

Amended Application¹ to Serve as

Independent Compliance Auditor for Herbalife

Paul S. Atkins, Chief Executive Officer of Patomak Global Partners, LLC, submits this application to serve as the Independent Compliance Auditor (“ICA”) for Herbalife in connection with the Federal Trade Commission’s (“FTC”) Stipulated Order for Permanent Injunction and Monetary Judgment dated July 25, 2016 (the “FTC Order” or the “Order”). Information responsive to the FTC’s Request for Applications to Serve as Independent Compliance Auditor for Herbalife dated August 9, 2016 is provided below.

A. Executive Summary

A brief description of how the Responder would complete the project.

Paul S. Atkins is Chief Executive Officer of Patomak Global Partners, LLC (“Patomak”), a consulting firm that provides strategic regulatory advice, risk management and compliance services, and enforcement and litigation support. Mr. Atkins and his colleagues at Patomak have substantial experience helping clients navigate extremely sensitive, high-profile regulatory enforcement and compliance matters, including matters involving retail financial products and services. They have earned a reputation for providing an independent, objective assessment of business and governance practices, and for delivering effective, commercially practical recommendations and solutions to address regulatory requirements. Mr. Atkins and his firm have provided advisory and consulting services on matters involving, among other things: investor disclosure; conflicts of interest; marketing materials; customer sales practices; recruiting, hiring, and professional development; supervision structure and processes; corporate governance policies and practices; and corporate culture.

If selected to be the ICA, Mr. Atkins would conduct a rigorous, independent audit of Herbalife’s business structure and practices to ensure that the organization compensates business opportunity participants based upon verifiable retail sales, not wholesale purchases and recruitment by such participants. Mr. Atkins’s independent audit would include, but would not be limited to, the following core work streams:

(1) Conducting a comprehensive audit of Herbalife’s business opportunity compensation practices and financial records to ensure, among other things, that compensation is driven by verifiable retail sales to end users and other Rewardable Transactions as set forth in the Order.

(2) Testing internal controls related to compensation practices, participant classifications; the collection of sales information; verification of sales transactions; personal consumption transactions; sales practices, refunds; training; leased and purchased

¹ This amended application replaces the application filed by Patomak on August 29, 2016.

business venues; disclosures; supervision of participants; and related items to ensure compliance with the requirements of the FTC Order.

(3) Reviewing and assessing the adequacy of Herbalife's written policies and procedures, operations manuals, compliance manuals and communications, supervisory procedures, training programs, and other related items to ensure that Herbalife is in compliance with the requirements of the FTC Order.

(4) Working with Herbalife's Board of Directors and management to ensure that appropriate changes to compensation practices and transformation are fully implemented within the deadlines set forth in the FTC Order, including, but not limited to, the reporting requirements set forth in the Order.

Mr. Atkins's firm has an established history of working collaboratively with both regulators and regulated entities in connection with similar independent consultancy assignments. Patomak has served both formally as an independent compliance consultant in connection with SEC and CFTC enforcement actions and DOJ prosecutions, and informally in analogous roles. If selected as the ICA, Mr. Atkins and Patomak would—without compromising their independence and rigor of the audit—work cooperatively with the FTC and Herbalife to ensure that the audit objectives are achieved within the deadlines set forth in the FTC Order, including through the periodic reporting requirements set forth in the Order.

B. Personnel

- *The names of the individuals and/or subcontractor consultants who would comprise the team;*
- *A summary of the relevant background of each team member;*
- *The internal organization of the team including the areas of responsibility for each member; and*
- *A description for each team member of any existing or expected significant time commitments that would limit the individual's availability for work on the ICA team.*

Patomak's ICA team would consist of the following experienced professionals:

