to rely upon the Work notwithstanding the fact that no third party rights are created under this Agreement, Andersen agrees that one or more of such Related Party Interests can utilize and rely upon the Work if and only if such Related Party Interests confirms in writing its or their agreement to the terms of this Agreement. Any such confirmation in writing shall be provided to the Andersen representative that signed the JAL. This Agreement is binding on Andersen and Client and on each of their respective successors, assigns, heirs, legatees and legal representatives.

For administrative reasons, Client may from time to time request that fees and expenses for Work performed for its international affiliates or at international locations be invoiced to Client or its designee there, in local currency. Client guarantees the timely payment of all such invoices by its affiliates. In addition, from time to time, a Member Firm, providing Work as a subcontractor to Andersen may bill Client directly for fees incurred for Work performed outside the US, in local currency or otherwise. In that event, such payment may be made directly to the Member Firm.

General Provisions

Neither Party shall be liable for any delay or failure in performance due to circumstances beyond its reasonable control. Client may not use Andersen's name or trademarks without Andersen's prior written consent, and unless expressly prohibited in writing by Client to Andersen, any use by Andersen of Client's name or trademarks shall only be in relation to the Work provided hereunder. Client shall in all events remain responsible for the care and control of its premises, for all internal books and recordkeeping, for establishing and maintaining effective internal control systems and for all management functions, responsibilities and decisions. This Agreement, including its formation and the Parties' respective rights and duties and all disputes that might arise from or in connection with this Agreement or its subject matter, and all claims arising out of Work provided pursuant to this Agreement, shall be governed by and construed in accordance with the laws of Delaware, without giving effect to conflicts of laws rules. The Parties (i) agree that any suit, action or proceeding arising out of or relating to this Agreement, a JAL or the Work will be brought solely in the state or federal courts of the State of Delaware, (ii) consent to the exclusive jurisdiction of each such court in any suit, action or proceeding relating to arising out of this Agreement or the Work and (iii) waive any objection that it may have to the laying of venue in any such suit, action or proceeding in any such court. Each Party is an independent contractor with respect to the other and shall not be construed as having a trustee, joint venture, agency or fiduciary relationship. Except as otherwise provided herein, neither Party shall assign any rights, obligations or claims relating to this Agreement. Andersen reserves the right to suspend Work where payment of an invoice is past due. This Agreement may be terminated at any time with or without cause by either Party, upon 30 days' prior written notice; however, Andersen reserves the right to immediately terminate this Agreement should Client not meet the requirements of Andersen's client acceptance process. In the event of such termination, Client shall pay Andersen for all Work rendered and expenses incurred by Andersen prior to the date of

termination. The JAL, including these Terms and any other incorporated attachments, sets forth the entire understanding between and among the Parties regarding the subject matter addressed therein, supersedes all prior and contemporaneous agreements, arrangements and communications and may not be modified or amended except by the mutual written agreement of both Parties, and which expressly references that it modifies this Agreement. Further, these Terms cannot be amended or waived except in a writing duly executed by an authorized signer for each Party. If any term hereof is found unenforceable or invalid this shall not affect the other terms hereof, all of which shall continue in effect as if the stricken term had not been included. The Parties acknowledge and agree that this Agreement may be executed in separate counterparts (which when taken together shall constitute one and the same instrument) that are electronically signed and that any electronic signatures appearing in this Agreement shall be treated the same as handwritten signatures for all purposes, including validity, enforceability, and admissibility. Either Party may copy this completed Agreement for electronic storage in a non-editable format, at which time the paper form of this Agreement may be destroyed. Andersen and Client each agree that following the electronic storage of this Agreement, any hard copy printout of that electronically stored information will constitute an original of this Agreement. Andersen is not a CPA firm or a public accounting firm.

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