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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	Chapter 11
	§	
EYE CARE LEADERS PORTFOLIO	§	Case No. 24-80001 (MVL)
HOLDINGS, LLC, <i>et al.</i> , ¹	§	
	§	(Jointly Administered)
Debtors.	§	
	§	

NOTICE OF FILING OF AMENDED CREDITOR TRUST AGREEMENT

PLEASE TAKE NOTICE that on July 1, 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Joint Chapter 11 Plan* [Docket No. 532], which was amended on August 21, 2024 at Docket No. 608 (the “Plan”), and on July 17, 2024, the Debtors filed the *Amended Disclosure Statement Regarding Debtors’ Joint Chapter 11*

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtors’ federal tax identification number are as follows: ECL PH Services Group LLC (6746); Eye Care Leaders Portfolio Holdings, LLC (0576); Alta Billing Holdings, LLC (4944); Alta Billing, LLC (4823); Canta Health, LLC (7791); DJRTC, LLC (N/A); ECL Group, LLC (9195); ECL Holdings, LLC (8888); Eye Care Leaders Holdings, LLC (1701); iMedicWare, Inc. (6251); IMW EMR, LLC (6421); IMW Holdings, LLC (3980); Insight Software, LLC (8321); Integrity EMR Holdings, LLC (3877); Integrity EMR, LLC (3716); IO Practiceware, Inc. (4507); IOPW Holdings, LLC (0461); IOPW, LLC (N/A); Keymed Holdings, LLC (0301); Keymed, LLC (9379); MD Office, LLC (9075); MDO Group Holdings, LLC (0435); MDX, LLC (5074); Medflow Holdings, LLC (7716); Medflow, Inc. (N/A); MNI Holdings, LLC (7633); MRX Holdings, LLC (N/A); My Vision Express, Inc. (N/A); Penn Medical Informatics Systems, LLC (4584); PI Software Holdings, LLC (N/A); PI Software, LLC (N/A); PMX, LLC (N/A); Revenue Health Solutions, LLC (7025); RHS Holdings, LLC (N/A); and The Hoehne Group – Software Division, Inc. (7788). The Debtors’ principal offices are located at 555 S. Mangum Street, Suite 100, Durham, NC 27701.

Plan [Docket No. 540] (the “Disclosure Statement”) pursuant to sections 1125 and 1126(b) of the Bankruptcy Code.²

PLEASE TAKE FURTHER NOTICE that on July 23, 2024, the Court entered its *Order (I) Conditionally Approving the Disclosure Statement, (II) Scheduling a Combined Hearing to Consider Final Approval of the Disclosure Statement and Confirmation of the Debtors’ Plan, (III) Approving the Solicitation Procedures and Dates, Deadlines, and Notices Related Thereto, and (IV) Granting Related Relief* [Docket No. 583] (the “Solicitation Order”), which, among other things, authorized the Debtors to solicit votes on the Plan and conditionally approved the Disclosure Statement as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that as contemplated by the Solicitation Order, the Debtors filed the *Notice of Filing of Plan Supplement* [Docket No. 593] (the “Plan Supplement”), which contains the Form of Creditor Trust Agreement as Exhibit A thereto (the “Creditor Trust Agreement”) and the Schedule of Non-Exclusive List of Retained Causes of Action as Exhibit B thereto.

PLEASE TAKE FURTHER NOTICE that the Debtors hereby amend the Creditor Trust Agreement. Attached hereto as **Exhibit A** is the Amended Form of Creditor Trust Agreement (the “Amended Trust Agreement”), and attached hereto as **Exhibit B** is a redline of the Amended Trust Agreement redlined against the Creditor Trust Agreement filed at Docket No. 593.

PLEASE TAKE FURTHER NOTICE that the hearing at which the Court will consider confirmation of the Plan and final approval of the Disclosure Statement will commence on September 11, 2024, at 1:30 p.m. prevailing Central Time, before the Honorable Michelle V. Larson, in the United States Bankruptcy Court for the Northern District of Texas, Earle Cabell Federal Building, 1100 Commerce St., 14th Floor, Courtroom #2, Dallas, TX 75242-1496, via hybrid format.

PLEASE TAKE FURTHER NOTICE that if you would like to obtain a copy of the Plan and amendments thereto, Disclosure Statement and amendments thereto, Solicitation Order, Plan Supplement, the Amended Creditor Trust Agreement, or related documents, please feel free to contact Stretto by: (a) calling the Debtors’ restructuring hotline 866.949.5222 (toll-free) or 949.620.0966 (international); (b) visiting the Debtors’ restructuring website at: <https://cases.stretto.com/eyecareleaders/>; or (c) emailing teameyecareleaders@stretto.com. You may also obtain copies of any pleadings filed in these chapter 11 cases for a fee via PACER at: <https://www.txnb.uscourts.gov/>.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan.

Respectfully submitted this 6th day of September, 2024.

GRAY REED

By: /s/ Jason S. Brookner

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Certificate of Service

I certify that on September 6, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Jason S. Brookner

Jason S. Brookner

Exhibit A

Form of Amended Creditor Trust Agreement

CREDITOR TRUST AGREEMENT

PREAMBLE

This Creditor Trust Agreement (the “**Agreement**”) is entered into by and among Eye Care Leaders Portfolio Holdings, LLC and its debtor affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”) and META Advisors LLC, not individually, but solely in its capacity as trustee (the “**Creditor Trustee**” and, collectively with the Debtors, the “**Parties**”) in accordance with the Debtors’ Joint Chapter 11 Plan, dated July 1, 2024 (including all exhibits thereto, as the same may be further amended, modified, or supplemented from time to time, the “**Plan**”).¹

RECITALS

WHEREAS, on January 16, 2024 (the “**Petition Date**”), each of the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas (the “**Bankruptcy Court**”) commencing their chapter 11 cases (the “**Chapter 11 Cases**”);

WHEREAS, on February 8, 2024, the United States Trustee for the Northern District of Texas (the “**United States Trustee**”) appointed an official committee of unsecured creditors in the Chapter 11 Cases (as amended from time to time, the “**Committee**”);

WHEREAS, on July 1, 2024, the Debtors filed the Plan;

WHEREAS, on September [●], 2024, the Bankruptcy Court entered an order confirming the Plan (the “**Confirmation Order**”);

WHEREAS, the Plan provides for the creation of the Creditor Trust, as of the Effective Date, to prosecute, settle, liquidate, and otherwise administer the Creditor Trust Assets, and to Distribute the same or proceeds of the same to the holders of Allowed General Unsecured Claims and, solely to the extent that the Purported Prepetition Lenders’ contingent beneficial interest in the Creditor Trust becomes non-contingent in accordance with section IV.B.ii of the Plan, to the holders of Purported Prepetition Lenders’ Secured Claims, in accordance with the terms of the Plan, the Confirmation Order, and this Agreement;

WHEREAS, this Agreement is executed to establish the Creditor Trust and to facilitate the Plan;

WHEREAS, the Creditor Trust is created on behalf of, and for the benefit of, the holders of Allowed (i) Class 2 Purported Prepetition Lenders’ Secured Claims (solely to the extent that the Purported Prepetition Lenders’ contingent beneficial interest in the Creditor Trust becomes non-contingent in accordance with section IV.B.ii of the Plan); and (ii) Class 4 General Unsecured Claims (each a “**Beneficiary**”);

¹ Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Plan.

WHEREAS, the Creditor Trust is intended to qualify as a “liquidating trust” under the United States Internal Revenue Code of 1986, as amended, (the “IRC”) and the Treasury Regulations promulgated thereunder, specifically Treasury Regulation section 301.7701-4(d), and as such be treated as a “grantor trust” for federal income tax purposes with the Beneficiaries treated as the grantors and owners of the Creditor Trust, and in that regard it is the Parties’ intention that this Agreement satisfy the requirements set forth in Revenue Procedure 94-45, 1994-2 C.B. 684 (July 11, 1994).

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein and in the Plan and the Confirmation Order, the Parties agree as follows:

ARTICLE I

ESTABLISHMENT OF THE CREDITOR TRUST

1.1 Name of Trust; Appointment of Creditor Trustee

The legal name of the Creditor Trust shall be “ECL Creditor Trust” The Committee has selected META Advisors LLC, which is hereby appointed to serve as the initial Creditor Trustee under the Plan and hereby accepts this appointment and agrees to serve in such capacity effective upon the Effective Date of the Plan and pursuant to the terms of the Confirmation Order, the Plan and this Agreement. A successor Creditor Trustee shall be appointed as set forth in Section 11.1 in the event the Creditor Trustee is removed or resigns pursuant to this Agreement or if the Creditor Trustee otherwise vacates the position.

1.2 Transfer of Assets to Creditor Trust

Pursuant to the Plan, the Debtors and the Creditor Trustee hereby establish the Creditor Trust on behalf of the Beneficiaries, to be treated as the grantors and deemed owners of the Creditor Trust Assets. The Debtors hereby irrevocably grant, release, assign, transfer, and convey and shall be deemed to have irrevocably granted, released, assigned, transferred, and conveyed to the Creditor Trust, all of their rights, title, and interests in and to all of the Creditor Trust Assets, including but not limited to the Retained Causes of Action, and in accordance with section 1141 of the Bankruptcy Code, the Creditor Trust Assets shall automatically vest in the Creditor Trust, free and clear of any Liens, Claims or encumbrances. Such transfer includes, but is not limited to, all rights to assert, waive or otherwise exercise any attorney-client privilege, work product protection or other privilege, immunity, or confidentiality provision vested in, or controlled by, the Debtors or their estates in respect of the Creditor Trust Assets. The Creditor Trustee agrees to accept and hold the Creditor Trust Assets in the Creditor Trust for the benefit of the Beneficiaries, subject to the terms of the Confirmation Order, the Plan and this Agreement. The Creditor Trustee shall have no duty to arrange for any of the transfers contemplated under this Agreement or by the Plan or to ensure their compliance with the terms of the Plan and the Confirmation Order, and shall be conclusively entitled to rely on the legality and validity of such transfers.

For all federal income tax purposes, all Parties and Beneficiaries shall treat the transfer of the Creditor Trust Assets by the Debtors to the Creditor Trust, as set forth in Article XI of this Agreement and in the Plan, as a transfer of such assets by the Debtors to the Beneficiaries entitled

to distributions under this Agreement followed by a transfer by such Beneficiaries to the Creditor Trust. Thus, the Beneficiaries shall be treated as the grantors and owners of a grantor trust for federal income tax purposes.

1.3 Title to Assets

Pursuant to the Plan, all of the Debtors' right, title and interest in and to Creditor Trust Assets, including all such assets held or controlled by third parties, are automatically vested in the Creditor Trust on the Effective Date and shall comprise assets of the Creditor Trust for all purposes, free and clear of all Liens, Claims, encumbrances, Interests, contractually imposed restrictions of any kind, and other interests, except as specifically provided in the Plan, and such transfer is on behalf of the Beneficiaries to establish the Creditor Trust. The Creditor Trust, and the Creditor Trustee on behalf of the Creditor Trust, shall be authorized to obtain possession or control of, liquidate, and collect all of the Creditor Trust Assets in the possession or control of third parties, pursue all Retained Causes of Action, whether arising before or after the Petition Date, and pursue, assert and/or exercise all rights of setoffs and recoupment and defenses of the Debtors or their Estates to any counterclaims that may be asserted by any and all defendants as to any Retained Causes of Action or by holders of Disputed Claims. Without limiting the generality of the foregoing, the Creditor Trust, and the Creditor Trustee on behalf of the Trust, shall have the right to invoke section 542 of the Bankruptcy Code to pursue turnover of Creditor Trust Assets. On the Effective Date, the Creditor Trust, acting by and through the Creditor Trustee, shall be substituted for the Debtors for all purposes with respect to Creditor Trust Assets and administration of Claims and Interests. To the extent any law or regulation prohibits the transfer of ownership of any of the Creditor Trust Assets from the Debtors to the Creditor Trust and such law is not superseded by the Bankruptcy Code, the Trust's interest shall be a lien upon and security interest in such Creditor Trust Assets, in trust, nevertheless, for the sole use and purposes set forth in this Agreement, and this Agreement shall be deemed a security agreement granting such interest thereon without need to file financing statements or mortgages. By executing this Agreement, the Creditor Trustee on behalf of the Creditor Trust hereby accepts all of such property as Creditor Trust Assets, to be held in trust for the Beneficiaries, subject to the terms of this Agreement and the Plan.

1.4 Capacity of Creditor Trust. Notwithstanding any state or federal law to the contrary or anything herein, the Creditor Trust shall itself have the capacity, in its own right and name, to act or refrain from acting, including the capacity to sue and be sued and to enter into contracts. The Creditor Trust may alone be (but is not required to be) the named movant, respondent, party plaintiff or defendant, or the like in all adversary proceedings, contested matters, and other state or federal proceedings brought by or against it, and may settle and compromise all such matters in its own name.

ARTICLE II

DUTIES AND POWERS OF THE CREDITOR TRUST AND CREDITOR TRUSTEE

2.1 Generally

The Creditor Trust, acting by and through the Creditor Trustee shall be deemed the Estates' representative in accordance with section 1123 of the Bankruptcy Code and shall have the purpose of (i) holding the Creditor Trust Assets, which shall include, among other assets, the Retained Causes of Action and the Debtors' Cash (including, but not limited to, (a) Sale proceeds after satisfying payments pursuant to the Plan, and (b) proceeds of the DIP Facility); and (ii) distributing the proceeds related to the liquidation of such Creditor Trust Assets, net of all claims, expenses, charges, liabilities, and obligations of the Creditor Trust, to the Beneficiaries in accordance with the terms of this Plan and the Creditor Trust Agreement; and t. The Creditor Trustee shall have the authority to bind the Creditor Trust within the limitations set forth herein, but shall for all purposes hereunder be acting in the capacity of Creditor Trustee and not individually.

2.2 Scope of Authority of Creditor Trust

Within the limitations set forth herein, and subject to the provisions set forth in this Agreement, the responsibilities and authority of the Creditor Trust, acting by and through the Creditor Trustee, shall include, without limitation: (i) holding and administering the Creditor Trust Assets; (ii) evaluating and determining strategy with respect to the Retained Causes Action and litigating the Retained Causes of Action, or settling, transferring, releasing or abandoning any and all Retained Causes of Action on behalf of the Creditor Trust; (iii) facilitating the prosecution or settlement of objections to or estimations of Claims asserted against the Debtors, their Estates, the Creditor Trust or the Creditor Trust Assets; (iv) calculating and implementing distributions to the Beneficiaries in accordance with the terms of the Plan; (v) filing all required tax returns for the Creditor Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a); (vi) performing such acts as are necessary for the administration, resolution, and wind-down of the Debtors' Estates after the Effective Date including, without limitation, preparing and filing final tax returns for the Debtors; (vii) retaining Creditor Trust Professionals and Creditor Trust Non-Professionals (both as defined herein); (viii) providing reasonable compensation to Creditor Trustee for the performance of its services as Creditor Trustee and paying the reasonable fees, costs and expenses of any Creditor Trust Professionals and Creditor Trust Non-Professionals in accordance with the applicable provisions of this Agreement; (ix) filing periodic reports as required under the Plan; and (x) carrying out such other responsibilities not specifically set forth herein as may be vested in the Creditor Trust pursuant to the Confirmation Order, the Plan, this Agreement, or other Bankruptcy Court order, or as may be necessary and proper to carry out the provisions of the Confirmation Order, the Plan or this Agreement.