Paul Atkins is the Chief Executive Officer of Patomak. Mr. Atkins served as a Commissioner of the U.S. Securities and Exchange Commission (SEC) (2002-2008); Member of the Congressional Oversight Panel for the Troubled Asset Relief Program (TARP) (2009-2010); executive partner of Coopers & Lybrand/PricewaterhouseCoopers' International Financial Services Group and partner managing the investment advisor, broker-dealer, and securities exchange regulatory consulting group (1994-2002); Chief of Staff and Counsellor to SEC Chairmen Richard C. Breeden and Arthur Levitt, respectively (1990-1994); and an attorney at Davis Polk & Wardwell (1984-1990). Mr. Atkins previously served as an independent director and non-executive chairman of the board of BATS Global Markets. Mr. Atkins currently is a trustee of the American Council on Germany, serving as chairman of the audit committee.

Deborah Montick is a managing director at Patomak. Ms. Montick has over 25 years of experience advising investment advisory firms, the boards of directors of mutual funds, insurance companies, broker-dealers, off-shore fund sponsors, and international financial holding companies on regulatory compliance matters. Ms. Montick served as Senior Counsel of Nomura Group's asset management subsidiaries in the United States (2004-2007 and 1993-1999); Associate General Counsel at Mitchell Hutchins Asset Management Inc. (1999-2001); Associate Counsel at Kemper Financial Services, Inc. (1989-1992); Senior Attorney at Guardian Life Insurance (1986-1989); and as an Enforcement Attorney at the SEC (1984-1986).

Benjamin Brown is a managing director at Patomak. Mr. Brown has over 13 years of experience providing legal, regulatory, and compliance advice in connection with SEC enforcement, securities litigation, and regulatory compliance matters. Mr. Brown served as Counsellor to SEC Commissioner Daniel Gallagher (2014-2015); as an associate at Jones Day (2003-2005); and as an associate and counsel at WilmerHale (2005-2014).

If selected to be the ICA, Patomak also expects to retain outside resources with expertise in accounting, compensation practices, and analysis of financial books and records. Patomak has identified Marty Wilczynski and Jason Flemmons of **Ankura Consulting Group** as leading candidates to fill this role. Messrs. Wilczynski and Flemmons's qualifications are described below:

Martin Wilczynski is a Senior Managing Director at Ankura Consulting Group. Mr. Wilczynski has nearly 35 years of professional experience in accounting, internal and forensic investigations. In addition to his nearly 20 years of consulting experience, Mr. Wilczynski's background includes 10 years of auditing experience at an international accounting firm and 6 years on the staff of the United States Securities and Exchange Commission (SEC), where he served for 5 years within the Enforcement Division. Prior to joining Ankura, Mr. Wilczynski spent 13 years with FTI Consulting, where he was the leader of the Forensic Accounting practice within the Forensic and Litigation Consulting segment. In addition to his experience with FTI, for 5 years Mr. Wilczynski was a shareholder at Ten Eyck Associates, a boutique forensic accounting and consulting firm.

Jason Flemmons is a Senior Managing Director in the Investigations & Accounting Advisory practice at Ankura Consulting Group. Mr. Flemmons has over 20 years of experience as a forensic accountant, regulator, accounting consultant and auditor. Prior to joining Ankura, Mr. Flemmons was a Senior Managing Director in the Forensic Accounting and Advisory Services practice at FTI Consulting, where he led numerous consulting and expert engagements involving a variety of accounting, auditing, disclosure, internal control and transactional tracing matters in connection with regulatory investigations and post-acquisition disputes. Prior to joining FTI, Mr. Flemmons served for 12 years in the SEC's Division of Enforcement, including most recently as the Deputy Chief Accountant. Before joining the SEC, Mr. Flemmons was both a forensic accountant and an auditor with an international public accounting firm.

Mr. Atkins would lead Patomak's independent audit to assess and report on Herbalife's compliance with the Order and would serve as the principal point of contact for Herbalife and the FTC. Mr. Brown and Ms. Montick would assist Mr. Atkins with the day-to-day operation and oversight of the audit, and Messrs. Wilczynski and Flemmons would be responsible for the technical review, analysis, and audit of Herbalife's financial records (and those of business opportunity participants, as appropriate) related to compensation practices covered by the FTC Order. In order to complete the engagement in a timely and efficient manner, and to properly address the scope and substance of the engagement, Mr. Atkins may involve additional Patomak personnel as needed.

