



PROGRAM MATERIALS

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How to Preserve Your Job as CEO, CFO or General Counsel in a Bankruptcy Case or Financial Restructuring

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How to Preserve Your Job as CEO, CFO or General Counsel in a Bankruptcy Case or Financial Restructuring

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■ C.R.O. Overview

- The job of the CRO does not include protecting the board or management.

- But, the “C” Suite can help protect the board and themselves.

C.R.O. Overview *continued*

- What is a C.R.O.?
- Why are they appointed?
- Who typically requests that they be appointed?
- Who selects the C.R.O.?
- Who influences the selection of the C.R.O.?
- What are the C.R.O.'s duties?
- To whom does the C.R.O. report?

C.R.O. Duties (A Sampler)

- Review financial information provided to stakeholders.
- Point Person with creditors.
- Oversee the sale process.
- Prepare financial projections, budgets, etc.
- Develop a business plan.
- Design a restructuring strategy.
- Manage flow of information.
- Oversee and direct operations.
- Terminate employees.
- Approve all material cash disbursements.
- Provide information to stakeholders.

Retainer Agreement Issues

- Use of employees of affiliates and subsidiaries and the CRO firm.
- Direct communication with creditors, including writings, reports, analyses & projections.
- Working on other matters.
- Working for other clients who are competitors.
- Success fee or completion fee.
- No duty to vet information that is shared.
- Disclosure of retention for PR Purposes.
- Not necessarily full time.
- Retainer applied to final invoice.
- Carve-Out inclusion.
- Not a fiduciary.
- Not responsible for consequential damages.

Success Fee/Completion Fee

- Addition to hourly monthly rates.
- Meeting Calendar Milestones.
- Managing cash flow above or below targets.
- Reduction in surety bonds or letters of credit.
- Filing a prepackaged or pre-negotiated plan of reorganization.
- Completing a “transaction”:
 - Debt Restructuring
 - Sale of Assets
 - Fee as a percentage of sale proceeds.

Conflicts

- Given a choice of three names. (“I’m not telling you who to pick, but...”)
- Don’t bite the hand that feeds you.
- No conflicts – except do not hurt the person who got you into the case.
- CRO firm representation of creditors and competitors.
- Disclosure of potential conflicts?
- Communication outside of management presence.
- Need for management sign off on anything in writing given to creditors.
- Have to blame someone!

Who Will Be Blamed?

- Lenders want to put fault on management.
- Creditors want to discover officer and director liability claims.
- CRO will point the finger to someone!
 - Only potential targets are management and the Board of Directors.
- Lenders never want to accept any blame.

To Do List

- Ingratiate yourself to the CRO.
- Become essential.
- Be viewed as too expensive to replace.
 - Wealth of knowledge.
- Have Board support.
- Be part of the CRO's team.
- Be the CRO's confidant.
- No exchange of financial information, reports or analyses absent management review beforehand.
- Note management disagreements with CRO's conclusions, observations and recommendations when necessary.
- No meetings by CRO with stakeholders or their professionals without prior notice to management.
- Have vendor and employee support.

Communication and Staying Informed

- The “C” suite must constantly be attune to what is being said and to whom in the case.
- GC should be copied on every communication with counsel and also attend every meeting and conference call with company and opposing counsel.
- CFO should be copied on every communication with the committee financial advisor and also attend every meeting and conference call with company and committee financial advisors.
- CEO should be copied on all communications with investment bankers. Operational actions above a certain threshold should require CEO approval.
- CEO, CFO and GC should attend all meetings with key constituents.

Relevant Bankruptcy Code Provisions



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11 U.S.C. § 327 - Retention of Professionals

- Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.
- If the trustee is authorized to operate the business of the debtor under section 721 , 1202 , or 1108 of this title, and if the debtor has regularly employed attorneys, accountants, or other professional persons on salary, the trustee may retain or replace such professional persons if necessary in the operation of such business.
- In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.
- The court may authorize the trustee to act as attorney or accountant for the estate if such authorization is in the best interest of the estate.
- The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.
- The trustee may not employ a person that has served as an examiner in the case.

11 U.S.C. § 330 - Compensation of Officers

- After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326 , 328 , and 329 , the court may award to a trustee, a consumer privacy ombudsman appointed under section 332 , an examiner, an ombudsman appointed under section 333 , or a professional person employed under section 327 or 1103--
 - Reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and
 - Reimbursement for actual, necessary expenses.
- The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.
- In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including--
 - The time spent on such services;
 - The rates charged for such services;
 - Whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
 - Whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

11 U.S.C. § 330 - Compensation of Officers

- With respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- Whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.
- Except as provided in subparagraph (B), the court shall not allow compensation for--
 - Unnecessary duplication of services; or
 - Services that were not reasonably likely to benefit the debtor's estate; or
- Necessary to the administration of the case.
- In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.
- The court shall reduce the amount of compensation awarded under this section by the amount of any interim compensation awarded under section 331 , and, if the amount of such interim compensation exceeds the amount of compensation awarded under this section, may order the return of the excess to the estate.

11 U.S.C. § 330 - Compensation of Officers

- Any compensation awarded for the preparation of a fee application shall be based on the level and skill reasonably required to prepare the application.
- In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326 .
- There shall be paid from the filing fee in a case under chapter 7 of this title \$45 to the trustee serving in such case, after such trustee's services are rendered.
- The Judicial Conference of the United States--
 - Shall prescribe additional fees of the same kind as prescribed under section 1914(b) of title 28 ; and
 - May prescribe notice of appearance fees and fees charged against distributions in cases under this title;
 - To pay \$15 to trustees serving in cases after such trustees' services are rendered. Beginning 1 year after the date of the enactment of the Bankruptcy Reform Act of 1994, such \$15 shall be paid in addition to the amount paid under paragraph (1).
- Unless the court orders otherwise, in a case under chapter 12 or 13 of this title the compensation paid to the trustee serving in the case shall not be less than \$5 per month from any distribution under the plan during the administration of the plan.
- In a case in which the United States trustee serves as trustee, the compensation of the trustee under this section shall be paid to the clerk of the bankruptcy court and deposited by the clerk into the United States Trustee System Fund established by section 589a of title 28.

11 U.S.C. § 331 - Interim Compensation

- A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. After notice and a hearing, the court may allow and disburse to such applicant such compensation or reimbursement.

Sample Retainer Agreement Provisions For Analysis and Discussion



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accompanying descriptive overview for the Firm and www.getzlerhenrich.com for your reference.

OUR UNDERSTANDING



We understand DUSA desires Getzler Henrich to provide management consulting and financial advisory services to facilitate the Company's consideration of and preparation for filing for Chapter 11 bankruptcy protection and aid the Company's navigation through Chapter 11 to its emergence. To this end, Getzler Henrich will furnish Mark Samson to serve as Chief Restructuring Officer of the Company and such other personnel as required to support the Chief Restructuring Officer to oversee and guide the restructuring/bankruptcy process. This agreement shall be subject to bankruptcy court approval under Bankruptcy Code Section 363, which the Company shall seek *nunc pro tunc* to the filing date.