2.3 Creditor Trustee Obligations to Creditor Trust and Beneficiaries

Notwithstanding anything in the Plan or this Agreement to the contrary, the Creditor Trustee shall always act in the best interests of the Creditor Trust Beneficiaries and in furtherance of the purpose of the Creditor Trust as set forth in the Plan. The Creditor Trustee shall have fiduciary duties to the Beneficiaries consistent with the fiduciary duties that a member of an official committee appointed pursuant to section 1102 of the Bankruptcy Code has to the creditor

constituents represented by such committee and shall exercise his, her, or its responsibilities accordingly. Except for obligations expressly imposed on the Creditor Trustee by this Agreement, to the extent that, at law or in equity, the Creditor Trustee has duties (including fiduciary duties) to the Beneficiaries or to any other person that is a party to or is otherwise bound by this Agreement, such duties are hereby eliminated by this Agreement to the fullest extent permitted by applicable law; provided, however, that this Agreement does not eliminate the implied contractual covenant of good faith and fair dealing.

2.4 Additional Powers of Creditor Trust

In connection with the administration of the Creditor Trust, subject to and except as otherwise set forth in the Confirmation Order, the Plan or this Agreement, the Creditor Trust is hereby authorized to perform those acts necessary to accomplish the purposes of the Creditor Trust without further order of the Bankruptcy Court. Without limiting, but subject to, the foregoing, the Creditor Trust, acting by and through the Creditor Trustee, shall have the power to take the following actions and any powers reasonably incidental thereto, unless otherwise provided in this Agreement and subject to the limitations contained herein and in the Confirmation Order and the Plan:

(1) Collect and liquidate the Creditor Trust Assets, including through the sale of any Creditor Trust Assets;

(2) hold legal title to the Creditor Trust Assets, including, but not limited to, the Retained Causes of Action and the Debtors' Cash, and be expressly authorized to vote any Claim held by the Creditor Trust in any case or proceeding under the Bankruptcy Code or otherwise and to receive any distribution therein;

(3) assert, prosecute, object to, pursue, compromise, and settle (or decline to do any of the foregoing) in accordance with the Creditor Trustee's reasonable business judgment, all matters affecting the Estates, including, without limitation, Disputed Claims and/or other Retained Causes of Action related thereto, in accordance with the terms set forth in Article V of this Agreement and except as provided therein, without further order of the Bankruptcy Court;

(4) assert and enforce all legal or equitable remedies and defenses belonging to the Debtors or their Estates, including, without limitation, setoff, recoupment, and any rights under Bankruptcy Code section 502(d);

(5) act on behalf of the Debtors in all adversary proceedings (including, without limitation, the Adversary Proceeding) and contested matters then pending or that can be commenced in the Bankruptcy Court and in all actions and proceedings pending or commenced elsewhere, and to allow, settle, retain, enforce, dispute, or adjust any Claim and otherwise pursue actions involving the Assets of the Debtors that could arise or be asserted at any time under the Bankruptcy Code, unless otherwise waived, relinquished, or transferred in the Plan;

(6) take such actions the Creditor Trustee deems appropriate in its reasonable business judgment against any Person with respect to a Claim or Retained Cause of Action and commence any process or proceeding in the Bankruptcy Court or in any court of competent jurisdiction in accordance with applicable laws, except as otherwise set forth in this Agreement;

(7) make distributions to holders of all Allowed General Unsecured Claims and Purported Prepetition Lenders' Secured Claims (if applicable), including Professional Fee Claims (to the extent applicable), in accordance with the Plan and Article IV of this Agreement;

(8) proceed with and employ all discovery devices permitted under applicable law, including Rule 2004 of the Bankruptcy Rules, in order to investigate any Claims or Retained Causes of Action;

(9) employ, without further order of the Bankruptcy Court, Creditor Trust Professionals and Creditor Trust Non-Professionals to assist the Creditor Trust and Creditor Trustee in carrying out all duties hereunder and under the Plan and the Confirmation Order, and compensate and reimburse the expenses of the Creditor Trust Professionals and Creditor Trust Non-Professionals in the terms to be agreed to by the Creditor Trust and the Creditor Trust Professionals and the Creditor Trust Non-Professionals without further order of the Bankruptcy Court, to the extent set forth in this Agreement;

(10) open and maintain bank accounts, invest Cash in accordance with section 2.7 of this Agreement, withdraw and make distributions of Cash to holders of all Allowed General Unsecured Claims and Purported Prepetition Lenders' Secured Claims (if applicable) and pay taxes and other obligations owed by the Debtors or incurred by the Creditor Trustee from the Creditor Trust Assets in accordance with the Plan;

(11) be expressly authorized and required to pay expenses and make disbursements necessary to preserve, liquidate, and enhance the Creditor Trust Assets;

(12) be expressly authorized to purchase such insurance coverage as the Creditor Trustee, in its sole discretion, deems necessary and appropriate with respect to the liabilities and obligations of the Creditor Trustee;

(13) be expressly authorized to purchase such insurance coverage as the Creditor Trustee, in its sole discretion, deems necessary and appropriate with respect to real and personal property which may be or may become Creditor Trust Assets;

(14) be expressly authorized to incur any reasonable and necessary expenses in liquidating and converting the Creditor Trust Assets to Cash, or otherwise administering the Creditor Trust, as set forth in the Confirmation Order, the Plan or this Agreement; ;

(15) coordinate the turnover of property, if any, subject to rejected executory contracts or abandonment or liquidation of any retained Creditor Trust Assets and dispose of, and deliver title to others of, or otherwise realize value of, all the remaining Creditor Trust Assets;

(16) abandon, or donate to the Anthony H. N. Schnelling Endowment Fund maintained by the American Bankruptcy Institute to assist in the provision of resources for research and education, any Creditor Trust Assets that the Creditor Trust determines to be too impractical to distribute to the Beneficiaries or of inconsequential value to the Creditor Trust and the Beneficiaries;

(17) have any required financial statements and U.S. Trustee post-confirmation quarterly reports prepared, until such time as the Bankruptcy Court enters an order (i) dismissing the Chapter 11 Cases, (ii) converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, or (iii) approving a final decree closing the Chapter 11 Cases;

(18) file periodic reports with the Bankruptcy Court as required under the Plan;

(19) execute and deliver all documents, and take all actions, necessary to consummate the Plan and implement this Agreement;

(20) implement and/or enforce all provisions of the Plan;

(21) assert and/or waive, as the Creditor Trustee deems appropriate, any attorney-client privilege or similar privilege belonging to any of the Debtors immediately prior to the Effective Date of the Plan;

(22) establish certain reserves and escrow accounts, and make distributions from such reserves and escrow accounts as required under the Plan;

(23) to the extent the Creditor Trust deems it necessary or appropriate, value the Creditor Trust Assets based on the Creditor Trustee's good faith determination, which valuation shall be used by all Parties and the Beneficiaries for all federal income tax purposes, and seeking resolution from the Bankruptcy Court of any dispute related to such valuation; and

(24) such other powers as may be vested in or assumed by the Creditor Trust or Creditor Trustee pursuant to this Agreement, the Plan, other Bankruptcy Court order, or as may be needed or appropriate to carry out the provisions of the Plan and this Agreement.

2.5 General Authority of the Creditor Trust

Unless specifically stated otherwise herein, the Creditor Trust shall not be required to obtain Bankruptcy Court approval with respect to any proposed action or inaction: (a) authorized in this Agreement, or (b) specifically contemplated in the Confirmation Order or the Plan.

2.6 Limitation of Creditor Trust's Authority; No Ongoing Business

(a) The Creditor Trust shall have no power or authority except as set forth in this Agreement or in the Confirmation Order or the Plan.

(b) For federal income tax purposes, the Creditor Trust shall not be authorized to engage in any trade or business with respect to the Creditor Trust Assets or any proceeds therefrom except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Creditor Trust. The Creditor Trust shall take such actions consistent with the prompt orderly liquidation of the Creditor Trust Assets as required by applicable law and consistent with the treatment of the Creditor Trust as a liquidating trust under Treasury Regulation section 301.7701-4(d), to the extent such actions are permitted by this Agreement.

2.7 Investment and Safekeeping of Creditor Trust Assets

All monies and other assets received by the Creditor Trust shall, until distributed or paid over as herein provided, be held in trust for the benefit of the Beneficiaries, but need not be segregated from all other monies and assets of the Creditor Trust.

The Creditor Trust may, but is not required to, invest any such monies in the manner set forth in this section 2.7, and shall have no liability for interest or income on any monies received by the Creditor Trust hereunder and held for distribution or payment to the Beneficiaries, except as such interest shall actually be received. Investment of any monies held by the Creditor Trust shall be administered in accordance with the general duties and obligations hereunder. The right and power of the Creditor Trust to invest the Creditor Trust Assets, the proceeds thereof, or any income earned by the Creditor Trust, shall be limited to the right and power to (i) invest such Creditor Trust Assets (pending distributions in accordance with the Confirmation Order, the Plan or this Agreement) in (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof, or (c) an open-ended management investment company, registered under the Investment Company Act of 1940 that is regulated as a “money market fund” pursuant to Rule 2a-7 under the Investment Company Act of 1940, provided that the fund: (1) invests exclusively in United States Treasury bills and United States Treasury Notes owned directly or through repurchase agreements; (2) has received the highest money market fund rating from a nationally recognized statistical rating organization, such as Standard & Poor’s or Moody’s; (3) has agreed to redeem funds shares in cash, with payment being made no later than the business day following a redemption request by a shareholder, except in the event of an unscheduled closing of the Federal Reserve Banks or the New York Stock Exchange; and (4) has adopted a policy that it will notify its shareholders 60 days prior to any change in its policy (A) to invest exclusively in Treasury Securities as described in (1) above or (B) to redeem fund shares in cash no later than the business day following a redemption request by the shareholder, with limited exceptions for unscheduled closings of Federal Reserve Banks or the New York Stock Exchange; or (ii) deposit such assets in demand deposits at any bank or trust company, (collectively, the “**Permissible Investments**”) *provided, however*, that the scope of any such Permissible Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulation section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the guidelines of the Internal Revenue Service of the United States of America (the “**IRS**”), whether set forth in IRS rulings, other IRS pronouncements or otherwise.

2.8 Creditor Trustee Conflicts of Interest

If the Creditor Trustee determines in its reasonable discretion that the Creditor Trustee has a material conflict of interest with respect to any matter, the Creditor Trustee shall, at its option and in its own discretion, designate a Person to act on behalf of the Creditor Trust solely with respect to such matter with such designee’s authority to act on behalf of the Creditor Trust to terminate upon the matter’s conclusion. If the Creditor Trustee is unable to appoint a designee to act on behalf of the Creditor Trust with respect to any matter, the Creditor Trustee, after notice to the U.S. Trustee, may request the Bankruptcy Court to approve a designee of the Creditor Trustee to act on behalf of the Creditor Trust solely with respect to such matter, with such designee’s

authority to act on behalf of the Creditor Trust to automatically terminate upon the matter's conclusion.

ARTICLE III

TERM AND COMPENSATION FOR CREDITOR TRUSTEE

3.1 Compensation

(a) The Creditor Trustee shall be entitled to receive compensation for services rendered on behalf of the Creditor Trust and reimbursement of expenses, in accordance with the terms established by the Debtors, the Committee, and the Creditor Trustee.

(b) All compensation and other amounts payable to the Creditor Trustee shall be paid out of the Creditor Trust Assets, subject to any applicable limitations or restrictions set forth in the Confirmation Order, the Plan or this Agreement.

3.2 Termination

The duties, responsibilities and powers of the Creditor Trustee will terminate on the date the Creditor Trust is dissolved and terminated pursuant to section 15.1, or by an order of the Bankruptcy Court.

3.3 No Bond

The Creditor Trustee shall serve without bond.

3.4 Removal

The Creditor Trustee may be removed only for cause by a Final Order of the Bankruptcy Court upon a motion by any party in interest and after notice and a hearing; *provided, however*, that the Creditor Trustee may not be removed until a successor Creditor Trustee has been named or is capable of being named immediately upon such removal. For purposes of removing the Creditor Trustee, "cause" shall mean gross negligence, breach of fiduciary duty, breach of trust, or reckless or willful mishandling of the Creditor Trust Assets. Any fees and unreimbursed expenses that have been properly incurred by the Creditor Trustee in accordance with the terms of this Agreement that are owing to the Creditor Trustee as of the date of the Creditor Trustee's removal shall be paid to the Creditor Trustee within 5 days of the removal date.

3.5 Resignation of Creditor Trustee

The Creditor Trustee may resign at any time by giving not less than sixty (60) days prior written notice thereof to the Bankruptcy Court. Such resignation shall become effective prior to the expiration of such sixty (60) day notice period upon the appointment of a permanent or interim successor Creditor Trustee.

3.6 Trust Continuance

The death, incapacity, dissolution, resignation, or removal of the Creditor Trustee shall not terminate the Creditor Trust or revoke any existing agency (other than any agency of such Creditor Trustee and the Creditor Trustee hereunder) created pursuant to this Agreement or invalidate any action previously taken by the Creditor Trustee. By accepting the position as Creditor Trustee (whether permanent or interim), such successor Creditor Trustee agrees that the provisions of this Agreement shall be binding upon, and inure to the benefit of, such successor Creditor Trustee and all of its heirs and legal and personal representatives, successors, or assigns.

ARTICLE IV

PROVISIONS REGARDING DISTRIBUTIONS

4.1 Priority and Method of Distributions

(a) Generally. The Creditor Trustee, on behalf of the Creditor Trust, or such other person or entity as may be designated in accordance with this Agreement, will make distributions to the Beneficiaries in accordance with this Agreement and in accordance with the priorities set forth in, and the other provisions of, the Plan. The Creditor Trust may engage disbursing agents and other Persons to assist in making such distributions. Whenever any distribution to be made under the Confirmation Order, the Plan or this Agreement is due on a day other than a Business Day, such distribution shall be made, without interest, on the immediately succeeding Business Day, but any such distribution will have been deemed to have been made on the date due.

(b) Distribution of Creditor Trust Assets and Proceeds Thereof. All Creditor Trust Assets and all proceeds therefrom shall be distributed in accordance with the terms of this Agreement and of, and with the priorities established by, the Plan and the Confirmation Order.