Mr. Atkins is not aware at this time of any existing or expected significant time commitments that would limit the above individuals' availability for work on the ICA team.

C. Qualifications

Provide each team member's qualifications, addressing the following areas as applicable:

- *Monitoring, auditing, evaluating, or otherwise reviewing performance of organizations, including experience in monitoring settlements, consent decrees, or court orders;*
- *Statistical and data analysis;*
- *Information technology;*
- *Data management;*
- *Completing projects within anticipated deadlines and budget;*
- *Preparing for and participating in court proceedings; and*
- *Report writing.*

Mr. Atkins has a long and distinguished career focusing on regulatory and compliance matters in senior government positions and in the private sector. In addition to his years of public service as an SEC Commissioner and as a Member of the Congressional Oversight Panel for TARP, Mr. Atkins has extensive experience conducting independent compliance reviews and audits on behalf of financial services institutions. From 1994 to 2002, Mr. Atkins was a Partner of Coopers & Lybrand/PricewaterhouseCoopers, where he had oversight of the firm's International Financial Services Group and managed the firm's Investment Advisor, Broker-Dealer, and Securities Exchange Regulatory Consulting Group. In those capacities, Mr. Atkins specialized in securities and investment management industry matters, especially issues of internal corporate oversight and organizational control, regulatory strategy and compliance, and corporate finance transactions. While at Coopers & Lybrand, Mr. led the firm's engagement as advisors to the trustee in the bankruptcy of The Bennett Funding Group, Inc., a leasing company that the SEC cites as the one of the largest Ponzi frauds in U.S. history, and also served as "crisis CEO" of a \$100 million finance company, where he stabilized management, rationalized operations, instituted effective internal controls, managed cash flows, reassured existing lenders, negotiated new financing arrangements,

and rebuilt and expanded customer relationships. Since founding Patomak Global Partners in 2009, Mr. Atkins has led dozens of projects involving reviews and analyses of compliance programs for some of the largest financial institutions in the world. Under his leadership, Patomak has been selected as an independent consultant in connection with several SEC, CFTC, and Department of Justice matters, and has been retained to audit and assess compliance programs related to risk management, internal controls, internal corporate governance in connections with numerous SEC investigations and enforcement matters and Department of Justice prosecutions.

Ms. Montick joined Patomak in 2012, where she has been responsible for leading projects in connection with compliance consulting engagements for large hedge funds, broker-dealers, private equity funds, mutual fund complexes, public companies, UK-based investment advisers, and future commission merchants. Several projects have involved SEC, CFTC and DOJ matters at various stages in the negotiation and post-settlement process under court orders, non-prosecution agreements, and independent consultancy appointments. These assignments have involved reviewing the performance of organizations of various sizes across a wide spectrum of issues, including insider trading, failure to supervise, securities trading, conflicts of interest, marketing and sub-adviser due diligence, code of ethics, corporate governance, cybersecurity and segregation of assets. In addition to the testing of processes, procedures and controls, these assignments have involved statistical and data analysis, information technology and data management, particularly in the areas of investment performance, surveillance of electronic communications, personal securities transactions, supervision, cybersecurity, and other compliance metrics. All of these projects included engagement agreements with anticipated deadlines and budgets, several of which required approval from the respective regulators. Each of the projects was completed in a timely and efficient manner. In addition to providing ongoing periodic reports to regulators, Ms. Montick has been responsible for completing both written and oral interim and final reports to clients and regulators. Ms. Montick has also assisted in the preparation of expert reports for court proceedings. Prior to joining Patomak, Ms. Montick served as senior asset management counsel for a large global financial services firm where she was responsible for the implementation of an independent consultant's recommendations pursuant to an SEC order for two registered investment adviser subsidiaries.