SCOPE OF WORK

- a) Assess the current financial position of DUSA
- b) Upon adoption of a resolution/appointment by the Board of Directors (the "Board") of DUSA, Mark Samson will assume the role of the Chief Restructuring Officer ("CRO") of the Company as of the petition date and shall serve in that capacity subject to the oversight, guidance, control and direction of DUSA's Board. Getzler Henrich shall also provide such other personnel and staffing for the Company as the CRO may from time to time determine necessary or appropriate and shall furnish additional officers of the Company, subject to the Board's approval. The Company shall apply to the Bankruptcy Court for appropriate modification of the order approving this engagement in the event Getzler Henrich is requested to furnish additional officers or the scope of the engagement is materially modified. The CRO and any additional officers provided to the Company shall be covered by the indemnity provisions of the Company's bylaws and applicable state law and the D&O policy (as described below) and acceptance of terms thereof by Getzler Henrich.
- c) The duties of the CRO shall include:

Assist with the bankruptcy process to minimize costs associated with that process, assess the Company's working capital needs and assist if necessary in developing a cash flow budget adequate to meet the Company's post-petition cash requirements, facilitate the Debtors' communication with parties-in-interest, assist with creditor negotiations, assist in the development of restructuring options and negotiation of a Plan of Reorganization, oversee any process for the sale of the Company's assets and resolution of claims asserted against the Company, provide guidance and/or assistance as to compliance with all requirements of the

Court and assist in such other matters as the Board or counsel to the Debtor may request from time to time;

Regarding the foregoing, the CRO may:



- Assist with the preparation of financial projections and analysis of alternative operating scenarios;
- Assess, monitor and manage operations and recommend and implement the restructuring of operations as appropriate;
- Oversee a 363 sale process or any alternative orderly liquidation of select assets, if applicable and the development of a Plan of Reorganization;
- Assist with the analysis and reconciliation of claims against the Debtors and other bankruptcy avoidance actions;
- Assist with the preparation of Court motions as requested by counsel;
- Assist with compliance with the reporting requirements of the Bankruptcy Code, Bankruptcy Rules and local rules, including reports, monthly operating statements and schedules;
- Consult with all other retained parties, secured lender, if any, creditors' committee, and other parties-in-interest;
- Participate in Court hearings and, if necessary, provide testimony in connection with any hearings before the Court; and
- Perform such other tasks as appropriate as may reasonably be requested by the Debtor's management or Company counsel.

With respect to all such efforts outlined above, Getzler Henrich will interface with management. Additionally, Getzler Henrich will work with the other professionals retained by the Debtors to ensure work is performed efficiently and without duplication of effort.

FEE STRUCTURE

Getzler Henrich will bill DUSA weekly for financial advisory and interim management fees ("Consulting Fees") and reasonable out-of-pocket expenses incurred by Getzler Henrich. Such expenses include, but are not limited to air travel, meals, local transportation, lodging, parking, telephone calls, delivery services, and photocopying. The Company acknowledges that Getzler Henrich invoices are due and payable each week upon presentation. If an invoice is not paid on a timely basis, we reserve the right to cease work until the matter is settled.

Consulting Fees will be billed on an hourly basis; our standard hourly rates are as follows:

Principal / Managing Director \$515-635
Director / Specialists \$385-585
Associate Professionals \$160-385



Specifically, Mark Samson's rate will be \$575 per billable hour, reflecting a 7.5% discount from his standard hourly rate. We will strive to perform services in a most expeditious and comprehensive fashion, which will be dependent in part on the quality, sophistication and availability of the Company's existing systems, personnel, processes and reporting procedures. Travel time is billed at 50% of the hourly rate. Hourly rates are revised periodically. We will notify you of any such changes to our rates. Note that we do not provide assurance regarding the outcome of our work and our fees will not be contingent on the results of such work.

To the extent that any services outside the scope of this engagement are required or requested, the extent of these services, and the additional compensation to be paid to Getzler Henrich for such services, shall be agreed upon prior to Getzler Henrich beginning to perform such services. These services will be provided subject to our entering into an appropriate amendment to this letter, which, if applicable, may be subject to bankruptcy court approval.

The Company will, on the signing of this letter, pay Getzler Henrich a retainer in the amount of \$100,000, which will be applied to the final bill. Should this retainer be insufficient, Getzler Henrich reserves the right to request and the Company agrees to pay a retainer increase. Any amount of this retainer remaining after application to unpaid fees and expenses will be returned to the Company upon request. Notwithstanding anything to the contrary contained in this paragraph, Getzler Henrich will be entitled to retain the unused portion of the retainer, if any, upon a showing by motion to the Bankruptcy Court, on appropriate notice, that performance to Getzler Henrich by the Company remains due under the indemnification obligations under this engagement letter.

TERMS OF ENGAGEMENT

The Terms and Conditions set forth in Annex I shall govern this engagement, except to the extent inconsistent with or superseded by the express terms of this letter or any court order approving this engagement.

Getzler Henrich's fees and expense reimbursement will be entitled to the benefits of any Carve Out, as defined in any final order authorizing the Company to obtain post-petition financing, and, to the extent not disallowed by an order of the Bankruptcy Court, shall constitute allowed administrative expenses under section 503(b)(1), with the priority specified in section 507(a), of the Bankruptcy Code.

During the post-petition period, Getzler Henrich shall provide the Office of the United States Trustee and any official committees reports of staffing, compensation and expenses monthly with respect to the prior month. Such reports shall include the names and functions filled of individuals assigned, summarize the services provided, identify the compensation for the CRO and any additional officers, personnel or staffing provided by Getzler Henrich, and itemize the expenses incurred.





Concurrently upon the acceptance of the appointment of CRO, DUSA shall cause its insurance broker to procure or add Samson to any existing Directors and Officers insurance policy ("D&O" policy), send copies of all documentation and other communications regarding the D&O policy, including without limitation any renewal or cancellation thereof, to the attention of Samson and Getzler Henrich, and extend the claim period upon any renewal or cancellation of the policy, as provided for in paragraph 6 of Annex I hereto. DUSA shall take all required steps to insure all persons serving as officers of the Company provided by Getzler Henrich shall receive the benefit of indemnifications and insurance provided to all other senior executive officers or directors on the same terms as such persons, whether under the corporate bylaws or applicable state law.

In no event shall Getzler Henrich have responsibility or liability for any decisions, actions or failure to act of any officers, made or taken in that capacity, furnished by it to the Company hereunder.

Except as disclosed to the Company and described in Getzler Henrich's forthcoming Bankruptcy Court retention affidavit, Getzler Henrich confirms that none of its principals or professional staff have any financial interest or business connection with DUSA, and Getzler Henrich is aware of no conflicts regarding this Agreement.

All notices, requests, consents and other communications hereunder to Getzler Henrich shall be deemed to be sufficient if contained in a written instrument delivered in person or duly sent by certified mail, postage prepaid; by an overnight delivery service, charges prepaid; or by confirmed telecopy; addressed to Getzler Henrich at the address set forth below or such other address as may hereafter be designated in writing:

Getzler Henrich & Associates LLC
295 Madison Avenue, 20th Floor
New York, NY 10017
Attention: Mark G. Samson and Joel Getzler
Facsimile: 212-697-4812

This Engagement Letter contains the entire agreement among the parties relating to the subject herein. Any modification or other changes to the terms contained herein or therein must be in writing and signed by the parties hereto to be enforceable.

If the foregoing is in accordance with our understanding, please sign the attached copy and forward it to our office. In addition, the retainer and future payments may be wired to Getzler Henrich & Associates LLC c/o JP Morgan Chase Bank, account # 621505952665, routing/ABA # 021 0000 21.


We are very appreciative of the opportunity to help you achieve your goals and to work with you.