(c) Reserves; Pooling of Reserved Funds

Before any distribution can be made, the Creditor Trust shall, in its reasonable discretion, establish, supplement, and maintain a reserve in an amount sufficient to meet any and all Creditor Trust fees and expenses, including but not limited to attorneys' fees and expenses and the fees and expenses of other professionals,. In accordance with section 10.1 of this Agreement, the Creditor Trust may also maintain as necessary a reserve for Disputed Claims. For the avoidance of doubt, the Creditor Trustee may withhold any distribution pending the Creditor Trust's determination of whether to object to a General Unsecured Claim. Any such withheld distribution shall become part of the Creditor Trust's reserve for Disputed Claims and shall be distributed to the appropriate Beneficiary no later than the first distribution after a decision is made not to object to the pertinent General Unsecured Claim or the General Unsecured Claim becomes Allowed. The Creditor Trustee need not maintain the Creditor Trust's reserves in segregated bank accounts and may pool funds in the reserves with each other and other funds of the Creditor Trust; *provided, however*, that the Creditor Trust shall treat all such reserved funds as being held in a segregated manner in its books and records.

(d) Distributions Net of Reserves and Costs

Distributions shall be made net of reserves in accordance with the Plan and this Agreement, and also net of the actual and reasonable costs of making the distributions. For the avoidance of doubt, all fees and costs of the Creditor Trust must be satisfied or reserved for before any Beneficiary may receive a distribution. The Creditor Trustee may sell or otherwise dispose of Creditor Trust Assets in order to pay such fees and costs.

(e) Periodic Distribution Requirement. Subject to the provisions of this Article IV and only to the extent required to maintain grantor trust tax status, the Creditor Trustee is required to distribute at least once per twelve-month period to the Beneficiaries the Creditor Trust's net income plus all net proceeds from the sale, realization, settlement or liquidation of the Creditor Trust Assets, except that the Creditor Trustee may retain an amount of net proceeds or net income reasonably necessary to maintain the value of the Creditor Trust Assets, to satisfy current and projected expenses of the Creditor Trust, and to meet Claims and contingent liabilities (including Disputed Claims), and the retention of such amounts may preclude distributions to such Beneficiaries.

(f) Withholding. The Creditor Trustee may withhold from amounts distributable to any person or entity any and all amounts, to be determined in the Creditor Trustee's reasonable sole discretion, required by any law, regulation, rule, ruling, directive or other government equivalent of the United States or of any political subdivision thereof. To the extent that amounts are so withheld and paid over to the appropriate governmental entity, such amounts shall be treated for all purposes of this Agreement as having been paid to the person or entity in respect of whom such deduction and withholding was made.

(g) Tax Identification Numbers, Tax Information and Forfeiture. The Creditor Trust shall be authorized to require each holder of a Claim to provide it with an executed Form W9, Form W-8, or any other tax form, documentation or certification as may be requested by the Creditor Trust as a condition precedent to being sent a distribution under the Plan. If a holder of a Claim does not provide the Creditor Trust with an executed Form W-9, Form W-8 or other requested tax form within ninety (90) days after the date of the initial request, the Creditor Trust may, in its sole discretion: (1) make such distribution under the Plan net of applicable withholding; (2) reserve such distribution under the Plan, in which case (i) such holder shall be deemed to have forfeited the right to receive any current, reserved or future distribution under the Plan, (ii) any such distribution under the Plan shall revert to the Creditor Trust for all purposes, including, but not limited to, for distribution to other Allowed Claims, and (iii) the Claim of the holder originally entitled to such distribution under the Plan shall be irrevocably waived and forever barred without further order of the Bankruptcy Court, notwithstanding any federal, state or provincial escheat, unclaimed or abandoned property law to the contrary; or (3) establish any other mechanisms it believes are reasonable and appropriate. The Creditor Trust reserves the right to allocate and distribute all distributions under the Plan in compliance with all applicable wage garnishments, alimony, child support and other spousal awards, Liens and similar encumbrances.

4.2 Delivery of Distributions

Subject to the provisions of Bankruptcy Rule 2002(g), and except as otherwise provided herein, distributions and deliveries to holders of Claims (including distributions to the Beneficiaries) shall be made at (1) at the address set forth in the underlying Proof of Claim, if filed, (2) at the address set forth on the Debtors' Schedules, if no Proof of Claim is filed, or (3) pursuant to a written change of address filed with the Bankruptcy Court and delivered to the Creditor Trust.

4.3 Non-Cash Property

If, in the Creditor Trustee's judgment, any Creditor Trust Asset that is not Cash cannot be sold, settled, or otherwise reduced to Cash in a commercially reasonable manner, the Creditor Trustee shall have the right to abandon, withdraw, or otherwise dispose of such property consistent with applicable law, including by donation of such property to a charity designated by the Creditor Trustee.

4.4 Means of Payment

Any distribution to be made by the Creditor Trust pursuant to the Plan shall be in Cash. The Creditor Trust shall distribute such Cash by check; *provided, however* that the Creditor Trustee may agree, in its sole discretion, to make any distribution by wire transfer or such other method as the Creditor Trustee deems appropriate under the circumstances.

4.5 De Minimis Distributions

The Creditor Trust shall have no obligation to make a distribution that is less than Fifty Dollars (\$50) in Cash. If an interim distribution to the holder of an Allowed Claim is less than \$50, such distribution shall be held for future distributions. If the final distribution to any holder of an Allowed Claim is less than \$50, such amount shall become and constitute unclaimed property and be treated in accordance with section 4.6 of this Agreement.

4.6 Undeliverable Distributions

If any distribution to the holder of an Allowed Claim (including distributions to Beneficiaries) is returned as undeliverable or otherwise is unclaimed, no further distributions to such holder shall be made unless and until the Creditor Trustee is notified of such holder's then-current address, at which time all missed distributions shall be made to such holder without interest. All such distributions, as well as any distributions by check or other means that have not been negotiated shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of sixty (60) days after the date of the distribution in question. Requests for reissuance of any check shall be made to the Creditor Trust by the holder of the Allowed Claim to whom such check originally was issued within such sixty (60) day period. After such 60th day, and notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary (i) all unclaimed property or interest in property in respect of the distribution in question shall revert to the Creditor Trust for all purposes, including, but not limited to, distributions to other holders of Allowed Claims, and (ii) the Claim of any holder with respect to such unclaimed property or interest in property shall be discharged and forever barred.

4.7 Time Bar to Cash Payments Checks issued by the Creditor Trust in respect of Allowed Claims shall be null and void if not negotiated within sixty (60) days after the date of issuance thereof. Requests for reissuance of any check shall be made to the Creditor Trust by the holder of the Allowed Claim to whom such check originally was issued within such sixty (60) day period. Thereafter, the amount represented by such voided check shall irrevocably revert to the Creditor Trust for all purposes, including, but not limited to, distribution to other holders of Allowed Claims. Any Claim in respect of such voided check shall be discharged and forever barred notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary.

ARTICLE V

PROSECUTION AND RESOLUTION OF DISPUTED, CONTINGENT AND UNLIQUIDATED CLAIMS AND RETAINED CAUSES OF ACTION

5.1 Objections to Claims; Prosecution of Disputed Claims

The Creditor Trust, acting by and through the Creditor Trustee, shall have the exclusive right to object to the allowance of any Claims by no later than the Objection Deadline. The Creditor Trust shall have the right to object to the allowance of Claims with respect to which the Creditor Trust disputes classification, liability, or allowance in whole or in part. The Creditor Trust shall have the sole authority to settle, without approval of the Bankruptcy Court, any and all such objections to Claims; *provided, however*, that the Creditor Trustee may not settle any objection to a Claim where (i) the amount in dispute exceeds \$250,000 and (ii) the remaining claim exceeds \$250,000 without approval of the Bankruptcy Court.

5.2 Estimation of Claims

The Creditor Trust may at any time request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Section 502(c) of the Bankruptcy Code regardless of whether the Debtors or the Creditor Trust previously have objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. Subject to the provisions of Section 502(j) of the Bankruptcy Code, in the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, the amount so estimated shall constitute the maximum allowed amount of such Claim. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Creditor Trustee may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

5.3 Payments and Distributions on Disputed Claims

(a) Notwithstanding any provision hereof to the contrary, the Creditor Trust may, in its reasonable discretion, pay the undisputed portion of a Disputed Claim. Notwithstanding the foregoing, the Creditor Trust will set aside for each holder of a Disputed Claim such portion

of Cash as may be necessary to provide required distributions if that Claim were an Allowed Claim, either based upon the amount of the Claim as filed with the Bankruptcy Court or the amount of the Claim as estimated by the Bankruptcy Court.

(b) At such time as a Disputed Claim becomes, in whole or in part an Allowed Claim, the Creditor Trust shall distribute to the holder thereof the distributions, if any, to which such holder is then entitled under the Confirmation Order, the Plan or this Agreement. Such distribution, if any, will be made as soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing such Disputed Claim becomes a Final Order. No interest will be paid on Disputed Claims that later become Allowed or with respect to any distribution in satisfaction thereof to a holder.

5.4 Prosecution of Retained Causes of Action

The Creditor Trust, by and through the Creditor Trustee, shall have the exclusive right to assert and prosecute in accordance with its reasonable business judgment the Retained Causes of Action. The Creditor Trust shall have the authority to settle and compromise, in its sole discretion and without approval of the Bankruptcy Court, any and all Retained Causes of Action; *provided, however*, that the Creditor Trustee may not settle any Retained Cause of Action where the initial amount of such Retained Cause of Action, without consideration of any defenses to the same, exceeds \$500,000 without approval of the Bankruptcy Court; *provided, further, however*, that any settlement, compromise or other disposition of the Adversary Proceeding shall require approval of the Bankruptcy Court.

ARTICLE VI LIABILITY AND EXCULPATION PROVISIONS

6.1 Exculpation/Indemnification

(a) The Creditor Trust and the Creditor Trust Indemnified Parties (including the Creditor Trust Professionals and the Creditor Trust Non-Professionals) (collectively, the “**Covered Persons**”) shall be, and hereby are, exculpated by all Persons, including the Beneficiaries and any other holders of Claims, from any and all claims, causes of action and other assertions of liability arising out of the discharge of the powers and duties conferred upon them by the Plan, this Agreement, or any order of the Bankruptcy Court entered pursuant to, or in furtherance of, the Plan, or by applicable law, except for actions or omissions to act that are determined by a Final Order to have arisen out of fraud, gross negligence, or willful misconduct. To the fullest extent permitted by applicable law, the Creditor Trust shall: (i) indemnify, defend, and hold harmless the Covered Persons for, and shall hold them harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost, or expense (including the reasonable fees and expenses of their respective professionals) incurred without fraud, gross negligence or willful misconduct on the part of the Creditor Trust Indemnified Parties (including the Creditor Trust Professionals and the Creditor Trust Non-Professionals) (which fraud, gross negligence or willful misconduct, if any, must be determined by a Final Order of a court of competent jurisdiction) for any action taken, suffered, or omitted to be taken by the Creditor Trust Indemnified Parties (including the Creditor Trust Professionals and the Creditor Trust Non-Professionals) in connection with the acceptance, administration, exercise, and performance of

their duties under the Plan, Confirmation Order, or this Agreement, as applicable; *provided, that*, an act or omission taken with the approval of the Bankruptcy Court, and not inconsistent therewith, will be conclusively deemed not to constitute fraud, gross negligence or willful misconduct; *provided, further, that*, the Creditor Trust shall, to the fullest extent permitted by law, indemnify and hold harmless the Creditor Trust Indemnified Parties, from and against and with respect to any and all liabilities, losses, damages, claims, costs, and expenses, including attorneys' fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the Creditor Trust or the implementation or administration of the Plan, if the Creditor Trust Indemnified Party acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of the Creditor Trust; and (ii) the Covered Persons shall be entitled to obtain advances from the Creditor Trust to cover their reasonable fees and expenses incurred in defending any such actions or inactions. To the extent the Creditor Trust indemnifies and holds harmless any Creditor Trust Indemnified Parties as provided above, the legal fees and related costs incurred by counsel to the Creditor Trust in monitoring or participating in the defense of such claims giving rise to the right of indemnification shall be paid as costs and expenses of the Creditor Trust. The costs and expenses incurred in enforcing the right of indemnification in this Section shall be paid by the Creditor Trust. The foregoing exculpation and indemnity in respect of any Covered Person shall survive the termination of such Covered Person from the capacity for which they are indemnified and shall inure to the benefit of the Covered Persons' heirs and assigns.

(b) Neither the Creditor Trust, the Creditor Trustee, nor their firms, companies, affiliates, partners, officers, directors, members, employees, designees, professionals, advisors, attorneys, representatives, disbursing agents or agents, and any of such Person's successors and assigns, shall incur any responsibility or liability by reason of any error of law or fact or of any matter or thing done or suffered or omitted to be done under or in connection with the Plan, the Confirmation Order, or this Agreement, other than for specific actions or omissions resulting from its willful misconduct, gross negligence or fraud found by a Final Order (not subject to further appeal or review) of a court of competent jurisdiction to be the direct and primary cause of loss, liability, damage, or expense suffered by the Creditor Trust. The Creditor Trustee shall enjoy all of the rights, powers, immunities, and privileges applicable to a chapter 7 trustee. The Creditor Trust, acting by and through the Creditor Trustee, may, in connection with the performance of its functions, in its sole and absolute discretion, consult with its attorneys, accountants, advisors, and agents, and shall not be liable for any act taken, or omitted to be taken, or suggested to be done in accordance with advice or opinions rendered by such persons, regardless of whether such advice or opinions are in writing. Notwithstanding such authority, neither the Creditor Trust nor the Creditor Trustee shall be under any obligation to consult with any such attorneys, accountants, advisors, or agents, and any determination not to do so shall not result in the imposition of liability on the Creditor Trust or the Creditor Trustee unless such determination of liability is based on willful misconduct, gross negligence, or fraud. Persons dealing with the Creditor Trust or the Creditor Trustee shall look only to the Creditor Trust Assets to satisfy any liability incurred by the Creditor Trust or the Creditor Trustee to such person in carrying out the terms of the Plan, the Confirmation Order, or this Agreement, and neither the Creditor Trust nor the Creditor Trustee shall have any personal obligation to satisfy such liability.

6.2 Reliance by Creditor Trustee

Except as otherwise provided herein:

(a) the Creditor Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, installment, opinion, report, request, consent, order, or other paper or document reasonably believed to be genuine and to have been signed or presented by the proper party or parties;

(b) the Creditor Trustee shall not be liable for any action reasonably taken or not taken by it in accordance with the advice of a Creditor Trustee Professional; and

(c) persons or entities dealing with the Creditor Trustee shall look only to the Creditor Trust Assets to satisfy any liability incurred by the Creditor Trustee to such person or entity in carrying out the terms of this Agreement, and the Creditor Trustee shall not have any personal obligation to satisfy any such liability, except to the extent that actions taken or not taken after the Effective Date by the Creditor Trustee are determined by a Final Order to be solely due to the Creditor Trustee's own gross negligence, willful misconduct, fraud or breach of fiduciary duty.

(d)

ARTICLE VII **BENEFICIARIES**

7.1 Interest Beneficial Only

The ownership of a beneficial interest in the Creditor Trust shall not entitle any Beneficiary or the Debtors to any title in or to the Creditor Trust Assets or to any right to call for a partition or division of such assets or to require an accounting.