Mr. Brown joined Patomak in 2015, where he has been responsible for leading a variety of projects focused on regulatory compliance matters for broker-dealers, asset managers, and hedge funds. These assignments have involved detailed review and analysis of policies and procedures, controls, trading systems and related technology, documentation practices, supervision, and training. In connection with these matters, Mr. Brown has been responsible for preparing comprehensive reports summarizing Patomak's findings and for delivering oral updates and observations. The projects Mr. Brown has participated in for Patomak have required strict adherence to deadlines, as well as comprehensive budgeting constraints. In addition to his time in public service at the SEC, earlier in his career Mr. Brown led large teams of lawyers in the defense of complex regulatory investigations at the law firm WilmerHale. In connection with these matters, Mr. Brown supervised dozens of lawyers, was responsible for overall project management,

prepared and monitored adherence to work plans and budgets, managed complex electronic discovery and related technology issues, and prepared interim and final reports. In this role, Mr. Brown generally served as one of the principal liaisons between his clients and regulators and had extensive involvement in preparing for and participating in court proceedings.

Mr. Wilczynski has been responsible for a wide range of forensic accounting and regulatory matters, including complex financial investigations, anti-corruption reviews, and technical accounting and revenue recognition disputes. With experience as an auditor with an international accounting firm, an accounting staff with the SEC Enforcement Division and a consulting career spanning nearly 20 years, Mr. Wilczynski has deep experience conducting audit procedures, transaction testing, litigation matters, accounting and financial reporting disputes, SEC and DOJ enforcement proceedings, compliance and internal control assessments and various remediation projects. While at FTI Consulting, Mr. Wilczynski served for more than 7 years as the co-leader of the consulting team providing investigative and litigation support to the Trustee and his counsel on the landmark Bernard L. Madoff Investment Securities matter. He has coordinated and managed teams of professionals providing large-scale data management and analysis, forensic modeling, and the preparation of complex data analytics efforts stemming from investigations and compliance reviews. Mr. Wilczynski has also coordinated resources on a variety of investigative projects involving information technology matters, including the preservation and collection of electronically stored information, and the analysis of technical evidence drawn from various IT systems, financial reporting packages and other sources. In numerous instances, Mr. Wilczynski has reported investigative results to SEC and DOJ staff relating to accounting evidence, technical and financial issues and evidentiary findings.

Mr. Flemmons has performed and supervised numerous financial fraud investigations involving public companies, senior executives, external auditors, and other third parties. During his tenure in the SEC's Division of Enforcement, including as the Deputy Chief Accountant, Mr. Flemmons oversaw and consulted SEC enforcement teams across the country in assessing accounting, auditing and disclosure matters and performing asset-tracing investigations involving Ponzi schemes and violations of the Foreign Corrupt Practices Act. Mr. Flemmons co-chaired the Division of Enforcement's Cross Border Working Group, which oversaw and coordinated numerous investigations involving companies and auditors located in foreign jurisdictions. Since leaving the SEC in 2012, Mr. Flemmons has led a variety of matters involving fraud examinations, internal control assessments and transactional tracing. Mr. Flemmons has significant experience identifying, coordinating and integrating the required work of other professionals such as data collection and analytics, industry specialists and legal expertise.

D. Prior Experience and References

List current or recent (within the past 10 years) project experience for members of the team relevant to the ICA duties and responsibilities; references for each project listed, including the name of the organization, contact person, title, address, e-mail address, and telephone number; and, if available, examples of non-confidential work product that is similar to the reports required for this project.