Sincerest regards,

GETZLER HENRICH & ASSOCIATES LLC

ANNEX I
Terms and Conditions

1. Access to Company Personnel and Information.



(a) The Company agrees to make available to Getzler Henrich all the Company's financial and operational information and data as requested by Getzler Henrich (all such information so furnished being the "Information") and agrees to permit discussions with Company personnel that Getzler Henrich reasonably requests about the services performed by Getzler Henrich under this Agreement. The Company will provide Getzler Henrich with full access to all Company personnel, books, and records, including those of the Company's attorneys (subject to such safeguards as may be necessary to preserve applicable attorney-client privileged communications) and other agents and third-party representatives. The Company represents and warrants to Getzler Henrich that, except as disclosed to Getzler Henrich in writing, all information provided or made available to Getzler Henrich by the Company, its directors, officers, employees, representatives, attorneys and agents at any time shall, to the best of the Company's knowledge: a) be complete and correct in all material respects; and b) not contain any untrue statement of material fact or omit to state a material fact necessary in order to make the statements not misleading in light of the circumstances under which such statements are made. The Company agrees that it shall notify Getzler Henrich if it learns subsequently that any information provided or made available to Getzler Henrich in accordance with this Agreement is incorrect, inaccurate, or otherwise should not be relied upon.

(b) The Company recognizes and confirms that Getzler Henrich (a) will use and rely primarily on the information and on information available from generally recognized public sources in performing the services contemplated hereby without having independently verified any of the same and (b) does not assume responsibility for accuracy or completeness of the information and such other information and (c) will not make an appraisal of any of the assets or liabilities or completeness of any information or other information. The Company agrees that Getzler Henrich shall incur no liability to the Company or any individual or other entity that may arise if any information or other information proves to be unreliable, inaccurate or incomplete.

2. Confidential Information.

(a) Getzler Henrich shall not publicly disclose the Confidential Information. Further, Getzler Henrich will use the Confidential Information only for the purpose of providing services to the Company pursuant to this Agreement. "Confidential Information" shall consist only of information that is necessary for Getzler Henrich to perform its services under this Agreement, and that is: (i) disclosed to Getzler Henrich by the Company, its directors, officers, employees, representatives and agents; (ii) acquired by Getzler Henrich from any inspection of the Company's property in connection with this Agreement; or (iii) information produced by Getzler Henrich, from Confidential Information, in connection with performing services to the Company under this Agreement.

(b) Confidential Information shall not include information that is: (i) now or subsequently becomes generally known or available by publication, commercial or otherwise, through no fault of Getzler Henrich, its employees, agents, or independent contractors; (ii) already known by Getzler Henrich at the time of the disclosure, provided that such information did not come from a source known by Getzler Henrich to be bound by a confidentiality agreement with the Company, or from a source that was otherwise prohibited from disclosing such information under a contractual, legal or fiduciary obligation; (iii) becomes available to Getzler Henrich on a non-confidential basis from a source other than the Company, provided that, to Getzler Henrich's knowledge, the source was not prohibited from disclosing such information to Getzler Henrich under a contractual, legal or fiduciary obligation to the Company; (iv) independently developed by Getzler Henrich, its employees, agents, or independent contractors primarily from information that is not Confidential Information; (v) information that the Company and Getzler Henrich agree, in writing, may be disclosed; (vi) information that is or should be reasonably expected to be disclosed as part of Getzler Henrich's services to the Company; or (vii) information that Getzler Henrich reasonably believes, upon advice of its attorneys, must be disclosed pursuant to applicable law, or regulatory or administrative process, including stock exchange rules.

(c) Getzler Henrich may disclose Confidential Information: (i) to third parties if and to the extent necessary to enable Getzler Henrich to perform its services under this Agreement, (ii) in connection with any dispute between Getzler Henrich and the Company under, concerning or arising out of this Agreement, or (iii) if Getzler Henrich receives any request by order, subpoena, or other legal process to produce any Confidential Information, or (iii) if Getzler Henrich receives any request by order, subpoena, or other legal process to produce any Confidential Information. In the event that Getzler Henrich receives any request by order, subpoena, or other legal process to produce any Confidential Information, then, unless otherwise prohibited by law or process, Getzler Henrich will provide the Company with timely written notice of such request in advance of any production. At the Company's request and expense, and unless otherwise prohibited by law, and without relinquishing or modifying Getzler Henrich's authority to disclose information under the terms of this Agreement, Getzler Henrich will cooperate reasonably with the Company in actions that the Company deems necessary or appropriate under the circumstances to protect the confidentiality of the Confidential Information.

(d) Getzler Henrich may disclose the Company's name for purposes of internal marketing materials only and will not otherwise disclose Confidential Information as contemplated under this Section 2.



3. **No Third-Party Beneficiaries; Use of Work Product.** Except as provided with respect to indemnification and exculpation, there are no third-party beneficiaries of this Agreement. The Company acknowledges that in connection with its engagement Getzler Henrich is acting as an independent contractor with duties owing solely to Company. The Company acknowledges that all information, whether written or oral, created, prepared, or compiled by Getzler Henrich in connection with this Agreement is intended solely for the benefit and use of the Company provided, however that Getzler Henrich acknowledges and agrees that Company shall utilize Getzler Henrich's work in negotiations with Company's creditors. No other individual or entity shall be entitled to rely on such information for any purpose. Company agrees that such information shall not be reproduced, disseminated, quoted or referred to at any time or in any manner other than to the Company's board of directors or managers, officers, employees, representatives, attorneys, and other agents who have a need to receive such information, except upon Getzler Henrich's prior written consent. Without limiting the foregoing, the Company shall not (and shall not authorize any other individual or entity to) use Getzler Henrich's name or to make available to third parties any information created, prepared, or compiled by Getzler Henrich under this Agreement for any reason, including obtaining or extending credit, offering or selling securities or other assets, or in any representations to third parties without Getzler Henrich's prior written consent. It is also expressly agreed that notwithstanding the above restrictions upon the Company's dissemination and use of information and work product, Getzler Henrich shall have no responsibility or liability relating directly or indirectly to such disclosure (whether authorized or unauthorized) by the Company concerning any information created, prepared, or compiled, in whole or in part, by Getzler Henrich pursuant to this Agreement, which may be disclosed only after prior written approval by Getzler Henrich or as required by applicable law, or regulatory or administrative process, including stock exchange rules. The foregoing provisions shall not be construed or interpreted to prohibit references to Getzler Henrich's engagement under this Agreement in required public filings or court documents.

4. **Future Performance.**

(a) The services to the Company under this Agreement may include the preparation of recommendations, projections, and other forward-looking statements. The Company acknowledges that numerous factors may affect the Company's actual financial and operational results, and that these results may materially and adversely differ from the recommendations and projections prepared, in whole or in part, by Getzler Henrich.

(b) Getzler Henrich does not provide assurance regarding the outcome of its engagement and its fees are not contingent on the results of its engagement.

5. **Independent Contractor Status.** Getzler Henrich is an independent contractor under this Agreement, and accordingly, this Agreement shall not be an employment agreement. No one on behalf of any Getzler Henrich Party (as defined below), nor any employees, agents, or independent contractors thereof, shall be considered to be a director, officer, member, manager, partner, control person, employee, representative, agent, or insider of the Company, unless expressly agreed to in a writing signed by Company and Getzler Henrich. Getzler Henrich will have exclusive control over the management and operation of Getzler Henrich, including hiring and paying the wages or other compensation of its personnel. The Getzler Henrich personnel that provide services to the Company under this Agreement may also provide services to other past, present or future Getzler Henrich clients. In addition, like other advisory firms, Getzler Henrich may utilize the services of qualified independent project employees, who work under our direct supervision for us on an ad hoc basis as temporary employees, to assist Getzler Henrich with its performance of its services pursuant to this Agreement. This arrangement enables us to reduce our overhead and provide cost-effective services to our clients, who benefit from this saving by our reasonable rate structure.