7.2 Evidence of Beneficial Interest

Ownership of a beneficial interest in the Creditor Trust Assets shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Creditor Trust by the Creditor Trustee.

7.3 Identification of Beneficiaries

In order to determine the actual names and addresses of the Beneficiaries, the Creditor Trust shall be entitled, but not required, to conclusively rely on the official claims register maintained in the Chapter 11 Cases. Each Beneficiary's right to distribution from the Creditor Trust shall be that accorded to such Beneficiary under the Plan.

7.4 Limitation on Transferability

The beneficial interests herein shall be non-transferable and non-assignable during the term of this Agreement except by operation of law. An assignment by operation of law shall not be effective until appropriate notification and proof thereof is submitted to the Creditor Trust, and the Creditor Trust pay all amounts to or for the benefit of the assigning Beneficiaries until receipt of proper notification and proof of assignment by operation of law. The Creditor Trustee may rely upon such proof without the requirement of any further investigation.

7.5 Effect of Death, Incapacity, Dissolution or Bankruptcy of Beneficiary

The death, incapacity, dissolution or bankruptcy of a Beneficiary during the term of the Creditor Trust shall not operate to terminate the Creditor Trust, nor shall it entitle the representative or creditors of the deceased, dissolved, incapacitated, or bankrupt Beneficiary to an accounting or to take any action in any court or elsewhere for the distribution of the Creditor Trust Assets or for a petition thereof nor shall it otherwise affect the rights and obligations of the Beneficiary under this Agreement or in the Creditor Trust.

7.6 Standing of Beneficiary

Except as expressly provided in this Agreement, the Plan, or the Confirmation Order, a Beneficiary does not have standing to direct the Creditor Trust or Creditor Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Creditor Trust Assets.

7.7 No Right to Accounting

Neither the Beneficiaries nor their successors, assigns, creditors, nor any other Person shall have any right to an accounting by the Creditor Trust or Creditor Trustee, and neither the Creditor Trust nor the Creditor Trustee shall be obligated to provide any accounting to any Person. Nothing in this Agreement is intended to require the Creditor Trustee at any time or for any purpose to file any accounting or seek approval of any court with respect to the administration of the Creditor Trust or as a condition for making any advance, payment, or distribution out of proceeds of Creditor Trust Assets.

7.8 Exemption from Registration

The rights of the Beneficiaries arising under this Agreement may be deemed “securities” under applicable law. However, such rights have not been defined as “securities” under the Plan because (a) the parties hereto intend that such rights shall not be securities and (b) if the rights under this Agreement in favor of the Beneficiaries are deemed to be “securities,” the exemption from registration under section 1145 of the Bankruptcy Code is intended to be applicable to such securities. No Party to this Agreement shall make a contrary or different contention.

ARTICLE VIII
ADMINISTRATION

8.1 Purpose of the Creditor Trust

The Creditor Trust shall be established for the primary purpose of liquidating its assets, in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Creditor Trust. Accordingly, the Creditor Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the Creditor Trust Assets, make timely distributions to the Beneficiaries and not unduly prolong its duration, and shall take

or refrain from taking such other actions as may be necessary, in the Creditor Trustee's reasonable judgment, to preserve and maintain the status of the Creditor Trust as a "liquidating trust" and as a "grantor trust" within the meaning of Treasury Regulation sections 301.7701-4(d) and 1.6714(a). The Creditor Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth in this Agreement. The Creditor Trust also shall not be deemed a successor-in-interest of the Beneficiaries for any purpose other than as specifically set forth in this Agreement.

8.2 Books and Records

On the date hereof, or at such other time as is reasonably convenient to the Liquidating Trust and the Debtors, the Debtors shall provide to the Creditor Trust all copies of books, records and files of the Debtors and the Estates that were not sold and transferred in connection with the Sale.

The Creditor Trust shall maintain books and records relating to the administration of the Creditor Trust Assets, the income and expenses of the Creditor Trust, and the payment of expenses and liabilities of, Claims against or assumed by, the Creditor Trust in such detail and for such period of time as may be necessary to make full and proper accounting in respect thereof and to comply with applicable provisions of law. Except as otherwise provided herein or in the Plan, nothing in this Agreement requires the Creditor Trust to file any accounting or seek approval of any court with respect to the administration of the Creditor Trust, or as a condition for making any payment or distribution out of the Creditor Trust Assets.

8.3 Compliance with Laws

Any and all distributions of Creditor Trust Assets shall comply with all applicable laws and regulations, including, but not limited to, applicable federal and state tax and securities laws.

ARTICLE IX

SUCCESSOR CREDITOR TRUSTEE

9.1 Successor Creditor Trustee

In the event the Creditor Trustee is removed by the Bankruptcy Court, resigns pursuant to this Agreement, or otherwise vacates its position, a successor Creditor Trustee shall be appointed by the Bankruptcy Court in accordance with the best interests of the Beneficiaries. Any successor Creditor Trustee appointed hereunder shall execute an instrument accepting such appointment. Thereupon, such successor Creditor Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts and duties of its predecessor in the Creditor Trust with like effect as if originally named herein; *provided, however*, that a removed or resigning Creditor Trustee shall, nevertheless, when requested in writing by the successor Creditor Trustee, execute and deliver any reasonable instrument or instruments conveying and transferring to such successor Creditor Trustee all the estates, properties, rights, powers, and trusts of such removed or resigning Creditor Trustee.

ARTICLE X

DISPUTED CLAIMS RESERVES

10.1 Disputed Claims Reserves

The Creditor Trust, by and through the Creditor Trustee shall maintain reserves for any distributable amounts required to be set aside on account of Disputed Claims and shall distribute such amounts (net of any expenses, including any taxes relating thereto) (the “**Trust Claims Reserve**”), as provided in the Plan, the Confirmation Order and this Agreement, as such Disputed Claims are resolved, and such amounts shall be distributable in respect of such Disputed Claims as such amounts would have been distributable had the Disputed Claims been Allowed Claims as of the Effective Date.

ARTICLE XI

REPORTING

11.1 Required Plan Reporting

The Creditor Trustee shall comply with any tax reporting requirements set forth in the Confirmation Order and/or the Plan, including as required under Section VI.B.14. of the Plan.

11.2 Federal Income Tax

(a) **Grantor Trust Status.** Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the Creditor Trust of a private letter ruling if the Creditor Trust so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Creditor Trust), the Creditor Trust shall file tax returns for the Creditor Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with the Plan.

(b) **Treatment of Beneficiaries as Grantors.** Subject to the provisions of Section 11.2(a)] hereof, (i) for federal income tax purposes, the Beneficiaries shall be treated as grantors and owners of the Creditor Trust for each tax return filed by the Creditor Trust as a grantor trust; and (ii) each Beneficiary shall be responsible for payment of any federal income tax with respect to its share of the taxable income of the Creditor Trust for any taxable year determined pursuant to Section 11.2(c), whether or not a reserve is established for Disputed Claims.

(c) **Allocations of Creditor Trust Taxable Income.** Subject to the provisions of Section 11.2(a) hereof, allocations of Creditor Trust taxable income shall be determined by reference to the manner in which an amount of cash equal to such taxable income would be distributed (without regard to any restriction on distributions described herein) if, immediately prior to such deemed distribution, the Creditor Trust had distributed all of its other assets (valued for this purpose at their tax book value) to the Beneficiaries (treating any holder of a Disputed Claim, for this purpose, as a current Beneficiary entitled to distributions), taking into account all prior and concurrent distributions from the Creditor Trust (including any distributions held in reserve pending the resolution of Disputed Claims). Similarly, taxable losses of the Creditor Trust will be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining Creditor Trust Assets. The tax book

value of the Creditor Trust Assets for this purpose shall equal their fair market value on the Effective Date or, if later, the date such assets were acquired by the Creditor Trust, adjusted in either case in accordance with tax accounting principles prescribed by the IRC, the Treasury Regulations and any other applicable administrative and judicial authorities and pronouncements.

(d) Tax Reporting Duties of Creditor Trustee.

(i) In compliance with the Plan, the IRC and the regulations thereunder, the Creditor Trustee shall prepare and send annually to each record holder of a beneficial interest a separate statement setting forth the holder's share of items of income, gain, loss, deduction, or credit and will instruct all such holders to report such items on their federal income tax returns or to forward the appropriate information to the beneficial holders with instructions to report such items on their federal income tax returns. The Creditor Trust's taxable income, gain, loss, deduction, or credit will be allocated among the beneficial holders of a Creditor Trust Interest in accordance with each holder's relative beneficial Creditor Trust Interest.

(ii) The Creditor Trust, acting by and through the Creditor Trustee, may, in its sole discretion, determine the best way to report for United States tax purposes with respect to any Creditor Trust Assets allocable to, or retained on account of the Trust Claims Reserve, including, but not limited to, filing a tax election to treat the Trust Claims Reserve as a disputed ownership fund ("**DOF**") or other separate entity within the meaning of Treasury Regulation section 1.468B-9 for federal income tax purposes rather than to tax such reserve as a part of the Creditor Trust (and, to the extent permitted by applicable law, report consistently with the foregoing for United States federal, state, and local income tax purposes) (the "**DOF Election**"). If a DOF Election is made, the Creditor Trust shall comply with all federal and state tax reporting and tax compliance requirements of the DOF or other separate entity, including, but not limited to, the filing of a separate federal tax return for the DOF or other separate entity and the payment of federal and/or state income tax due.

(iii) The Creditor Trust shall be responsible for payments, out of the Creditor Trust Assets, of any taxes imposed on the Creditor Trust or the Creditor Trust Assets, including the Trust Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Trust Claims Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (1) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (2) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts distributable by the Creditor Trust as a result of the resolutions of such Disputed Claims.

(iv) The Creditor Trust may request an expedited determination of taxes of the Creditor Trust, including the Trust Claims Reserve, under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Creditor Trust for all taxable periods through the dissolution of the Creditor Trust.

11.3 Other

The Creditor Trustee shall file (or cause to be filed) any other statement, returns or disclosures relating to the Creditor Trust or the Creditor Trust Assets, that are required by the IRS or any other governmental unit.

ARTICLE XII

CREDITOR TRUSTEE PROFESSIONALS AND NON-PROFESSIONALS

12.1 Retention of Creditor Trust Professionals and Non-Professionals

(a) The Creditor Trust shall have the right to retain its own professionals including, without limitation, claims, disbursing and transfer agents, legal counsel, accountants, experts and other agents or advisors, as the Creditor Trust deems appropriate (the “**Creditor Trust Professionals**”) and on such terms as the Creditor Trust deems appropriate. The Creditor Trust Professionals shall be compensated in accordance with section 12.2 hereof. The Creditor Trust Professionals so retained need not be “disinterested” as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors of the Debtors or the Committee.

(b) The Creditor Trust shall have the right to retain non-professionals including, without limitation, employees, independent contractors or other agents as the Creditor Trustee deems appropriate (the “**Creditor Trust Non-Professionals**”) and on such terms as the Creditor Trust deems appropriate. Such Creditor Trust Non-Professionals shall be compensated in accordance with section 2.2 hereof. The Creditor Trust Non-Professionals so retained need not be “disinterested” as that term is defined in the Bankruptcy Code and may include, without limitation, employees, independent contractors or agents of the Debtors, the Committee, or its members.

12.2 Payment to Creditor Trust Professionals and Creditor Trust Non-Professionals

After the Effective Date, Creditor Trustee Professionals shall be required to submit reasonably detailed invoices on a periodic basis to the Creditor Trust, including in such invoices a description of the work performed, who performed such work, and if billing on an hourly basis, the hourly rate of each such person, plus an itemized statement of expenses. All payments to Creditor Trustee Professionals or Creditor Trustee Non-Professionals shall be paid out of the Creditor Trust Assets.

ARTICLE XIII

TERMINATION OF CREDITOR TRUST

13.1 Duration and Extension

(a) Notwithstanding any provision of the Plan to the contrary, the Creditor Trust shall be dissolved and the Creditor Trustee shall be discharged no later than the fifth (5th) anniversary of the Effective Date; *provided, however*, that, the Bankruptcy Court, upon motion by a party in interest, including the Creditor Trust, may extend the term of the Creditor Trust if it is necessary to the liquidation and/or distribution of the Creditor Trust Assets, without prejudice to further extensions, so long as (i) adequate funding exists for such extension period, and (ii)

Bankruptcy Court approval of such extension is obtained in conformity with IRS Revenue Procedure 94-45, 1994-2 C.B.; *provided, however*, that in no event shall the term of the Creditor Trust extend past the tenth (10th) anniversary of the Effective Date unless a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Creditor Trust as a liquidating trust for federal income tax purposes is obtained; *provided, further* that neither this Agreement nor the continued existence of the Creditor Trust shall prevent the Creditor Trust from seeking to close the Chapter 11 Cases pursuant to section 350 of the Bankruptcy Code and obtain a Final Decree pursuant to Bankruptcy Rule 3022. The Creditor Trust may be terminated earlier than its scheduled termination if (i) the Bankruptcy Court has entered a Final Order closing all of or the last of the Chapter 11 Cases pursuant to section 350(a) of the Bankruptcy Code and (ii) the Creditor Trust has administered all Creditor Trust Assets and performed all other duties required by the Plan, the Confirmation Order and this Agreement

13.2 Diligent Administration

The Creditor Trustee shall not unduly prolong the duration of the Creditor Trust and shall at all times endeavor to resolve, settle or otherwise dispose of all claims that constitute Creditor Trust Assets and to effect the distribution of the Creditor Trust Assets in accordance with the terms of this Agreement and the Plan and terminate the Creditor Trust as soon as practicable. Prior to and upon termination of the Creditor Trust, the Creditor Trust Assets will be distributed to the Beneficiaries of the Creditor Trust, pursuant to the provisions set forth in this Agreement. If at any time the Creditor Trustee determines that the expense of administering the Creditor Trust is likely to exceed the value of the Creditor Trust Assets, the Creditor Trustee shall have the authority to (i) cause the Creditor Trust distribute to the Beneficiaries any Cash balance remaining in excess of necessary costs to pay outstanding expenses of the Creditor Trust, including any fees and expenses of the Creditor Trust Professionals and Creditor Trust Non-Professionals, (ii) donate any Creditor Trust Assets remaining in the Creditor Trust to a charitable organization exempt from federal income tax under section 501(c)(3) of the IRC that is unrelated to the Debtors and any Insider of the Debtors, and (iii) dissolve the Creditor Trust.

ARTICLE XIV **AMENDMENT AND WAIVER**

14.1 Amendment and Waiver

Any substantive provision of this Agreement may be materially amended or waived only by order of the Bankruptcy Court if necessary to implement the Plan; *provided, however*, that no change may be made to this Agreement that would adversely affect the federal income tax status of the Creditor Trust as a liquidating grantor trust. Technical or non-material amendments to or waivers of portions of this Agreement may be made as necessary, to clarify this Agreement or to enable the Creditor Trust to effectuate the terms of this Agreement, at the sole discretion of the Creditor Trustee.

ARTICLE XV
MISCELLANEOUS PROVISIONS

15.1 Intention of Parties to Establish Grantor Trust

This Agreement is intended to create a liquidating grantor trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as a grantor trust.