As noted above, Mr. Atkins and his firm have extensive experience assisting clients with regulatory compliance matters, including as an independent compliance consultant (“ICC”). For example:

1. Patomak served as ICC pursuant to a regulator’s order for a large retail broker-dealer. Patomak’s review included sales practices, supervision, recruiting, and protection of customer funds.
2. Patomak served as ICC pursuant to a regulator’s order and non-prosecution agreement for a mid-tier investment bank. Patomak’s review included an in-depth review of fixed income sales and trading, including sales practices, alleged misrepresentations to customers, failure to supervise, incentive-based compensation practices, compliance culture, and training programs for customer communications.
3. Patomak conducted a comprehensive compliance review for a large private equity fund. Patomak’s review included potential conflicts of interest between the manager and the funds or their investors, supervision, hiring and compensation, oversight of third-party and affiliated service providers, fees and expense allocation, compliance culture, business practices, oversight of remote offices and employees, training programs, compliance and communications surveillance, and cybersecurity.
4. Patomak conducted a targeted compliance review of a large hedge fund, which included policies, procedures, and controls designed to prevent the misuse of material non-public information. Patomak’s review covered issues related to recruiting and hiring (including background checks), professional development, compensation practices, compliance culture, surveillance of business practices, and training programs regarding information flow.
5. Patomak conducted a focused compliance review for an asset manager during regulatory settlement negotiations, which included the development of marketing materials and sales practices, and due diligence reviews.
6. Patomak conducted a compliance review for a futures commission merchant following a regulatory investigation of certain transactions involving fund transfers among customer accounts. Patomak’s review included compliance policies, procedures, operations, and controls in its treasury, margins, and customer account areas. The independent review and remedial actions were cited as mitigating factors in the settlement with the regulator.

Ankura Consulting also has extensive experience assisting clients with receivership, monitorship, and high profile investigative matters. For example:

1. While at FTI Consulting, Ankura professionals served in leadership roles supporting the Trustee and his counsel on the Bernard L. Madoff Investment Securities matter. The team members were intimately involved since 2008 assisting the Trustee with the necessary investigation, forensic accounting and complex financial and enterprise data analytics.
2. While at FTI Consulting, Ankura professionals provided significant services as financial advisors to the Receiver of the Michael Kenwood Group which included hedge funds that were used to conduct a massive Ponzi scheme. The team reconstructed the financial transaction records navigating through a complex web of shell companies and intermediaries to support clawback litigation and settlement discussions leading to a successful recovery effort.

E. Proposed Activities

Describe (in as specific detail as possible and using illustrations as necessary) the activities proposed to perform the Scope of Work. This discussion may address but not be limited to:

- *Methods of obtaining information;*
- *Methods of analyzing information;*
- *Methods of reporting information;*
- *Frequency of proposed activities;*
- *Personnel responsible for the various activities described in the Scope of Work and the number of hours anticipated to be devoted to specific aspects of the project by month or quarter, including the number of hours that would be spent on site at Herbalife's headquarters in Los Angeles;*
- *Coordination with Herbalife to arrange visits, on-site records reviews, and interviews; and*
- *Reporting to the Parties.*

While Mr. Atkins would determine the final work plan in close consultation with the FTC and Herbalife, below is a summary of activities that he would expect the ICA to undertake in connection with this matter:

Review of Policies and Procedures

- Mr. Atkins and his team will conduct a comprehensive review of Herbalife's policies and procedures related to the business opportunity compensation practices that are the subject of the FTC Order, including any changes made to such policies and procedures in connection with the Order. They will assess the reasonableness, adequacy, and effectiveness of such policies and procedures and will make recommendations on

necessary amendments and/or enhancements that will enable Herbalife to satisfy its obligations under the Order. As described below, Mr. Atkins also envisions deploying his team to develop testing protocols to confirm that applicable policies and procedures are being followed and are working as intended.