6. **Appointment as Officer and/or Director.** Getzler Henrich understands that the Company's officers and directors are covered by appropriate D&O insurance policies. Should the Company with the consent of Getzler Henrich elect a Getzler Henrich Party as an officer or director, the Company shall prior to the effectiveness of such election name such Getzler Henrich Party and Getzler Henrich as additional insureds under these policies and under all such other policies that the Company may purchase during Getzler Henrich's engagement. The Company further agrees to provide evidence of this coverage as soon as it is in place. It is mutually understood that naming such Getzler Henrich representative as an officer or director of the Company, that such Getzler Henrich representative will remain at all times an employee of Getzler Henrich and not become an employee of the Company and will be compensated solely by Getzler Henrich. Upon any cancellation or non-renewal of the D&O policy, then the Company shall exercise their rights to extend the claim period for a one-year "discovery period" and shall exercise such rights and pay such premiums required thereunder.

7. **No Fiduciary Relationship.** Other than with respect to appointment(s) of a Getzler Henrich Party as an officer and/or director of Company in writing (and then only with respect to such Getzler Henrich Party), nothing in this Agreement is intended to create, or shall be deemed or construed to create a fiduciary relationship between: (a) the Company, including without limitation, the Company's directors, officers, members, managers partners, control persons, shareholders, employees, representatives, agents, or creditors (collectively, the "Company Parties" and each a "Company Party"), on the one hand; and (b) Getzler Henrich, Getzler Henrich's affiliates, and the respective directors, officers, members, managers, partners, control persons, shareholders, employees, representatives, independent contractors, attorneys, agents, successors or assigns of Getzler Henrich or Getzler Henrich affiliates (collectively, the "Getzler Henrich Parties," and each a "Getzler Henrich Party") on the other hand.

11. Limitation of Liability. No Getzler Henrich Party shall be liable to the Company, or any party asserting claims on behalf of the Company, except for direct damages found in a final determination to be the direct result of the bad faith, self-dealing, intentional misconduct or gross negligence of such Getzler Henrich Party. The Getzler Henrich Parties shall not be liable for incidental or consequential damages under any circumstances, even if they have been advised of the possibility of such damages. The Getzler Henrich Parties aggregate liability, whether in tort, contract or otherwise, is limited to the amount of fees paid for services on this engagement (the "Liability Cap"). The Liability Cap is the total limit of the Getzler Henrich Parties for any and all claims or demands by anyone with respect to this Agreement, or the services provided hereunder, and the Liability Cap shall be allocated among all such claimants, as appropriate.



12. Attorneys' Fees and Expenses. The Company shall pay all costs and expenses, including reasonable attorneys' fees and expenses, incurred by Getzler Henrich to enforce this Agreement, including, but not limited to any indemnity provision of this Agreement. This obligation to pay Getzler Henrich's reasonable attorneys' fees and expenses shall apply whether such fees and expenses are incurred during trial or appeal, or in arbitration, a bankruptcy case, or otherwise. If so required, Getzler Henrich shall additionally be entitled to reimbursement of reasonable legal expenses associated with any required court approval of this Agreement or enforcement of provisions of this Agreement, including, but not limited to, fee applications and the defense of any objections thereto. Company shall reimburse Getzler Henrich for all such expenses upon presentation of the invoice for the same supported by appropriate documentation.

13. Consent: Entire Agreement. In any instance under this Agreement where a party's consent is permitted or required to be given, such consent shall not be withheld unreasonably. This Agreement contains the entire Agreement of the parties with respect to its subject matter and supersedes all prior agreements and understandings between the Company and Getzler Henrich with respect to such subject matter. The parties agree that all terms of their agreement and understanding are embodied in this Agreement, and as modified or supplemented from time to time, but only if such modification or supplement is both: (i) in writing, and (ii) signed by all parties. To the extent that any services outside the scope of this engagement are required or requested, the extent of these services, and the additional compensation to be paid to Getzler Henrich for such services, shall be agreed upon prior to Getzler Henrich beginning to perform such services.

14. Choice of Law/Forum. The validity, interpretation and enforcement of this Agreement, matters arising out of or related to this Agreement or its making, performance or breach, and related matters shall be governed by the internal laws of the State of New York (without reference to choice of law doctrine). Any legal action or proceeding concerning the validity, interpretation and enforcement of this Agreement, matters arising out of or related to this Agreement or its making, performance or breach, or related matters shall be brought exclusively in the courts of the State of New York in the County of New York or of the United States of America for the Southern District of New York, and all parties consent to the exclusive jurisdiction of those courts, waiving any objection to the propriety or convenience of such venues. GETZLER HENRICH HEREBY AGREES, AND THE COMPANY HEREBY AGREES ON ITS OWN BEHALF, AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF EACH OTHER COMPANY PARTY, TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTER-CLAIM OR ACTION IN CONNECTION WITH, RELATING TO OR ARISING OUT OF GETZLER HENRICH'S ENGAGEMENT, GETZLER HENRICH'S PERFORMANCE THEREOF, OR THIS AGREEMENT.

15. Multiple Originals. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. This Agreement may be executed by facsimile signatures or signatures forwarded via email.

16. Termination. Either the Company or Getzler Henrich can terminate this agreement upon written notice, except for Sections 1 thru 3 and 6 thru 12, which shall survive any termination. Outstanding amounts due Getzler Henrich, if any, will be paid promptly upon receipt of a final invoice that will be provided immediately upon notice of termination by the Company.

Penny Lindemann
Chief Financial Officer
NPC International
4200 N. 115th Street
Suite 200
Leawood, KS 66221

January 30, 2020

Re: Agreement for the Provision of Interim Management Services

Dear Ms. Lindemann:

This letter, together with the attached Schedule(s) and General Terms and Conditions, sets forth the agreement ("Agreement") between AP Services, LLC, a Michigan limited liability company ("APS"), and NPC Restaurant Holdings I LLC (the "Company") for the engagement of APS to provide interim management services to the Company.

All defined terms shall have the meanings ascribed to them in this letter and in the attached Schedule(s) and General Terms and Conditions. The Company and APS are each a "party," and together the "parties."

The engagement of APS, including any APS employees who serve in Executive Officer positions, shall be under the supervision of the Special Committee of the Board of Managers of the Company.

Objectives and Tasks

Subject to APS' (i) internal approval from its Risk Management Committee, (ii) confirmation the Company has a Directors and Officers Liability Insurance policy in accordance with Section 7 of the General Terms and Conditions regarding Directors and Officers Liability Insurance coverage, and (iii) receipt of a copy of the signed Board of Managers' resolution (or similar document as required by the Company's governance documents) as official confirmation of the appointment, APS will provide Eric Koza to serve as the Company's Chief Restructuring Officer ("CRO"), reporting to the Special Committee of the Board of Managers. Working collaboratively with the senior management team, the Board of Managers and other Company professionals, Eric Koza will assist the Company with the following:

- Prepare budgets and 13-week cash forecasts and evaluate variances thereto, as required by the Company's lenders.
- Develop the Company's revised business plan, and such other related forecasts as may be required by the Company's lenders in connection with negotiations or by the Company for other corporate purposes.
- Develop a short-term operating plan designed to minimize cash requirements while maintaining the efficiency of operations, sustaining vendor relationships, and minimizing the impact on the Company's customer base.
- Design, negotiate and implement a restructuring strategy designed to maximize enterprise value, taking into account the unique interests of key constituencies.
- Assess the potential separation of the Pizza Hut and Wendy's business segments.