15.2 Preservation of Privilege

In connection with the vesting and transfer of the Creditor Trust Assets, including rights and Retained Causes of Action, any attorney-client privilege, work-product protection, or other privilege or immunity attaching or relating to any documents or communications (of any kind, whether written or oral, electronic or otherwise) held by the Debtors or the Committee shall be transferred to the Creditor Trust and shall vest in the Creditor Trust. Accordingly, in connection with the prosecution and/or investigation of the Retained Causes of Action by the Creditor Trust, acting by and through the Creditor Trustee, any and all directors, officers, employees, counsel, agents, or attorneys-in-fact, of the Debtors or the Committee, cannot assert any attorney-client privilege, work product protection, or other privilege or immunity attaching or relating to any documents or communications (of any kind, whether written or oral, electronic or otherwise) held by the Debtors or the Committee or otherwise prevent, hinder, delay, or impede production or discussion of documents or communications requested by the Creditor Trustee in discovery (whether formal or informal, and including without limitation, depositions, written discovery, and interviews). The Debtors, the Committee, and the Creditor Trust shall take all necessary actions to protect the transfer of such privileges, protections and immunities. The transfer to and vesting in the Creditor Trust of the Creditor Trust Assets on the Effective Date shall not effect a waiver of any privilege of the Debtors or the Committee, and upon such transfer, the Creditor Trust, acting by and through the Creditor Trustee, shall hold all rights with respect to such privileges, including the right to waive such privileges in its discretion.

15.3 Standing

The Creditor Trust and the Creditor Trustee shall have standing to object to Claims against the Debtors' estates, to assert and prosecute the Retained Causes of Action, to be heard on any other matters that may affect or relate to the Creditor Trust Assets and, as applicable, shall stand in the shoes of the Debtors with respect thereto.

15.4 Laws as to Construction

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to rules governing the conflict of law.

15.5 Severability

If any provision of this Agreement or the application thereof to any Person or entity or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision

to Persons or entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

15.6 Notices

Any notices or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered by electronic mail (at the addresses set forth below) and deposited, postage prepaid, in a post office or letter box addressed to the person or entity (or their successors or replacements) for whom such notice is intended at such address as set forth below, or such other addresses as may be filed with the Bankruptcy Court:

Creditor Trustee:

META Advisors LLC
175 Greenwich Street
3 World Trade Center
New York, NY 10007

With a copy to:

[•]

15.7 Notices if to a Beneficiary

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the person or entity for whom such notice is intended, or via electronic mail, to the name and address (1) set forth in the underlying Proof of Claim, if filed, (2) set forth on the Debtors' Schedules, if no Proof of Claim is filed, or (3) pursuant to a written change of address filed with the Bankruptcy Court and delivered to the Creditor Trust.

15.8 Survivability

Notwithstanding any provision of the Plan to the contrary, the terms and provisions of this Agreement shall remain fully binding enforceable notwithstanding any vacancy in the position of the Creditor Trustee.

15.9 Headings

The section headings contained in this Agreement are solely for the convenience of reference and shall not affect the meaning or interpretation of this Agreement or of any term or provision hereof.

15.10 Conflicts with Plan Provisions

Except as otherwise expressly stated herein, if any of the terms and/or provisions of this Agreement conflict with the terms and/or provisions of the Plan, then this Agreement shall govern.

15.11 Counterparts

This Agreement may be signed by the Parties hereto, in counterparts, which, when taken together, shall constitute one and the same document.

15.12 Jurisdiction

The Bankruptcy Court shall have jurisdiction regarding the Debtors, Creditor Trust, Creditor Trustee, and Creditor Trust Assets, including, without limitation, the determination of all disputes arising out of or related to administration of the Creditor Trust. The Bankruptcy Court shall have continuing jurisdiction and venue to hear and finally determine all disputes and related matters among the Parties arising out of or related to this Agreement or the administration of the Creditor Trust. The Parties expressly consent to the Bankruptcy Court hearing and exercising such judicial power as is necessary to finally determine all such disputes and matters. If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in this Agreement, the provisions of this Agreement shall have no effect on and shall not control, limit or prohibit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter, and all applicable references in this Agreement to an order or decision of the Bankruptcy Court shall instead mean an order or decision of such other court of competent jurisdiction.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have either executed and acknowledged this Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first written above.

[Signatures forthcoming]

Exhibit B

Redline to Creditor Trust Agreement

CREDITOR TRUST AGREEMENT

PREAMBLE

— This Creditor Trust Agreement (the “**Agreement**”) is entered into by and among Eye Care Leaders Portfolio Holdings, LLC and its debtor affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”) and ~~Meta~~**META** Advisors LLC—(~~“Meta”~~),² not individually, but solely in its capacity as trustee (the “**Creditor Trustee**” and, collectively with the Debtors, the “**Parties**”) in accordance with the Debtors’ Joint Chapter 11 Plan, dated July 1, 2024 (including all exhibits thereto, as the same may be further amended, modified, or supplemented from time to time, the “**Plan**”).¹

RECITALS

— WHEREAS, on January 16, 2024 (the “**Petition Date**”), each of the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas (the “**Bankruptcy Court**”) commencing their chapter 11 cases (the “**Chapter 11 Cases**”);

— WHEREAS, on February 8, 2024, the United States Trustee for the Northern District of Texas (the “**United States Trustee**”) appointed an official committee of unsecured creditors in the Chapter 11 Cases (as amended from time to time, the “**Committee**”);

— WHEREAS, on July 1, 2024, the Debtors filed the Plan;

— WHEREAS, on September [●], 2024, the Bankruptcy Court entered an order confirming the Plan (the “**Confirmation Order**”);

¹ Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Plan.

—WHEREAS, the Plan provides for the creation of the Creditor Trust, as of the Effective Date, to prosecute, settle, liquidate, and otherwise administer the Creditor Trust Assets, and to Distribute the same or proceeds of the same to the holders of Allowed General Unsecured Claims and, solely to the extent that the Purported Prepetition Lenders' contingent beneficial interest in the Creditor Trust becomes non-contingent in accordance with section IV.B.ii of the Plan, to the holders of Purported Prepetition Lenders' Secured Claims, in accordance with the terms of the Plan, the Confirmation Order, and this Agreement;

—WHEREAS, this Agreement is executed to establish the Creditor Trust and to facilitate the Plan;

—WHEREAS, the Creditor Trust is created on behalf of, and for the benefit of, the holders of Allowed (i) Class 2 Purported Prepetition Lenders' Secured Claims (solely to the extent that the Purported Prepetition Lenders' contingent beneficial interest in the Creditor Trust becomes non-contingent in accordance with section IV.B.ii of the Plan); and (ii) Class 4 General Unsecured Claims (each a "**Beneficiary**");

—WHEREAS, the Creditor Trust is intended to qualify as a "liquidating trust" under the United States Internal Revenue Code of 1986, as amended, (the "**IRC**") and the Treasury Regulations promulgated thereunder, specifically Treasury Regulation section 301.7701-4(d), and as such be treated as a "grantor trust" for federal income tax purposes with the Beneficiaries treated as the grantors and owners of the Creditor Trust, and in that regard it is the Parties' intention that this Agreement satisfy the requirements set forth in Revenue Procedure 94-45, 1994-2 C.B. 684 (July 11, 1994).

—NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein and in the Plan and the Confirmation Order, the Parties agree as follows:

ARTICLE I.

ARTICLE INAME **ESTABLISHMENT OF THE CREDITOR TRUST AND CREDITOR TRUSTEE**

1.1.1.1 Name of Trust; Appointment of Creditor Trustee

The legal name of the Creditor Trust shall be "[ECL Creditor Trust]" The Committee has selected ~~Meta~~META Advisors LLC, which is hereby appointed to serve as the

initial Creditor Trustee under the Plan and hereby accepts this appointment and agrees to serve in such capacity effective upon the Effective Date of the Plan and pursuant to the terms of the Confirmation Order, the Plan, ~~this Agreement, and the engagement letter dated September [●], 2024, that is attached hereto as Exhibit A (the "Engagement Letter").~~ and this Agreement. A successor Creditor Trustee shall be appointed as set forth in Section 11.1 in the event the Creditor Trustee is removed or resigns pursuant to this Agreement or if the Creditor Trustee otherwise vacates the position.

1.2 Transfer of Assets to Creditor Trust

Pursuant to the Plan, the Debtors and the Creditor Trustee hereby establish the Creditor Trust on behalf of the Beneficiaries, to be treated as the grantors and deemed owners of the Creditor Trust Assets. The Debtors hereby irrevocably grant, release, assign, transfer, and convey and shall be deemed to have irrevocably granted, released, assigned, transferred, and conveyed to the Creditor Trust, all of their rights, title, and interests in and to all of the Creditor Trust Assets, including but not limited to the Retained Causes of Action, and in accordance with section 1141 of the Bankruptcy Code, the Creditor Trust Assets shall automatically vest in the Creditor Trust, free and clear of any Liens, Claims or encumbrances. Such transfer includes, but is not limited to, all rights to assert, waive or otherwise exercise any attorney-client privilege, work product protection or other privilege, immunity, or confidentiality provision vested in, or controlled by, the Debtors or their estates in respect of the Creditor Trust Assets. The Creditor Trustee agrees to accept and hold the Creditor Trust Assets in the Creditor Trust for the benefit of the Beneficiaries, subject to the terms of the Confirmation Order, the Plan and this Agreement. The Creditor Trustee shall have no duty to arrange for any of the transfers contemplated under this Agreement or by the Plan or to ensure their compliance with the terms of the Plan and the Confirmation Order, and shall be conclusively entitled to rely on the legality and validity of such transfers.

For all federal income tax purposes, all Parties and Beneficiaries shall treat the transfer of the Creditor Trust Assets by the Debtors to the Creditor Trust, as set forth in Article XI of this Agreement and in the Plan, as a transfer of such assets by the Debtors to the Beneficiaries entitled to distributions under this Agreement followed by a transfer by such Beneficiaries to the Creditor Trust. Thus, the Beneficiaries shall be treated as the grantors and owners of a grantor trust for federal income tax purposes.

1.3 Title to Assets

ARTICLE II.

Pursuant to the Plan, all of the Debtors' right, title and interest in and to Creditor Trust Assets, including all such assets held or controlled by third parties, are automatically vested in the Creditor Trust on the Effective Date and shall comprise assets of the Creditor Trust for all purposes, free and clear of all Liens, Claims, encumbrances, Interests, contractually imposed restrictions of any kind, and other interests, except as specifically provided in the Plan, and such transfer is on behalf of the Beneficiaries to establish the Creditor Trust. The Creditor Trust, and the Creditor Trustee on behalf of the Creditor Trust, shall be authorized to obtain possession or

control of, liquidate, and collect all of the Creditor Trust Assets in the possession or control of third parties, pursue all Retained Causes of Action, whether arising before or after the Petition Date, and pursue, assert and/or exercise all rights of setoffs and recoupment and defenses of the Debtors or their Estates to any counterclaims that may be asserted by any and all defendants as to any Retained Causes of Action or by holders of Disputed Claims. Without limiting the generality of the foregoing, the Creditor Trust, and the Creditor Trustee on behalf of the Trust, shall have the right to invoke section 542 of the Bankruptcy Code to pursue turnover of Creditor Trust Assets. On the Effective Date, the Creditor Trust, acting by and through the Creditor Trustee, shall be substituted for the Debtors for all purposes with respect to Creditor Trust Assets and administration of Claims and Interests. To the extent any law or regulation prohibits the transfer of ownership of any of the Creditor Trust Assets from the Debtors to the Creditor Trust and such law is not superseded by the Bankruptcy Code, the Trust's interest shall be a lien upon and security interest in such Creditor Trust Assets, in trust, nevertheless, for the sole use and purposes set forth in this Agreement, and this Agreement shall be deemed a security agreement granting such interest thereon without need to file financing statements or mortgages. By executing this Agreement, the Creditor Trustee on behalf of the Creditor Trust hereby accepts all of such property as Creditor Trust Assets, to be held in trust for the Beneficiaries, subject to the terms of this Agreement and the Plan.

1.4 Capacity of Creditor Trust. Notwithstanding any state or federal law to the contrary or anything herein, the Creditor Trust shall itself have the capacity, in its own right and name, to act or refrain from acting, including the capacity to sue and be sued and to enter into contracts. The Creditor Trust may alone be (but is not required to be) the named movant, respondent, party plaintiff or defendant, or the like in all adversary proceedings, contested matters, and other state or federal proceedings brought by or against it, and may settle and compromise all such matters in its own name.

ARTICLE II

DUTIES AND POWERS OF THE CREDITOR TRUST AND CREDITOR TRUSTEE

2.22.1 Generally

~~————The The Creditor Trust, acting by and through the~~ Creditor Trustee shall be deemed the Estates' representative in accordance with section 1123 of the Bankruptcy Code and shall have the purpose of (i) holding the Creditor Trust Assets, which shall include, among other assets, the Retained Causes of Action and the Debtors' Cash (including, but not limited to, (a) Sale proceeds after satisfying payments pursuant to the Plan, and (b) proceeds of the DIP Facility); and (ii) distributing the proceeds related to the liquidation of such Creditor Trust Assets, net of all claims, expenses, charges, liabilities, and obligations of the Creditor Trust, to the Beneficiaries in accordance with ~~the terms of this Plan and the Creditor Trust Agreement, and (iii) taking action on behalf of, and representing the Creditor Trust.~~ The Creditor Trustee shall have the authority to bind the Creditor Trust within the limitations set forth herein, but shall for all purposes hereunder be acting in the capacity of Creditor Trustee and not individually.

2.72.2 Scope of Authority of Creditor Trust

—Within the limitations set forth herein, and subject to the provisions set forth in this Agreement, the responsibilities and authority of the Creditor Trust, acting by and through the Creditor Trustee, shall include, without limitation:- (i) holding and administering the Creditor Trust Assets; (ii) evaluating and determining strategy with respect to the Retained Causes Action and litigating the Retained Causes of Action, or settling, transferring, releasing or abandoning any and all Retained Causes of Action on behalf of the Creditor Trust; (iii) facilitating the prosecution or settlement of objections to or estimations of Claims asserted against the Debtors, their Estates, the Creditor Trust or the Creditor Trust Assets; (iv) calculating and implementing distributions to the Beneficiaries in accordance with the terms of the Plan; (v) filing all required tax returns for the Creditor Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a); (vi) performing such acts as are necessary for the administration, resolution, and wind-down of the Debtors' Estates after the Effective Date including, without limitation, preparing and filing final tax returns for the Debtors; (vii) retaining Creditor Trust Professionals and Creditor Trust Non-Professionals (both as defined herein); (viii) receiving providing reasonable compensation to Creditor Trustee for performing the performance of its services as Creditor Trustee in accordance with the Engagement Letter and paying the reasonable fees, costs and expenses of any Creditor Trust Professionals and Creditor Trust Non-Professionals in accordance with the applicable provisions of this Agreement; (ix) filing periodic reports as required under the Plan; and (x) carrying out such other responsibilities not specifically set forth herein as may be vested in the Creditor Trust pursuant to the Confirmation Order, the Plan, this Agreement, or other Bankruptcy Court order, or as may be necessary and proper to carry out the provisions of the Confirmation Order, the Plan or this Agreement.