Meetings with and Interviews of Firm Personnel and Business Opportunity Participants

- Mr. Atkins and his team will meet with employees from a broad cross section of Herbalife departments involved in the compensation of business opportunity participants, including members of Herbalife's executive management, finance, internal audit, accounting, and human resources departments, among others. Mr. Atkins contemplates an initial phase of meetings in a group setting as the ICA team becomes familiar with the company, its compensation practices, and the personnel involved in those practices, followed by a second phase of individual interviews with relevant personnel and members of management in connection with its audit and test work. Mr. Atkins also contemplates meeting with certain members of Herbalife's board of directors and the company's outside advisors to the extent they have involvement in Herbalife's business opportunity compensation practices.

Forensic Accounting / Auditing

- Forensic accounting professionals with auditing experience will work with the ICA to develop testing protocols to meet the needs of the scope of work items identified by the FTC. These testing protocols will be used to evaluate the enhanced processes and procedures implemented by Herbalife to comply with the Order. The testing program will include the evaluation of sample items to ensure compliance with the Order (e.g., reviewing a sample of supporting documents and/or data related to compensation payments to ensure that calculations only included genuine rewardable transactions). In addition to testing internal Herbalife books, records, and related documents, the ICA team also may seek to test records of certain business opportunity participants, other retail end users, and related parties, as appropriate, to confirm that Herbalife is compliance with its obligations under the FTC Order.

Data Analytics

- A key focus of the ICA will be Herbalife's systems and how relevant information across the business is captured, updated, tracked and reported. The forensic accounting professionals supporting the ICA will ensure that the relevant systems function and perform calculations in line with the requirements of the Order. By understanding how Herbalife's systems process data related to tracking customers, partners, compensation, payments and sales, we will be able to proactively identify any potential systematic issues. For all system and data-related activities, the ICA team's analytics experts will design and implement processes for receiving relevant data in a timely manner, causing

as little disruption as possible to core business processes. Additionally, the data team will build systematic procedures that will create efficiencies across the scope of work tasks to be performed by the ICA. Many of the Order requirements can be largely assessed through the development of automated processes that will confirm compliance and identify any anomalies for further review.

Coordination with and Reporting to FTC and Herbalife

- Mr. Atkins and Patomak have an established history of working cooperatively with respondents, clients, and regulators. They have served both formally as independent compliance consultants in connection with SEC and CFTC enforcement actions and DOJ prosecutions, and informally in analogous roles. Mr. Atkins and Patomak have significant experience working with regulators in such roles, and believe in open communication with the respondent and regulator. Their practice is to hold periodic check-in meetings with respondent and regulator to discuss progress and observations as they complete their review and assessment. In the present matter, Mr. Atkins would contemplate holding briefing meetings with Herbalife and its representatives as frequently as the company desires, and would work cooperatively with the FTC to set up a periodic reporting schedule.
- The ICA team envisions a busy, “high-touch” period during the first six months of the engagement as it familiarizes itself with Herbalife’s business, processes, and personnel. During this period, the ICA team would conduct a significant number of on-site interviews and testing of controls; they would also review documents provided in response to document requests. Although this period would require an on-site presence, Mr. Atkins’s preferred approach is to minimize distractions and disruption to the company as much as possible. After completing the first year of ICA reports, the ICA team would be able to conduct more of its work off-site, as the team conducts fewer meetings, review a smaller selection of documents, and conducts more limited testing of internal controls. As the team completes reports throughout the 7-year period, its review will necessitate cycles of “high-touch” periods followed by lower levels of direct involvement to minimize business disruptions.

F. Potential Conflicts of Interest or Bias

Disclose any potential or perceived conflicts of interest involving team members, associated firms or organizations, and any employee(s) assigned to the project, or proposed subcontractor(s), including current or former employment, and contracts or grants with the FTC or Herbalife. Any close, familial, or business relationship with any of the mentioned entities, or their agents or employees, must be disclosed. To the extent a conflict or potential bias exists, explain why it does not bar the individual’s or the team’s selection, including any legal or ethical opinions or waivers upon which the team relies. Please note that any individual who serves as ICA or performs duties at the ICA’s direction shall agree not to be retained by the FTC or Herbalife for a period of two years

after the conclusion of the engagement. [Order § VI.A] The following shall be ineligible for selection as the ICA or as a member of the ICA team: previous Herbalife board members, employees, or distributors and previous FTC Commissioners and Bureau Directors.