- Lead communications on behalf of the Company with the its various stakeholders and other related parties.
- Develop short-term and long-term cash flow forecasting tools and related methodologies to support negotiations with the Company's stakeholders and fundraising initiatives.
- Prepare for and file a Bankruptcy Petition, coordinating and providing administrative support for the proceeding and developing the Company's Chapter 11 Plan or other appropriate case resolution, if necessary.
- In connection with a bankruptcy, prepare (i) a Disclosure Statement and Chapter 11 Plan, (ii) a liquidation analysis, (iii) statements of financial affairs and schedules of assets and liabilities, (iv) a potential preferences analysis, (v) a claims analyses, and (vi) monthly operating reports and other regular reporting required by the Bankruptcy Court.
- Provide assistance with the implementation of Bankruptcy Court orders.
- Coordinate the Company's professionals assigned to sourcing, negotiating and implementing any financing, including debtor-in-possession and exit financing facilities, in conjunction with the Plan of Reorganization and the overall restructuring.
- Assist the Board of Managers and the Company's counsel in diligence gathering, analysis, and reports relating to any investigations as well as assist with diligence gathering relating to any third-party investigations.
- Assist in managing the "working group" professionals who are assisting the Company in the restructuring process or who are working for the Company's various stakeholders to improve coordination of their effort and individual work product to be consistent with the Company's overall restructuring goals.
- Create and communicate materials for diligence purposes and manage the flow of information to potential acquirers in connection a potential sale of the Company's assets.
- Render testimony, as requested from time to time, regarding any matters to which APS is providing services;
- Assist the Company with such other matters as may be requested by the Company that are within APS's expertise and are mutually agreeable.

Staffing

Eric Koza will be the managing director responsible for the overall engagement, assisted by a staff of consultants at various levels who have a wide range of skills and abilities related to this type of assignment. In addition, APS has relationships with, and may periodically use, independent contractors with specialized skills and abilities to assist in this engagement.

We will periodically review the staffing levels to determine the proper mix for this assignment. We will only use the necessary staff required to complete the requested or planned tasks.

These General Terms and Conditions ("Terms") are incorporated into the Agreement to which these Terms are attached. In case of conflict between the wording in the letter and/or schedule(s) and these Terms, the wording of the letter and/or schedule(s) shall prevail.

Section 1. Company Responsibilities

The Company will undertake responsibilities as set forth below:

1. Use commercially reasonable efforts to provide reliable and accurate detailed information, materials, documentation and

2. Make decisions and take future actions, as the Company determines in its sole discretion, on any recommendations made by APS in connection with this Agreement.

APS' delivery of the services and the fees charged are dependent on (i) the Company's timely and effective completion of its responsibilities; and (ii) timely decisions and approvals made by the Company's management.

Section 2. Retainer, Billing, Payments and Taxes

Retainer. Upon execution of the Agreement, the Company shall promptly pay APS the agreed-upon advance retainer as set forth on Schedule 1. Invoices shall be offset against the retainer. Payments of invoices will be used to replenish the retainer to the agreed-upon amount. Any unearned portion of the retainer will be applied against the final invoice or returned to the Company at the end of the engagement.

Billing and Payments. All payments to be made to APS shall be due and payable upon receipt of invoice via check or wire transfer to APS' bank account, as shown on the invoice. All amounts invoiced are based on services rendered and expenses incurred to date, and are not contingent upon future services or Work Product (as defined below), or the outcome of any case or matter. "Fees," as used in this Agreement, shall include all amounts payable by the Company to APS in accordance with Schedule 1, including any success fee or break fee, but excluding reimbursable expenses.

Taxes. APS' fees are exclusive of taxes or similar charges, which shall be the sole responsibility of the Company (other than taxes imposed on APS' income generally). If APS' fees are subject to any taxes, such as State sales tax, Goods and Services Tax/Harmonized Sales Tax or Value Added Tax, then APS will include such taxes on its invoices as separate line items.

Section 3. Relationship of the Parties

The parties intend that an independent contractor relationship will be created by the Agreement. As an independent contractor, APS will have complete and exclusive charge of the management and operation of its business, including hiring and paying the wages and other compensation of all its employees and

agents, and paying all bills, expenses and other charges incurred or payable with respect to the operation of its business. Employees of APS will not be entitled to receive from the Company any vacation pay, sick leave, retirement, pension or social security benefits, workers' compensation, disability, unemployment insurance benefits or any other employee benefits. APS will be responsible for all employment, withholding, income and other taxes incurred in connection with the operation and conduct of its business.

APS is not an accounting firm and does not give accounting advice or guidance. While APS' work may involve analysis of accounting, business and other related records, this engagement does not constitute an audit in accordance with either generally accepted auditing standards or the standards of the Public Company Accounting Oversight Board or any other similar governing body.

APS is not authorized to practice law or provide legal advice. No services provided under this Agreement are intended to be, nor should be construed to be, legal services.

Section 4. Confidentiality

Each party shall use reasonable efforts, but in no event less effort than it would use to protect its own confidential information, to keep confidential all non-public confidential or proprietary information obtained from the other party during the performance of APS' services hereunder (the "Confidential Information"), and each party shall not disclose any Confidential Information to any other person or entity. "Confidential Information" includes the terms of this Agreement, non-public confidential and proprietary data, plans, reports, schedules, drawings, accounts, records, calculations, specifications, flow sheets, computer programs, source or object codes, results, models or any work product relating to the business of either party, its subsidiaries, distributors, affiliates, vendors, customers, employees, contractors and consultants.

The foregoing is not intended to prohibit, nor shall it be construed as prohibiting, APS from making such disclosures of Confidential Information that APS reasonably believes are required by law or any regulatory requirement or authority to clear client conflicts. APS may also disclose Confidential Information to its partners, directors, officers, employees, independent contractors and agents who have a need to know the Confidential Information as it relates to the services being provided under this Agreement, provided APS is responsible for any breach of these confidentiality obligations by any such parties. APS may make reasonable disclosures of Confidential Information to third parties, such as the Company's suppliers and/or vendors, in connection with the performance of APS' obligations and assignments hereunder, provided APS reasonably

believes that such third party is bound by confidentiality obligations. In addition, APS will have the right to disclose to any person that it provided services to the Company or its affiliates and a general description of such services, but shall not provide any other information about its involvement with the Company. The obligations of the parties under this Section 4 shall survive the end of any engagement between the parties for a period of three (3) years.

Work Product (as defined in Section 5) may contain APS proprietary information or other information that is deemed to be Confidential Information for purposes of this Agreement, and the parties may not want to make public. Therefore, the parties acknowledge and agree that (i) all information (written or oral), including advice and Work Product (as defined in Section 5), generated by APS in connection with this engagement is intended solely for the benefit and use of the Company in connection with this Agreement, and (ii) no such information shall be used for any other purpose or disseminated to any third parties, or, quoted or referred to with or without attribution to APS at any time in any manner or for any purpose without APS' prior approval (not to be unreasonably withheld or delayed), except as required by law. The Company may not rely on any draft or interim Work Product.