2.82.3 Creditor Trust Obligations to Creditor Trust and Beneficiaries

~~—The Creditor Trustee's actions as Creditor Trustee will be subject to standards required under Texas law.~~

Notwithstanding anything in the Plan or this Agreement to the contrary, the Creditor Trustee shall always act in the best interests of the Creditor Trust Beneficiaries and in furtherance of the purpose of the Creditor Trust as set forth in the Plan. The Creditor Trustee shall have fiduciary duties to the Beneficiaries consistent with the fiduciary duties that a member of an official committee appointed pursuant to section 1102 of the Bankruptcy Code has to the creditor constituents represented by such committee and shall exercise his, her, or its responsibilities

accordingly. Except for obligations expressly imposed on the Creditor Trustee by this Agreement, to the extent that, at law or in equity, the Creditor Trustee has duties (including fiduciary duties) to the Beneficiaries or to any other person that is a party to or is otherwise bound by this Agreement, such duties are hereby eliminated by this Agreement to the fullest extent permitted by applicable law; provided, however, that this Agreement does not eliminate the implied contractual covenant of good faith and fair dealing.

2.92.4 Additional Powers of Creditor ~~Trustee~~ Trust

—In connection with the administration of the Creditor Trust, subject to and except as otherwise set forth in the Confirmation Order, the Plan or this Agreement, the Creditor ~~Trustee~~ Trust is hereby authorized to perform those acts necessary to accomplish the purposes of the Creditor Trust—without further order of the Bankruptcy Court. Without limiting, but subject to, the foregoing, the Creditor Trust, acting by and through the Creditor Trustee, shall have the power to take the following actions and any powers reasonably incidental thereto, unless otherwise provided in this Agreement and subject to the limitations contained herein and in the Confirmation Order and the Plan:

(1) ~~collect~~ Collect and liquidate the Creditor Trust Assets—under, including through the jurisdiction ~~sale of the Bankruptcy Court; any Creditor Trust Assets;~~

(2) hold legal title ~~(on behalf of the Creditor Trust as Creditor Trustee, but not individually)~~ to the Creditor Trust Assets, including, but not limited to, the Retained Causes of Action and the Debtors' Cash, and be expressly authorized to vote any Claim held by the Creditor Trust in any case or proceeding under the Bankruptcy Code or otherwise and to receive any distribution therein;

(3) assert, prosecute, object to, pursue, compromise, and settle (or decline to do any of the foregoing) in accordance with the Creditor Trustee's reasonable business judgment, all matters affecting the Estates, including, without limitation, Disputed Claims and/or other Retained Causes of Action related thereto, in accordance with the terms set forth in Article V of this Agreement and except as provided therein, without further order of the Bankruptcy Court;

(4) assert and enforce all legal or equitable remedies and defenses belonging to the Debtors or their Estates, including, without limitation, setoff, recoupment, and any rights under Bankruptcy Code section 502(d);

(5) act on behalf of the Debtors in all adversary proceedings (including, without limitation, the Adversary Proceeding) and contested matters then pending or that can be commenced in the Bankruptcy Court and in all actions and proceedings pending or commenced elsewhere, and to allow, settle, retain, enforce, dispute, or adjust any Claim and otherwise pursue actions involving the Assets of the Debtors that could arise or be asserted at any time under the Bankruptcy Code, unless otherwise waived, relinquished, or transferred in the Plan;

(6) take such actions the Creditor Trustee deems appropriate in its reasonable business judgment against any Person with respect to a Claim or Retained Cause of Action and commence any process or proceeding in the Bankruptcy Court or in any court of competent jurisdiction in accordance with applicable laws, except as otherwise set forth in this Agreement;

(7) make distributions to holders of all Allowed General Unsecured Claims and Purported Prepetition Lenders' Secured Claims (if applicable), including Professional Fee Claims (to the extent applicable), in accordance with the Plan and Article IV of this Agreement;

(8) proceed with and employ all discovery devices permitted under applicable law, including Rule 2004 of the Bankruptcy Rules, in order to investigate any Claims or Retained Causes of Action;

(9) employ, without further order of the Bankruptcy Court, Creditor ~~Trustee~~Trust Professionals and Creditor ~~Trustee~~Trust Non-Professionals to assist the Creditor ~~Trust and Creditor~~Trust Trustee in carrying out ~~the Creditor Trustee's~~all duties hereunder and under the Plan and the Confirmation Order, and compensate and reimburse the expenses of the Creditor ~~Trustee~~Trust Professionals and Creditor ~~Trustee~~Trust Non-Professionals in the terms to be agreed to by the Creditor ~~Trustee~~Trust and the Creditor ~~Trustee~~Trust Professionals and the Creditor ~~Trustee~~Trust Non-Professionals without further order of the Bankruptcy Court, to the extent set forth in this Agreement;

(10) open and maintain bank accounts, invest Cash in accordance with section 2.7 of this Agreement, withdraw and make distributions of Cash to holders of all Allowed General Unsecured Claims and Purported Prepetition Lenders' Secured Claims (if applicable) and pay taxes and other obligations owed by the Debtors or incurred by the Creditor Trustee from the Creditor Trust Assets in accordance with the Plan;

(11) be expressly authorized and required to pay expenses and make disbursements necessary to preserve, liquidate, and enhance the Creditor Trust Assets;

(12) be expressly authorized to purchase such insurance coverage as the Creditor Trustee, in its sole discretion, deems necessary and appropriate with respect to the liabilities and obligations of the Creditor Trustee;

(13) be expressly authorized to purchase such insurance coverage as the Creditor Trustee, in its sole discretion, deems necessary and appropriate with respect to real and personal property which may be or may become Creditor Trust Assets;

(14) be expressly authorized to incur any reasonable and necessary expenses in liquidating and converting the Creditor Trust Assets to Cash, or otherwise administering the Creditor Trust, as set forth in the Confirmation Order, the Plan or this Agreement; ;

(15) coordinate the turnover of property, if any, subject to rejected executory contracts or abandonment or liquidation of any retained Creditor Trust Assets and dispose of, and deliver title to others of, or otherwise realize value of, all the remaining Creditor Trust Assets;

(16) abandon, or donate to the Anthony H. N. Schnelling Endowment Fund maintained by the American Bankruptcy Institute to assist in the provision of resources for research and education, any Creditor Trust Assets that the Creditor Trust determines to be too impractical to distribute to the Beneficiaries or of inconsequential value to the Creditor Trust and the Beneficiaries;

~~(16)~~(17) have any required financial statements and ~~United States~~U.S. Trustee post-confirmation quarterly reports prepared, until such time as the Bankruptcy Court enters an order (i) dismissing the Chapter 11 Cases, (ii) converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, or (iii) approving a final decree closing the Chapter 11 Cases;

~~(17)~~(18) file periodic reports with the Bankruptcy Court as required under the Plan;

~~(18)~~(19) execute and deliver all documents, and take all actions, necessary to consummate the Plan and implement this Agreement;

~~(19)~~(20) implement and/or enforce all provisions of the Plan;

~~(20)~~(21) assert and/or waive, as the Creditor Trustee deems appropriate, any attorney-client privilege or similar privilege belonging to any of the Debtors immediately prior to the Effective Date of the Plan;

~~(21)~~(22) establish certain reserves and escrow accounts, and make distributions from such reserves and escrow accounts as required under the Plan;

~~(22)~~(23) to the extent the Creditor ~~Trustee~~Trust deems it necessary or appropriate, value the Creditor Trust Assets based on the Creditor Trustee's good faith determination, which valuation shall be used by all Parties and the Beneficiaries for all federal income tax purposes, and seeking resolution from the Bankruptcy Court of any dispute related to such valuation; and

~~(23)~~(24) such other powers as may be vested in or assumed by the Creditor Trust or Creditor Trustee pursuant to this Agreement, the Plan, other Bankruptcy Court order, or as may be needed or appropriate to carry out the provisions of the Plan and this Agreement.

2.102.5 General Authority of the Creditor ~~Trustee~~Trust

Unless specifically stated otherwise herein, the Creditor ~~Trustee~~Trust shall not be required to obtain Bankruptcy Court approval with respect to any proposed action or inaction: (a) authorized in this Agreement, or (b) specifically contemplated in the Confirmation Order or the Plan.

2.112.6 Limitation of Creditor ~~Trustee's~~Trust's Authority; No Ongoing Business

(a) The Creditor ~~Trustee~~Trust shall have no power or authority except as set forth in this Agreement or in the Confirmation Order or the Plan.

(b) For federal income tax purposes, the Creditor ~~Trustee~~Trust shall not be authorized to engage in any trade or business with respect to the Creditor Trust Assets or any proceeds therefrom except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Creditor Trust. ~~The Creditor Trustee shall take such actions consistent with the prompt orderly liquidation of the Creditor Trust Assets as required by applicable law and consistent with the treatment of the Creditor Trust as a liquidating trust under Treasury Regulation section 301.7701-4(d), to the extent such actions are permitted by this Agreement.~~

2.122.7 Investment and Safekeeping of Creditor Trust Assets

~~—All monies and other assets received by the Creditor Trustee shall, until distributed or paid over as herein provided, be held in trust for the benefit of the Beneficiaries, but need not be segregated from all other monies and assets of the Creditor Trustee, and further, shall be held in trust for the benefit of the Beneficiaries.—Trust.~~

~~The Creditor Trustee shall be responsible for establishing and maintaining any segregated, reserve or escrow accounts as are Trust may, but is not required to carry out the obligations of the Creditor Trust under the Plan.~~

~~—The Creditor Trustee shall promptly,~~ invest any such monies in the manner set forth in this section 2.7, ~~but and shall otherwise be under have~~ no liability for interest or income on any monies received by the Creditor Trust hereunder and held for distribution or payment to the Beneficiaries, except as such interest shall actually be received. ~~Investment of any monies held by the Creditor Trust shall be administered in accordance with the general duties and obligations hereunder. The right and power of the Creditor Trustee to invest the Creditor Trust Assets, the proceeds thereof, or any income earned by the Creditor Trust, shall be limited to the right and power to (i) invest such Creditor Trust Assets (pending distributions in accordance with the Confirmation Order, the Plan or this Agreement) in (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof, or (c) an open-ended management investment company, registered under the Investment Company Act of 1940 that is regulated as a “money market fund” pursuant to Rule 2a-7 under the Investment Company Act of 1940, provided that the fund: (1) invests exclusively in United States Treasury bills and United States Treasury Notes owned directly or through repurchase agreements; (2) has received the highest money market fund rating from a nationally recognized statistical rating organization, such as Standard & Poor’s or Moody’s; (3) has agreed to redeem funds shares in cash, with payment being made no later than the business day following a redemption request by a shareholder, except in the event of~~

an unscheduled closing of the Federal Reserve Banks or the New York Stock Exchange; and (4) has adopted a policy that it will notify its shareholders 60 days prior to any change in its policy (A) to invest exclusively in Treasury Securities as described in (1) above or (B) to redeem fund shares in cash no later than the business day following a redemption request by the shareholder, with limited exceptions for unscheduled closings of Federal Reserve Banks or the New York Stock Exchange; or (ii) deposit such assets in demand deposits at any bank or trust company, (collectively, the “**Permissible Investments**”) *provided, however*, that the scope of any such Permissible Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulation section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the guidelines of the Internal Revenue Service of the United States of America (the “**IRS**”), whether set forth in IRS rulings, other IRS pronouncements or otherwise.

~~2.132.8~~ Creditor Trustee Conflicts of Interest

———If the Creditor Trustee determines in its reasonable discretion that the Creditor Trustee has a material conflict of interest with respect to any matter, the Creditor Trustee shall, at its option and in its own discretion, designate a Person to act on behalf of the Creditor Trust solely with respect to such matter with such designee’s authority to act on behalf of the Creditor Trust to terminate upon the matter’s conclusion. ~~If the Creditor Trustee is unable to appoint a designee to act on behalf of the Creditor Trust with respect to any matter, the Creditor Trustee, after notice to the ~~United States~~U.S. Trustee, may request the Bankruptcy Court to approve a designee of the Creditor Trustee to act on behalf of the Creditor Trust solely with respect to such matter, with such designee’s authority to act on behalf of the Creditor Trust to automatically terminate upon the matter’s conclusion.~~

~~ARTICLE III.~~

ARTICLE III

TERM AND COMPENSATION FOR CREDITOR TRUSTEE

3.1 Compensation

(a) The Creditor Trustee shall be entitled to receive compensation for services rendered on behalf of the Creditor Trust and reimbursement of expenses ~~as provided in the Engagement Letter, in accordance with the terms established by the Debtors, the Committee, and the Creditor Trustee.~~

(b) All compensation and other amounts payable to the Creditor Trustee shall be paid out of the Creditor Trust Assets, subject to any applicable limitations or restrictions set forth in the Confirmation Order, the Plan, or this Agreement, ~~or the Engagement Letter.~~

3.2 Termination

~~—~~The duties, responsibilities and powers of the Creditor Trustee will terminate on the date the Creditor Trust is dissolved and terminated pursuant to section 15.1, or by an order of the Bankruptcy Court.

3.3 No Bond

~~—~~The Creditor Trustee shall serve without bond.

3.4 Removal

~~—~~The Creditor Trustee may be removed only for cause by a Final Order of the Bankruptcy Court upon a motion by any party in interest and after notice and a hearing; *provided, however,* that the Creditor Trustee may not be removed until a successor Creditor Trustee has been named or is capable of being named immediately upon such removal. ~~For purposes of removing the Creditor Trustee, “cause” shall mean gross negligence, breach of fiduciary duty, breach of trust, or reckless or willful mishandling of the Creditor Trust Assets. Any fees and unreimbursed expenses that have been properly incurred by the Creditor Trustee in accordance with the terms of this Agreement~~ ~~and the Engagement Letter~~ that are owing to the Creditor Trustee as of the date of the Creditor Trustee’s removal shall be paid to the Creditor Trustee within 5 days of the removal date.

3.5 Resignation of Creditor Trustee

—The Creditor Trustee may resign at any time by giving not less than sixty (60) days prior written notice thereof to the Bankruptcy Court. -Such resignation shall become effective prior to the expiration of such sixty (60) day notice period upon the appointment of a permanent or interim successor Creditor Trustee.

3.6 Trust Continuance

—The death, incapacity, dissolution, resignation, or removal of the Creditor Trustee shall not terminate the Creditor Trust or revoke any existing agency (other than any agency of such Creditor Trustee and the Creditor Trustee hereunder) created pursuant to this Agreement or invalidate any action previously taken by the Creditor Trustee. -By accepting the position as Creditor Trustee (whether permanent or interim), such successor Creditor Trustee agrees that the provisions of this Agreement shall be binding upon, and inure to the benefit of, such successor Creditor Trustee and all of its heirs and legal and personal representatives, successors, or assigns.