Mr. Atkins is not aware at this time of any potential or perceived conflicts of interest that would prevent him or his firm, including its employees and subcontractors, from serving as the ICA.

G. Estimated Costs

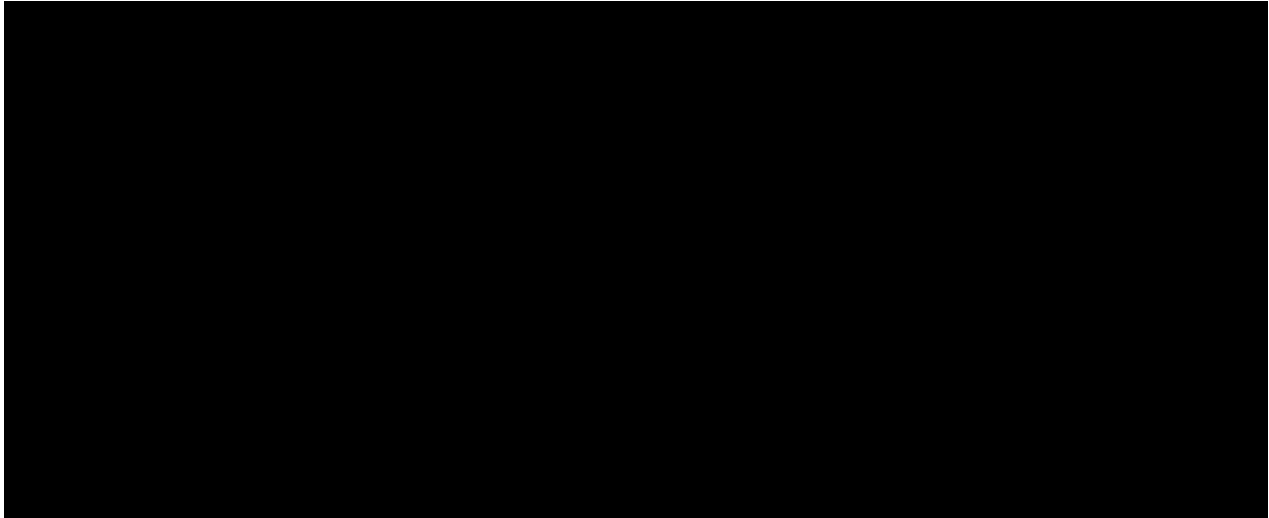
Provide a Cost Estimate for this project based on the above Scope of Work and requirements of the Order:

- *Include a projected budget for all costs including but not limited to hourly billing rates, travel, sub-consultant/contractor services, overhead, and supplies.*
- *Break down the different activities that members of the team will perform (e.g., policy review, technical assistance, training assessment, report writing, and/or incident review).*
- *Include a projected allocation of hourly commitments by each team member, broken down by the number of hours projected for both on-site and off-site work.*
- *Estimate annual costs that are expected for each year the ICA is in place.*
- *Include a total seven-year cost estimate that fees and costs are not expected to exceed*

Based on analogous independent consultancy projects that Mr. Atkins and his firm have performed in the past, provided below is an estimate of the total amount of fees and costs to complete the project over the seven-year time period:²



² The estimates above are highly provisional and speculative given the amount of information available to us at this time, and could be significantly higher or lower depending on a wide range of factors, including: the volume and nature of documents and financial records requiring review; the number and scope of interviews and meetings with Herbalife and its outside advisors, and with the FTC, that are required; and the scope and particulars of the accounting and forensic review involved, among other factors.



H. Contact Information

Paul S. Atkins
Chief Executive Officer
Patomak Global Partners, LLC
1750 17th Street, NW
Suite 1000
Washington, DC 20006
202-862-3920