Section 5. Intellectual Property

All analyses, final reports, presentation materials, and other work product (other than any Engagement Tools, as defined below) that APS creates or develops specifically for the Company and delivers to the Company as part of this engagement (collectively known as "Work Product") shall be owned by the Company and shall constitute Company Confidential Information as defined above. APS may retain copies of the Work Product and any Confidential Information necessary to support the Work Product subject to its confidentiality obligations in this Agreement.

All methodologies, processes, techniques, ideas, concepts, know-how, procedures, software, tools, templates, models, utilities and other intellectual property that APS has created, acquired or developed or will create, acquire or develop (collectively, "Engagement Tools"), are, and shall be, the sole and exclusive property of APS. The Company shall not acquire any interest in the Engagement Tools other than a limited worldwide, perpetual, non-transferable license to use the Engagement Tools to the extent they are contained in the Work Product.

The Company acknowledges and agrees, except as otherwise set forth in this Agreement, that any Engagement Tools provided to the Company are provided "as is" and without any warranty or condition of any kind, express, implied or otherwise, including, implied warranties of merchantability or fitness for a particular purpose.

Section 6. Framework of the Engagement

The Company acknowledges that it is retaining APS solely to assist and advise the Company as described in the Agreement. This engagement shall not constitute an audit, review or compilation, or any other type of financial statement reporting engagement.

Section 7. Indemnification and Other Matters

The Company shall indemnify, hold harmless and defend APS and its affiliates and its and their partners, directors, officers, employees and agents (collectively, the "APS Parties") from and against all claims, liabilities, losses, expenses and damages arising out of or in connection with the engagement of APS that is the subject of the Agreement other than with respect to any claim, liability, loss, or expenses directly related to the bad faith, self-dealing, or intentional misconduct of an APS Party, in each case as determined by a tribunal of competent jurisdiction pursuant to an order not subject to appeal. The Company shall pay damages and expenses as incurred, including reasonable and documented legal fees and disbursements of one set of counsel. If, in the written opinion of counsel, representing both parties in the matter covered by this indemnification creates a potential conflict of interest, the APS Parties may engage separate counsel to represent them at the Company's expense.

In addition to the above indemnification, APS employees serving as directors or officers of the Company or affiliates will receive the benefit of the most favorable indemnification provisions provided by the Company to its directors, officers and any equivalently placed employees, whether under the Company's charter or by-laws, by contract or otherwise.

The Company shall specifically include and cover APS employees and agents serving as directors or officers of the Company or affiliates from time to time with direct coverage under the Company's policy for liability insurance covering its directors, officers and any equivalently placed employees ("D&O insurance"). Prior to APS accepting any officer position, the Company shall, at the request of APS provide APS a copy of its current D&O policy, a certificate(s) of insurance evidencing the policy is in full force and effect, and a copy of the signed board resolutions and any other documents as APS may reasonably request evidencing the appointment and coverage of the indemnitees. The Company will maintain such D&O insurance coverage for the period through which claims can be made against such persons. The Company disclaims a right to distribution from the D&O insurance coverage with respect to such persons. In the event that the Company is unable to include APS employees and agents under the Company's policy or does not have first dollar coverage acceptable to APS in effect for at least \$10 million (e.g., there are outstanding or threatened claims against officers and directors alleging prior acts that may give rise to a claim), APS may, at its option,

Ms. Penny Lindemann
Chief Financial Officer
NPC International
4200 N. 115th Street
Suite 200
Leawood, KS 66221

June 16, 2020

Re: Agreement for the Provision of Interim Management Services – First Addendum

Dear Ms. Lindemann:

This letter is the First Addendum (the "First Addendum") to the agreement between AP Services, LLC, a Michigan limited liability company ("APS") and NPC Restaurant Holdings I LLC (the "Company") dated January 30, 2020 (the "Engagement Letter"). Unless otherwise modified herein, the terms and conditions of the Engagement Letter remain in full force and effect. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Engagement Letter.

Effective June 30, 2020, the Company acknowledges and agrees all of the rights and obligations applicable to APS under the Engagement Letter are hereby assigned to AlixPartners, LLP ("AlixPartners"). Any References to APS in the Engagement Letter, or under this First Addendum, shall mean AlixPartners.

Pursuant to Schedule 1, Section 2. Restructuring Fees, of the Engagement Letter, the Company and APS agreed to mutually agree upon a restructuring fee under a separate addendum.

In furtherance thereof, the following Restructuring Fee shall be incorporated into Schedule 1 of Engagement Letter:

Restructuring Fee: In addition to the fees described in Schedule 1 of the Engagement Letter, AlixPartners will be compensated for its efforts by the payment of a Restructuring Fee (subject to Court approval, as may be applicable). AlixPartners shall earn a Restructuring Fee, as set forth below:

If the Company files a "pre-packaged", "pre-negotiated", "pre-arranged" or substantively similar type of chapter 11 bankruptcy proceeding, or a foreign equivalent, and executes a "Transaction" as defined below, then upon the earlier of chapter 11 plan confirmation or the closing on the Transaction, the Company will pay AlixPartners a Restructuring Fee of \$1,500,000.

AlixPartners

NPC International
June 16, 2020
Page 2 of 3

A "Transaction" shall mean (i) the consummation of any material recapitalization or debt restructuring of the Company (including, without limitation, through any exchange, conversion, cancellation, forgiveness, retirement and/or a material modification or amendment to the terms, conditions or covenants thereof) of the Company's preferred equity and/or debt securities and/or other indebtedness or obligations (including lease obligations, trade credit facilities and/or tort obligations), including pursuant to a repurchase or an exchange transaction, a plan or solicitation of consents, waivers, acceptances or authorizations or (iii) consummation of one or more transactions, in any form, including a sale of substantially all of the Company's assets under U.S. Bankruptcy Code Section 363, that effectively transfers a) all or a portion of the equity securities of the Company by the security holders of the Company or b) all or a portion of the assets (including the assignment of any executory contracts) or businesses of the Company or its subsidiaries, in either case, including through a sale or exchange of capital stock, options or assets, a lease of assets with or without purchase option, a merger consolidation or other business combination, an exchange or tender offer, a recapitalization, the formation of a joint venture, partnership or similar entity, or any similar transaction, c) a significant portion of the business as a going concern to another entity or entities or that results in a change in structure of the board of directors.

The Restructuring Fee shall be due and payable immediately when the success objective or objectives determined as described above have been achieved.



INTELLIGENCE THAT WORKS

CONFIDENTIAL

March 31, 2021

Via Email

Pete Collins
Chief Financial Officer
4775 Eucalyptus Ave
Chino, CA 91710
pete.collins@thecollectedgroup.com

Re: The Collected Group – Interim Management Services

Dear Pete:

This letter confirms the engagement of Evan Hengel of Berkeley Research Group, LLC (“BRG”) as Chief Restructuring Officer (“CRO”) for The Collected Group (collectively with its designated affiliates, the “Company”). The CRO’s engagement team will include professional staff from BRG (the “Additional Personnel”). This letter and any attachments set forth the agreement (“Agreement”) between the parties and shall supersede and replace all prior engagement letters between the Company and BRG.