~~ARTICLE IV.~~

ARTICLE IV PROVISIONS REGARDING DISTRIBUTIONS

4.1 Priority and Method of Distributions

(a) Generally.- The Creditor Trustee, on behalf of the Creditor Trust, or such other person or entity as may be designated in accordance with this Agreement, will make distributions to the Beneficiaries in accordance with this Agreement and in accordance with the priorities set forth in, and the other provisions of, the Plan. The Creditor Trust may engage disbursing agents and other Persons to assist in making such distributions. Whenever any distribution to be made under the Confirmation Order, the Plan or this Agreement is due on a day other than a Business Day, such distribution shall be made, without interest, on the immediately succeeding Business Day, but any such distribution will have been deemed to have been made on the date due.

(b) Distribution of Creditor Trust Assets and Proceeds Thereof.- All Creditor Trust Assets and all proceeds therefrom shall be distributed in accordance with the terms of this Agreement and of, and with the priorities established by, the Plan and the Confirmation Order.

(c) Reserves; Pooling of Reserved Funds

Before any distribution can be made, the Creditor Trust shall, in its reasonable discretion, establish, supplement, and maintain a reserve in an amount sufficient to meet any and all Creditor Trust fees and expenses, including but not limited to attorneys' fees and expenses and the fees and expenses of other professionals,. In accordance with section 10.1 of this Agreement, the Creditor Trust may also maintain as necessary a reserve for Disputed Claims. For the avoidance of doubt, the Creditor Trustee may withhold any distribution pending the Creditor Trust's determination of whether to object to a General Unsecured Claim. Any such withheld distribution shall become part of the Creditor Trust's reserve for Disputed Claims and shall be distributed to the appropriate Beneficiary no later than the first distribution after a decision is made not to object to the pertinent General Unsecured Claim or the General Unsecured Claim becomes Allowed. The Creditor Trustee need not maintain the Creditor Trust's reserves in segregated bank accounts and may pool funds in the reserves with each other and other funds of the Creditor Trust; *provided, however*, that the Creditor Trust shall treat all such reserved funds as being held in a segregated manner in its books and records.

(d) Distributions Net of Reserves and Costs

Distributions shall be made net of reserves in accordance with the Plan and this Agreement, and also net of the actual and reasonable costs of making the distributions. For the avoidance of doubt, all fees and costs of the Creditor Trust must be satisfied or reserved for before any Beneficiary may receive a distribution. The Creditor Trustee may sell or otherwise dispose of Creditor Trust Assets in order to pay such fees and costs.

(e)(e) Periodic Distribution Requirement.- Subject to the provisions of this Article IV and only to the extent required to maintain grantor trust tax status, the Creditor Trustee is required to distribute at least once per twelve-month period to the Beneficiaries the Creditor Trust's net income plus all net proceeds from the sale, realization, settlement or liquidation of the Creditor Trust Assets, except that the Creditor Trustee may retain an amount of net proceeds or net income reasonably necessary to maintain the value of the Creditor Trust Assets, to satisfy current and projected expenses of the Creditor Trust, and to meet Claims and contingent liabilities (including Disputed Claims-), and the retention of such amounts may preclude distributions to such Beneficiaries.

(d)(f) Withholding. The Creditor Trustee may withhold from amounts distributable to any person or entity any and all amounts, to be determined in the Creditor Trustee's reasonable sole discretion, required by any law, regulation, rule, ruling, directive or other government equivalent of the United States or of any political subdivision thereof. -To the extent that amounts are so withheld and paid over to the appropriate governmental entity, such amounts

shall be treated for all purposes of this Agreement as having been paid to the person or entity in respect of whom such deduction and withholding was made.

~~(e)(g)~~ Tax Identification Numbers, Tax Information and Forfeiture.- The Creditor Trust shall be authorized to require each holder of a Claim to provide it with an executed Form ~~W-9W9~~, Form W-8, or any other tax form, documentation or certification as may be requested by the Creditor Trust as a condition precedent to being sent a distribution under the Plan. -If a holder of a Claim does not provide the Creditor Trust with an executed Form W-9, Form W-8 or other requested tax form within ninety (90) days after the date of the initial request, the Creditor Trust may, in its sole discretion: (1) make such distribution under the Plan net of applicable withholding; (2) reserve such distribution under the Plan, in which case (i) such holder shall be deemed to have forfeited the right to receive any current, reserved or future distribution under the Plan, (ii) any such distribution under the Plan shall revert to the Creditor Trust for all purposes, including, but not limited to, for distribution to other Allowed Claims, and (iii) the Claim of the holder originally entitled to such distribution under the Plan shall be irrevocably waived and forever barred without further order of the Bankruptcy Court, notwithstanding any federal, state or provincial escheat, unclaimed or abandoned property law to the contrary; or (3) establish any other mechanisms it believes are reasonable and appropriate. -The Creditor Trust reserves the right to allocate and distribute all distributions under the Plan in compliance with all applicable wage garnishments, alimony, child support and other spousal awards, Liens and similar encumbrances.

4.2 Delivery of Distributions

—Subject to the provisions of Bankruptcy Rule 2002(g), and except as otherwise provided herein, distributions and deliveries to holders of Claims (including distributions to the Beneficiaries) shall be made at (1) at the address of each such Beneficiary set forth on the Debtors' books and records unless superseded by (i) in the underlying Proof of Claim, if filed, (2) at the address set forth on proof(s) the Debtors' Schedules, if no Proof of claim Claim is filed by any such Beneficiary, or (ii) the 3) pursuant to a written change of address provided in connection filed with a transfer pursuant to section 13.1 the Bankruptcy Court and delivered to the Creditor Trust.

4.3 Non-Cash Property

—If, in the Creditor Trustee's judgment, any Creditor Trust Asset that is not Cash cannot be sold, settled, or otherwise reduced to Cash in a commercially reasonable manner, the Creditor Trustee shall have the right to abandon, withdraw, or otherwise dispose of such property consistent with applicable law, including by donation of such property to a charity designated by the Creditor Trustee. ~~Except in the case of willful misconduct, no party in interest shall have a~~

~~cause of action against the Creditor Trust, the Creditor Trustee, or any partner, director, officer, employee, representative, consultant of, or professional employed by the Creditor Trustee in connection with the Creditor Trust arising from or related to the disposition of non-Cash property in accordance with this section 4.3.~~

4.4 Means of Payment

~~Any distribution to be made by the Creditor Trust pursuant to the Plan shall be in Cash. The Creditor Trust shall distribute such Cash by check; provided, however that the Creditor Trustee may agree, in its sole discretion, to make any distribution by wire transfer or such other method as the Creditor Trustee deems appropriate under the circumstances.~~

4.5 De Minimis Distributions

~~The Creditor Trust shall have no obligation to make a distribution that is less than Fifty Dollars (\$50) in Cash. If an interim distribution to the holder of an Allowed Claim is less than \$50, such distribution shall be held for future distributions. If the final distribution to any holder of an Allowed Claim is less than \$50, such amount shall become and constitute unclaimed property and be treated in accordance with section 4.6 of this Agreement.~~

4.5.6 Undeliverable Distributions

~~Subject to Bankruptcy Rule 9010, all distributions under the Plan (including distributions to Beneficiaries) shall be made at the address of each holder of an Allowed Claim: (1) set forth in the underlying proof of claim, if filed, (2) set forth on the Debtors' Schedules, if no proof of claim is filed, or (3) pursuant to a written change of address filed with the Bankruptcy Court and delivered to the Creditor Trust. If any distribution to the holder of an Allowed Claim (including distributions to Beneficiaries) is returned as undeliverable or otherwise is unclaimed, no further distributions to such holder shall be made unless and until the Creditor Trustee is notified of such holder's then-current address, at which time all missed distributions shall be made to such holder without interest. All such distributions, as well as any distributions by check or other means that have not been negotiated shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of sixty (60) days after the date of the distribution in question. Requests for reissuance of any check shall be made to the Creditor Trust by the holder of the Allowed Claim to whom such check originally was issued within such sixty (60) day period. After such 60th day, and notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary (i) all unclaimed property or interest in property in respect of the distribution in question shall revert to the Creditor Trust for all purposes, including, but not limited to, distributions to other holders of Allowed Claims, and (ii) the Claim of any holder with respect to such unclaimed property or interest in property shall be discharged and forever barred.~~

ARTICLE V.

4.7 Time Bar to Cash Payments Checks issued by the Creditor Trust in respect of Allowed Claims shall be null and void if not negotiated within sixty (60) days after the date of issuance thereof. Requests for reissuance of any check shall be made to the Creditor Trust by the holder of the Allowed Claim to whom such check originally was issued within such sixty (60) day period. Thereafter, the amount represented by such voided check shall irrevocably revert to the Creditor Trust for all purposes, including, but not limited to, distribution to other holders of Allowed Claims. Any Claim in respect of such voided check shall be discharged and forever barred notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary.

ARTICLE V

PROSECUTION AND RESOLUTION OF DISPUTED, CONTINGENT AND UNLIQUIDATED CLAIMS AND RETAINED CAUSES OF ACTION

5.1 Objections to Claims; Prosecution of Disputed Claims

—The Creditor ~~Trustee, on behalf of Trust, acting by and through~~ the Creditor ~~Trust~~Trustee, shall have the exclusive right to object to the allowance of any Claims by no later than the Objection Deadline. -The Creditor ~~Trustee~~Trust shall have the right to object to the allowance of Claims with respect to which the Creditor ~~Trustee~~Trust disputes classification, liability, or allowance in whole or in part. -The Creditor ~~Trustee~~Trust shall have the sole authority to settle, without approval of the Bankruptcy Court, any and all such objections to Claims; *provided, however*, that the Creditor Trustee may not settle any objection to a Claim where (i) the remaining claim amount after the settlement in dispute exceeds \$250,000 and (ii) the remaining claim exceeds \$250,000 without approval of the Bankruptcy Court.

5.2.5.2 Estimation of Claims

—The Creditor ~~Trustee~~Trust may at any time request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Section 502(c) of the Bankruptcy Code regardless of whether the Debtors or the Creditor ~~Trustee~~Trust previously have objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. -The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. -Subject to the provisions of Section 502(j) of the Bankruptcy Code, in the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, the amount so estimated

shall constitute the maximum allowed amount of such Claim. -If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Creditor Trustee may pursue supplementary proceedings to object to the allowance of such Claim. -All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not necessarily exclusive of one another. -Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

~~5.3.5.3~~ Payments and Distributions on Disputed Claims

(a) Notwithstanding any provision hereof to the contrary, the Creditor ~~Trustee~~Trust may, in its reasonable discretion, pay the undisputed portion of a Disputed Claim. Notwithstanding the foregoing, the Creditor ~~Trustee~~Trust will set aside for each holder of a Disputed Claim such portion of Cash as may be necessary to provide required distributions if that Claim were an Allowed Claim, either based upon the amount of the Claim as filed with the Bankruptcy Court or the amount of the Claim as estimated by the Bankruptcy Court.

(b) At such time as a Disputed Claim becomes, in whole or in part an Allowed Claim, the Creditor ~~Trustee~~Trust shall distribute to the holder thereof the distributions, if any, to which such holder is then entitled under the Confirmation Order, the Plan or this Agreement. -Such distribution, if any, will be made as soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing such Disputed Claim becomes a Final Order. -No interest will be paid on Disputed Claims that later become Allowed or with respect to any distribution in satisfaction thereof to a holder.

~~5.4.5.4~~ Prosecution of Retained Causes of Action

———The Creditor ~~Trustee, on behalf of Trust, by and through~~ the Creditor ~~Trust~~Trustee, shall have the exclusive right to assert and prosecute in accordance with the ~~Creditor Trustee's~~sits reasonable business judgment the Retained Causes of Action. -The Creditor ~~Trustee~~Trust shall have the authority to settle and comprise, in its sole discretion and without approval of the Bankruptcy Court, any and all Retained Causes of Action; *provided, however*, that the Creditor Trustee may not settle any Retained Cause of Action where the initial amount of such Retained Cause of Action, without consideration of any defenses to the same, exceeds \$~~250~~500,000 without approval of the Bankruptcy Court; *provided, further, however*, that any settlement, compromise or other disposition of the Adversary Proceeding shall require approval of the Bankruptcy Court.

~~ARTICLE VI.~~

ARTICLE VI
LIABILITY AND EXCULPATION PROVISIONS

6.1 Exculpation/Indemnification

(a) The Creditor Trust and the Creditor Trust Indemnified Parties (including the Creditor Trust Professionals and the Creditor Trust Non-Professionals) (collectively, the “**Covered Persons**”) shall be, and hereby are, exculpated by all Persons, including the Beneficiaries and any other holders of Claims, from any and all claims, causes of action and other assertions of liability arising out of the discharge of the powers and duties conferred upon them by the Plan, this Agreement, or any order of the Bankruptcy Court entered pursuant to, or in furtherance of, the Plan, or by applicable law, except for actions or omissions to act that are determined by a Final Order to have arisen out of fraud, gross negligence, or willful misconduct. ~~No Person shall have standing, or be permitted to pursue, any claim or cause of action against any of the Covered Persons for making payments in accordance with this Agreement, the Confirmation Order or the Plan, or for implementing any other provision of the Confirmation Order, the Plan or this Agreement.~~ To the fullest extent permitted by applicable law, the Creditor Trust shall: - (i) indemnify, defend, and hold harmless the Covered Persons for, and shall hold them harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost, or expense (including the reasonable fees and expenses of their respective professionals) incurred without fraud, gross negligence or willful misconduct on the part of the Creditor Trust Indemnified Parties (including the Creditor Trust Professionals and the Creditor Trust Non-Professionals) (which fraud, gross negligence or willful misconduct, if any, must be determined by a Final Order of a court of competent jurisdiction) for any action taken, suffered, or omitted to be taken by the Creditor Trust Indemnified Parties (including the Creditor Trust Professionals and the Creditor Trust Non-Professionals) in connection with the acceptance, administration, exercise, and performance of their duties under the Plan, Confirmation Order, or this Agreement, as applicable; *provided, that*, an act or omission taken with the approval of the Bankruptcy Court, and not inconsistent therewith, will be conclusively deemed not to constitute fraud, gross negligence or willful misconduct; *provided, further, that*, the Creditor Trust shall, to the fullest extent permitted by law, indemnify and hold harmless the Creditor Trust Indemnified Parties, from and against and with respect to any and all liabilities, losses, damages, claims, costs, and expenses, including attorneys’ fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the Creditor Trust or the implementation or administration of the Plan, if the Creditor Trust Indemnified Party acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of the Creditor Trust; and (ii) the Covered Persons shall be entitled to obtain advances from the Creditor Trust to cover their reasonable fees and expenses incurred in defending any such actions or inactions. -To the extent the Creditor Trust indemnifies and holds harmless any Creditor Trust Indemnified Parties as provided above, the legal fees and related costs incurred by counsel to the Creditor Trust in monitoring or participating in the defense of such claims giving rise to the right of indemnification shall be paid as costs and

expenses of the Creditor Trust. -The costs and expenses incurred in enforcing the right of indemnification in this Section shall be paid by the Creditor Trust. -The foregoing exculpation and indemnity in respect of any Covered Person shall survive the termination of such Covered Person from the capacity for which they are indemnified and shall inure to the benefit of the Covered Persons' heirs and assigns.