SCOPE OF SERVICES

The Company has requested that the CRO and Additional Personnel provide the following professional services as independent consultants (“Services”):

- a. In consultation with management of the Company and subject to the approval of the Special Committee of the Company, develop and implement a chosen course of action to preserve asset value and maximize recoveries to stakeholders. CRO will report directly to the Special Committee.
- b. Oversee the activities of the Company in consultation with other advisors and the management team to effectuate the selected course of action.
- c. Assist the Company and its management in developing cash flow projections and related methodologies and assist with planning for alternatives as requested by Company.
- d. Assist the Company in preparing for and operating in a Chapter 11 bankruptcy proceeding, including negotiations with stakeholders, and the formulation of a reorganization strategy and plan of reorganization directed to preserve and maximize value.





e. Assist as requested by management in connection with the Company's development of its business plan, and such other related forecasts as may be required by creditor constituencies in connection with negotiations.

f. Provide information deemed by the CRO to be reasonable and relevant to stakeholders and consult with key constituents as necessary.

g. To the extent reasonably requested by the Company, offer testimony before the Bankruptcy Court with respect to the services provided by the CRO and the Additional Personnel, and participate in depositions, including by providing deposition testimony, related thereto.

h. To the extent reasonably requested by the Company, offer assistance in obtaining relevant Employee Retention Credit benefits and any other tax refunds the Company may be eligible for.

i. Such other services as mutually agreed upon by the CRO, BRG and the Special Committee of the Company.

The Company agrees that (i) Mr. Hengel will provide Services as CRO as required, and (ii) the CRO may retain as consultants on behalf of the Company other members or employees of BRG.

The Company agrees that the CRO will continue as an employee of BRG and may continue to provide his services to other companies during the term of this Agreement. The Company acknowledges that since the CRO is an employee of BRG, BRG must release the CRO from his full-time obligations to BRG in order for the CRO to perform Services hereunder, and therefore to compensate BRG for the loss of full-time access to the CRO or any Additional Personnel providing Services hereunder, all payments for the time charges of the CRO or Additional Personnel providing Services hereunder to Company shall be made to BRG.

The CRO and Additional Personnel who provide Services to the Company under this Agreement are independent contractors and are not, and will not be deemed to be employees of the Company.

FEES & EXPENSES

The CRO's fees ("Professional Fees") for provision of the services set forth in this Agreement will be \$115,000 per month or standard hourly rates, whichever is lower during each individual month of service.

The fees for the Additional Personnel, will be based on the actual hours charged at BRG's standard hourly rates which are in effect when the Services are rendered ("Professional Fees") and are not to exceed \$197,500 per month unless otherwise authorized by the Special Committee. Hourly rates may change in the future from time to time and are typically adjusted annually. BRG's current hourly rates are as follows:

Managing Director	\$860 - \$1150
Director	\$600 - \$895
Professional Staff	\$250 - \$770





The Company will undertake responsibilities to (a) provide reliable and accurate detailed information, materials, and documentation and (b) make decisions and take future actions, as the Company determines in its sole discretion, on any recommendations made by the CRO in connection with this Agreement. BRG's delivery of services and the fees charged are dependent on the Company's timely and effective completion of its responsibilities and timely decisions and approvals made by the Company's management.

In connection with any Chapter 11 filing, the Company shall apply promptly to the Bankruptcy Court for approval of the Company's retention of the CRO and BRG under the terms of this Agreement. The form of retention application and proposed order shall be reasonably acceptable to BRG. BRG shall have no obligation to provide any further Services if the Company becomes a debtor under the Bankruptcy Code unless BRG's retention under the terms of this Agreement is approved by a final order of the Bankruptcy Court reasonably acceptable to BRG. The Company shall assist, or cause its counsel to assist, with filing, serving and noticing of papers related to BRG's fee and expense applications. The CRO and BRG reserve the right to request approval of additional compensation in circumstances where extraordinary results may warrant such additional compensation.

CONFIDENTIALITY

BRG shall not disclose any confidential or privileged information to any third party; provided, however, that BRG may disclose confidential or privileged information (a) to BRG's employees, affiliates, vendors or agents who provide Services in connection with this engagement, (b) with Client's written consent, or (c) when legally required to do so. Both parties agree that confidential and proprietary information will not be construed to include information that is available from public sources or sources not subject to obligations of confidentiality to Client. Work papers associated with BRG's consulting Services are the confidential property of BRG.

CONFLICTS OF INTEREST

BRG is engaged by many other companies and individuals. It is possible that some of BRG's past, current or future clients had, have or may have disputes or other matters that are adverse to or may not be consistent with the interests of Client. BRG reserves the right to undertake unrelated engagements during and after this engagement by Client, consistent with BRG's internal policies. BRG will not be required to disclose any such unrelated engagements to Client. BRG will institute procedures to protect the confidentiality of information provided by Client in the course of this engagement.

ARBITRATION

This Agreement shall be interpreted and controlled by the laws of the state of Delaware. Any controversy, dispute, or claim between Client on the one hand and BRG on the other hand of whatever nature arising out of, in connection with, or in relation to the interpretation, performance or breach of this agreement, including any claim based on contract, tort, or statute ("Claims"), shall be resolved at the request of any party to this agreement, by final and binding arbitration, administered by Judicial Arbitration & Mediation Services, Inc. (JAMS), or its



CONSULTING AGREEMENT

This CONSULTING AGREEMENT (this “Consulting Agreement”), dated as of June 27, 2021, is entered into between Agilon Energy Holdings II LLC, a Texas Limited Liability Company; Victoria Port Power LLC, a Texas Limited Liability Company, and Victoria City Power LLC, a Texas Limited Liability Company (collectively, the “Companies”) and Hugh Smith Advisors LLC, a Texas Limited Liability Company (“Mr. Smith” and, together with the Companies, the “Parties”).

WITNESSETH

WHEREAS, on June 27, 2021 (the “Petition Date”), each of the Companies voluntarily commenced a chapter 11 case (collectively, the “Chapter 11 Cases”) by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”);

WHEREAS, in connection with the ongoing operations of the Companies and navigating the Companies through the Bankruptcy process, the Companies wish to secure the services of Mr. Smith as the Chief Restructuring Officer (the “CRO”);

WHEREAS, Mr. Smith wishes to render such services to the Companies upon the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Engagement by the Companies.

1.1. Subject to the terms of this Consulting Agreement, Mr. Smith shall serve as the Companies’ CRO and shall perform such duties consistent with such position, including but not limited to:

(a) oversee and direct the operation of the Companies, including without limitation, being designated as an authorized signatory for the Companies to execute all documents and agreements on behalf of the Companies;

(b) oversee and direct all activities required to bring the Companies’ generation units into production;

(c) oversee and direct the preparation of all financial information;

(d) oversee and direct the development of short-term cash management procedures and liquidity forecasting, including developing and maintaining cash flow forecast and budgets delivered to the lender under any of the Companies’ post-petition debtor in possession financing facilities (the “DIP Facility”);



- (e) approve all material cash disbursements, in coordination with the Companies' obligations under the DIP Facility, in order to maximize, protect, and preserve the assets of the Companies;
- (f) oversee and direct the Companies' efforts to complete a sale of substantially all of its assets or such other sale or sales consistent with the requirements of the Companies pursuant to the DIP Facility ("Sale");
- (g) consistent with the requirements of the Companies pursuant to the DIP Facility: oversee and direct the Companies and their advisors through the Sale process, including due diligence, marketing, discussions and negotiations with potential bidders, seeking Bankruptcy Court approval and filing such other pleadings as may be necessary or desirable in connection with the Sale, any auctions in connection with the Sale, and documenting and closing the Sale;
- (h) oversee and direct the claims reconciliation process, including, without limitation, initiating and pursuing any necessary litigation involving claims filed against the Companies, and approving or seeking approval, as applicable, of any settlements to be executed by the Companies in connection therewith during the pendency of the Chapter 11 Cases;
- (i) to the extent necessary and appropriate, attending hearings, meetings, and other events related to the Chapter 11 Cases as the Companies' representative;
- (j) retaining or terminating employees, contractors and professionals employed by the Companies, subject to any required approval by the Bankruptcy Court;
- (k) oversee and direct the preparation of information, including any reports and the schedules needed for the Chapter 11 Cases, and having access to all of the Companies' controlled materials necessary for such preparation;
- (l) participate in meetings with third parties and their respective representatives on all material matters related to the Companies and/or the administration of the Chapter 11 Cases;
- (m) consistent with the requirements of the Companies pursuant to the DIP Facility, work with Companies' advisors with respect to the development, negotiation and filing of any chapter 11 plan, disclosure statement or motion to dismiss or convert the Companies' Chapter 11 Cases;
- (n) provide testimony before the Bankruptcy Court with respect to the foregoing to the extent (i) deemed appropriate or necessary by the Companies, (ii) consistent with the customary role of a chief restructuring officer, (iii) consistent with the other provisions of this Consulting Agreement, and (iv) consistent with the requirements of the Companies pursuant to the DIP Facility; and



(o) consistent with the requirements of the Companies pursuant to the DIP Facility, take any and all actions necessary and appropriate to fulfill the CRO's responsibilities set forth above, including executing all necessary documentation on behalf of the Companies to effectuate the same.

2. **Term.** The term of the Consulting Agreement (the "Term") shall be for the period commencing on the Petition Date (the "Agreement Date") and ending upon (a) the entry of an order by the Bankruptcy Court ending the engagement, (b) the Companies' exit from Chapter 11, either through a confirmed chapter 11 plan, a conversion to chapter 7 or a dismissal of the Chapter 11 Cases, or (c) the appointment of a trustee or examiner with expanded powers over any of the Debtors.
3. **Compensation.** As compensation by the Companies for all services to be rendered by Mr. Smith to the Companies in all capacities during the Term, Mr. Smith shall receive the following compensation and benefits:

3.1. **Fixed Payment.** Mr. Smith shall receive a fixed monthly payment of (the "Fixed Payment") of \$35,000 per month, paid monthly in arrears and deposited directly into Mr. Smith's designated bank account unless he advises the Companies that he wishes to be paid by check.

3.2. **Reimbursement of Expenses.** The Companies shall reimburse Mr. Smith for reasonable out-of-pocket expenses (including airfare, lodging, meals, communications) in connection with the performance of the Companies' business requirements.

3.3. **Sale Payment.**

3.3.1. In the event an Eligible Sale Transaction (as defined below) occurs during the Term or within three (3) months immediately after the end of the Term, unless the Term is terminated by the Companies for cause or voluntarily by Mr. Smith (the "Sale Closing"), the Companies shall pay Mr. Smith from the proceeds of the Sale Closing, an amount (the "Sale Payment") equal to (i) \$75,000; plus (ii) 0.325% of Proceeds (as defined below).

3.3.2. The Companies' obligation to make the Sale Payment in accordance with the terms hereof shall be contingent upon and subject to approval of the Bankruptcy Court, which the Companies shall use their best efforts to obtain. Such approval may be obtained in advance of the Sale Closing, following the Sale Closing or pursuant to a confirmed chapter 11 plan for the Companies (the "Chapter 11 Plan"). If such approval is obtained, the Companies shall pay the Sale Payment in a single sum upon the last of the following to occur: (i) the entry of a final order by the Bankruptcy Court approving the Sale Payment, (ii) the Sale Closing, (iii) or the effective date of the Chapter 11 Plan.

3.3.3. **Definitions.** For purposes of this Consulting Agreement, (i) "Eligible Sale Transaction" means the Companies' sale of the equity or substantially all of the

QUESTIONS?



**Lowenstein
Sandler**



THOMSON REUTERS

Article Written By Ken Rosen

- February 11, 2021, [Keeping Your Job as CFO When A CRO Arrives](#), *Global Banking & Finance Review*

Kenneth A. Rosen

Partner & Chair Emeritus, Bankruptcy & Restructuring Department

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With more than 35 years of proven experience, Ken is the first call for companies seeking a strategic plan for recovery from financial distress.

Ken advises on the full spectrum of restructuring solutions, including Chapter 11 reorganizations, out-of-court workouts, financial restructurings, and litigation. He works closely with debtors, creditors' committees, lenders, landlords, and others in such diverse industries as paper and printing, food, furniture, pharmaceuticals, health care, and real estate.

For each matter, Ken starts by developing a strategic direction based on a clear understanding of his client's needs. His goals are to preserve the business or business relationship, to minimize disruption, and to move quickly toward a workable solution. His success is reflected both in his long list of accolades—including top rankings from *Chambers USA* (2008-2020) and *The Deal's* "Bankruptcy Insider"—and the fact that the majority of his practice is referral-based. Clients laud Ken's practical approach and sensitivity to the needs of their business, as well as his strong track record of successful outcomes. Clients and peers alike recognize Ken as "definitely a standout."

In his spare time, Ken serves on several philanthropy and nonprofit boards primarily devoted to health care and education. He currently serves as Interim Chair of the Board of the New York City Opera.



Education

- Columbia University (M.B.A. 1980)
- Benjamin N. Cardozo School of Law (J.D. 1979)
- Cornell University (B.S. 1975)

Bar Admissions

- New York
- New Jersey

Jennifer B. Kimble

Counsel, Bankruptcy & Restructuring Department

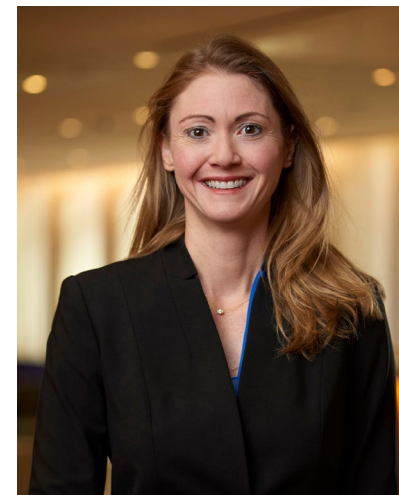
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Jennifer is a corporate restructuring attorney with more than a decade of experience representing Chapter 11 debtors, creditors' and retiree committees, Chapter 7 trustees, and other creditors in bankruptcy proceedings, preference actions, commercial transactions, commercial litigation, and out-of-court restructurings. She has extensive experience in all aspects of Chapter 11 cases, including first day motions, noticing issues, negotiating DIP financing, 363 sales, contract assumption, 1113/1114 matters, and plan confirmation and implementation. She is skilled in claims resolution processes and well-versed in post-confirmation trusts and the litigation of Chapter 5 claims.

Jennifer offers proven skill in insolvency-related matters in the automotive industry. She has represented original equipment manufacturers and tiered suppliers in negotiating and resolving contract issues, financial disputes, tooling ownership, and other bankruptcy and litigation actions with manufacturers' sole source suppliers to maintain just-in-time delivery.

A responsive and engaged team player, Jennifer takes the time to understand how each client defines success. She is adept at consolidating details into comprehensive solutions that support client objectives. Jennifer excels at helping companies achieve the best possible outcome during the restructuring process by analyzing and applying bankruptcy law in the context of an insolvency event.

Prior to joining the firm, Jennifer worked with a leading bankruptcy claims and noticing firm and with various commercial law firms.



Education

- University of Mississippi School of Law (J.D. 2005), magna cum laude; associate articles editor, *Mississippi Law Journal*
- Mississippi State University (B.A. 2002), summa cum laude

Bar Admissions

- New York
- Alabama

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