(b) Neither the Creditor Trust, the Creditor Trustee, nor their firms, companies, affiliates, partners, officers, directors, members, employees, designees, professionals, advisors, attorneys, representatives, disbursing agents or agents, and any of such Person's successors and assigns, shall incur any responsibility or liability by reason of any error of law or fact or of any matter or thing done or suffered or omitted to be done under or in connection with the Plan, the Confirmation Order, or this Agreement, other than for specific actions or omissions resulting from its willful misconduct, gross negligence or fraud found by a Final Order (not subject to further appeal or review) of a court of competent jurisdiction to be the direct and primary cause of loss, liability, damage, or expense suffered by the Creditor Trust. -The Creditor Trustee shall enjoy all of the rights, powers, immunities, and privileges applicable to a chapter 7 trustee. -The Creditor Trust, acting by and through the Creditor Trustee, may, in connection with the performance of its functions, in its sole and absolute discretion, consult with its attorneys, accountants, advisors, and agents, and shall not be liable for any act taken, or omitted to be taken, or suggested to be done in accordance with advice or opinions rendered by such persons, regardless of whether such advice or opinions are in writing. -Notwithstanding such authority, neither the Creditor Trust nor the Creditor Trustee shall be under any obligation to consult with any such attorneys, accountants, advisors, or agents, and any determination not to do so shall not result in the imposition of liability on the Creditor Trust or the Creditor Trustee unless such determination of liability is based on willful misconduct, gross negligence, or fraud. -Persons dealing with the Creditor Trust or the Creditor Trustee shall look only to the Creditor Trust Assets to satisfy any liability incurred by the Creditor Trust or the Creditor Trustee to such person in carrying out the terms of the Plan, the Confirmation Order, or this Agreement, and neither the Creditor Trust nor the Creditor Trustee shall have any personal obligation to satisfy such liability.

~~6.2.6.2~~ Reliance by Creditor Trustee

Except as otherwise provided herein:

(a) the Creditor Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, installment, opinion, report, request, consent, order, or other paper or document reasonably believed to be genuine and to have been signed or presented by the proper party or parties;

(b) the Creditor Trustee shall not be liable for any action reasonably taken or not taken by himit in accordance with the advice of a Creditor Trustee Professional; and

(c) persons or entities dealing with the Creditor Trustee shall look only to the Creditor Trust Assets to satisfy any liability incurred by the Creditor Trustee to such person or entity in carrying out the terms of this Agreement, and the Creditor Trustee shall not have any personal obligation to satisfy any such liability, except to the extent that actions taken or not taken after the Effective Date by the Creditor Trustee are determined by a Final Order to be solely due to the Creditor Trustee's own gross negligence, willful misconduct, fraud or breach of fiduciary duty.

(d)

ARTICLE VII.

ESTABLISHMENT OF THE CREDITOR TRUST

ARTICLE VII **BENEFICIARIES**

7.1 Interest Beneficial Only

The ownership of a beneficial interest in the Creditor Trust shall not entitle any Beneficiary or the Debtors to any title in or to the Creditor Trust Assets or to any right to call for a partition or division of such assets or to require an accounting.

7.2 Evidence of Beneficial Interest

Ownership of a beneficial interest in the Creditor Trust Assets shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Creditor Trust by the Creditor Trustee.

~~7.1~~ ~~Transfer of Assets to Creditor Trust; Assumption of Liabilities~~

~~Pursuant to the Plan, the Debtors and the Creditor Trustee hereby establish the Creditor Trust on behalf of the Beneficiaries, to be treated as the grantors and deemed owners of the Creditor Trust Assets. The Debtors hereby irrevocably grant, release, assign, transfer, and convey and shall be deemed to have irrevocably granted, released, assigned, transferred, and conveyed to the Creditor Trust, all of their rights, title, and interests in and to all of the Creditor Trust Assets, including the Retained Causes of Action, and in accordance with section 1141 of the Bankruptcy Code, the Creditor Trust Assets shall automatically vest in the Creditor Trust, free and clear of any Liens, Claims or encumbrances, except with respect to Sale proceeds to the extent that any valid prepetition Liens attach to such proceeds. Such transfer includes, but is not limited to, all rights~~

~~to assert, waive or otherwise exercise any attorney-client privilege, work-product protection or other privilege, immunity, or confidentiality provision vested in, or controlled by, the Debtors or their estates in respect of the Creditor Trust Assets. The Creditor Trustee agrees to accept and hold the Creditor Trust Assets in the Creditor Trust for the benefit of the Beneficiaries, subject to the terms of the Confirmation Order, the Plan and this Agreement.~~

~~7.2.1.1 Title to Assets~~

~~(a) Notwithstanding any prohibition of assignability under applicable non-bankruptcy law, all applicable assets and properties encompassed by the Plan shall vest in the Creditor Trust in accordance with Section 1141 of the Bankruptcy Code. Upon the transfer of the Creditor Trust Assets to the Creditor Trust, the Debtors shall have no interest in or with respect to such Creditor Trust Assets or the Creditor Trust.~~

~~(b) For all federal income tax purposes, all Parties and Beneficiaries shall treat the transfer of the Creditor Trust Assets by the Debtors to the Creditor Trust, as set forth in this Article VIII and in the Plan, as a transfer of such assets by the Debtors to the Beneficiaries entitled to distributions under this Agreement followed by a transfer by such Beneficiaries to the Creditor Trust. Thus, the Beneficiaries shall be treated as the grantors and owners of a grantor trust for federal income tax purposes.~~

ARTICLE VIII.

BENEFICIARIES

~~8.17.3~~ Identification of Beneficiaries

In order to determine the actual names and addresses of the Beneficiaries, the Creditor ~~Trustee~~Trust shall be entitled, but not required, to conclusively rely on the ~~names and addresses set forth~~official claims register maintained in the ~~Debtors' Schedules, books and records or filed proofs of claim.~~Chapter 11 Cases. Each Beneficiary's right to distribution from the Creditor Trust shall be that accorded to such Beneficiary under the Plan.

~~8.2.7.4~~ Limitation on Transferability

The beneficial interests herein shall be non-transferable and non-assignable during the term of this Agreement except by operation of law. -An assignment by operation of law shall not be effective until appropriate notification and proof thereof is submitted to the Creditor ~~Trustee~~Trust, and the Creditor ~~Trustee may continue to cause the Creditor Trust to~~Trust pay all amounts to or for the benefit of the assigning Beneficiaries until receipt of proper notification and proof of assignment by operation of law. -The Creditor Trustee may rely upon such proof without the requirement of any further investigation.

8.3.7.5 Effect of Death, Incapacity, ~~Dissolution~~ or Bankruptcy of Beneficiary

The death, incapacity, dissolution or bankruptcy of a Beneficiary during the term of the Creditor Trust shall not operate to terminate the Creditor Trust, nor shall it entitle the representative or creditors of the deceased, dissolved, incapacitated, or bankrupt Beneficiary to an accounting or to take any action in any court or elsewhere for the distribution of the Creditor Trust Assets or for a petition thereof nor shall it otherwise affect the rights and obligations of the Beneficiary under this Agreement or in the Creditor Trust.

8.4.7.6 Standing of Beneficiary

Except as expressly provided in this Agreement, the Plan, or the Confirmation Order, a Beneficiary does not have standing to direct the Creditor Trust or Creditor Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party (~~other than the Creditor Trustee~~) upon or with respect to the Creditor Trust Assets.

7.7 No Right to Accounting

Neither the Beneficiaries nor their successors, assigns, creditors, nor any other Person shall have any right to an accounting by the Creditor Trust or Creditor Trustee, and neither the Creditor Trust nor the Creditor Trustee shall be obligated to provide any accounting to any Person. Nothing in this Agreement is intended to require the Creditor Trustee at any time or for any purpose to file any accounting or seek approval of any court with respect to the administration of the Creditor Trust or as a condition for making any advance, payment, or distribution out of proceeds of Creditor Trust Assets.

7.8 Exemption from Registration

The rights of the Beneficiaries arising under this Agreement may be deemed “securities” under applicable law. However, such rights have not been defined as “securities” under the Plan

because (a) the parties hereto intend that such rights shall not be securities and (b) if the rights under this Agreement in favor of the Beneficiaries are deemed to be “securities,” the exemption from registration under section 1145 of the Bankruptcy Code is intended to be applicable to such securities. No Party to this Agreement shall make a contrary or different contention.

~~ARTICLE IX.~~

ARTICLE VIII
ADMINISTRATION

9.18.1 Purpose of the Creditor Trust

The Creditor Trust shall be established for the primary purpose of liquidating its assets, in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Creditor Trust. -Accordingly, the Creditor Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the Creditor Trust Assets, make timely distributions to the Beneficiaries and not unduly prolong its duration, and shall take or refrain from taking such other actions as may be necessary, in the Creditor Trustee’s reasonable judgment, to preserve and maintain the status of the Creditor Trust as a “liquidating trust” and as a “grantor trust” within the meaning of Treasury Regulation sections 301.7701-4(d) and 1.671-46714(a).- The Creditor Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth in this Agreement. -The Creditor Trust also shall not be deemed a successor-in-interest of the Beneficiaries for any purpose other than as specifically set forth in this Agreement.

9.28.2 Books and Records

On the date hereof, or at such other time as is reasonably convenient to the Liquidating Trust and the Debtors, the Debtors shall provide to the Creditor Trust all copies of books, records and files of the Debtors and the Estates that were not sold and transferred in connection with the Sale.

The Creditor ~~Trustee~~Trust shall maintain books and records relating to the administration of the Creditor Trust Assets, the income and expenses of the Creditor Trust, and the payment of expenses and liabilities of, Claims against or assumed by, the Creditor Trust in such detail and for such period of time as may be necessary to make full and proper accounting in respect thereof and

to comply with applicable provisions of law. -Except as otherwise provided herein or in the Plan, nothing in this Agreement requires the Creditor ~~Trustee~~Trust to file any accounting or seek approval of any court with respect to the administration of the Creditor Trust, or as a condition for making any payment or distribution out of the Creditor Trust Assets.

9.38.3 Compliance with Laws

Any and all distributions of Creditor Trust Assets shall comply with all applicable laws and regulations, including, but not limited to, applicable federal and state tax and securities laws.

~~ARTICLE X.~~

ARTICLE IX
SUCCESSOR CREDITOR TRUSTEE

10.19.1 Successor Creditor Trustee

In the event the Creditor Trustee is removed by the Bankruptcy Court, resigns pursuant to this Agreement, or otherwise vacates its position, a successor Creditor Trustee shall be appointed by the Bankruptcy Court in accordance with the best interests of the Beneficiaries. -Any successor Creditor Trustee appointed hereunder shall execute an instrument accepting such appointment. Thereupon, such successor Creditor Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts and duties of its predecessor in the Creditor Trust with like effect as if originally named herein; *provided, however*, that a removed or resigning Creditor Trustee shall, nevertheless, when requested in writing by the successor Creditor Trustee, execute and deliver any reasonable instrument or instruments conveying and transferring to such successor Creditor Trustee all the estates, properties, rights, powers, and trusts of such removed or resigning Creditor Trustee.

~~ARTICLE XI.~~

ARTICLE X
DISPUTED CLAIMS RESERVES

~~11.10.1~~ Disputed Claims Reserves

~~The~~The Creditor Trust, by and through the Creditor Trustee shall maintain reserves for any distributable amounts required to be set aside on account of Disputed Claims and shall distribute such amounts (net of any expenses, including any taxes relating thereto~~),~~ (the “Trust Claims Reserve”), as provided in the Plan~~and,~~ the Confirmation Order and this Agreement, as such Disputed Claims are resolved, and such amounts shall be distributable in respect of such Disputed Claims as such amounts would have been distributable had the Disputed Claims been Allowed Claims as of the Effective Date.

~~ARTICLE XII.~~

ARTICLE XI
REPORTING

~~12.11.1~~ Required Plan Reporting

The Creditor Trustee shall comply with any tax reporting requirements set forth in the Confirmation Order and/or the Plan, including as required under ~~Article~~Section VI.B.14. of the Plan.

~~12.211.2~~ Federal Income Tax

(a) Grantor Trust Status.- Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the Creditor ~~Trustee~~Trust of a private letter ruling if the Creditor ~~Trustee~~Trust so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Creditor ~~Trustee~~Trust), the Creditor ~~Trustee~~Trust shall file tax returns for the Creditor Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with the Plan.

(b) Treatment of Beneficiaries as Grantors.- Subject to the provisions of Section ~~1311.2(a))~~ hereof, (i) for federal income tax purposes, the Beneficiaries shall be treated as grantors and owners of the Creditor Trust for each tax return filed by the Creditor ~~Trustee~~Trust as a grantor

trust; and (ii) each Beneficiary shall be responsible for payment of any federal income tax with respect to its share of the taxable income of the Creditor Trust for any taxable year determined pursuant to Section ~~4311~~.2(c), whether or not a reserve is established for Disputed Claims.

(c) Allocations of Creditor Trust Taxable Income. -Subject to the provisions of Section ~~4311~~.2(a) hereof, allocations of Creditor Trust taxable income shall be determined by reference to the manner in which an amount of cash equal to such taxable income would be distributed (without regard to any restriction on distributions described herein) if, immediately prior to such deemed distribution, the Creditor Trust had distributed all of its other assets (valued for this purpose at their tax book value) to the Beneficiaries (treating any holder of a Disputed Claim, for this purpose, as a current Beneficiary entitled to distributions), taking into account all prior and concurrent distributions from the Creditor Trust (including any distributions held in reserve pending the resolution of Disputed Claims). -Similarly, taxable losses of the Creditor Trust will be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining Creditor Trust Assets. -The tax book value of the Creditor Trust Assets for this purpose shall equal their fair market value on the Effective Date or, if later, the date such assets were acquired by the Creditor Trust, adjusted in either case in accordance with tax accounting principles prescribed by the IRC, the Treasury Regulations and any other applicable administrative and judicial authorities and pronouncements.

(d) Tax Reporting Duties of Creditor Trustee.

(i) In compliance with the Plan, the IRC and the regulations thereunder, the Creditor Trustee shall prepare and send annually to each record holder of a beneficial interest a separate statement setting forth the holder's share of items of income, gain, loss, deduction, or credit and will instruct all such holders to report such items on their federal income tax returns or to forward the appropriate information to the beneficial holders with instructions to report such items on their federal income tax returns. -The Creditor Trust's taxable income, gain, loss, deduction, or credit will be allocated among the beneficial holders of a Creditor Trust Interest in accordance with each holder's relative beneficial Creditor Trust Interest.

(ii) The Creditor Trust, acting by and through the Creditor Trustee, may, in its sole discretion, determine the best way to report for United States tax purposes with respect to any Creditor Trust Assets allocable to, or retained on account of, ~~Disputed Claims~~ (the "Trust Claims Reserve"), including, but not limited to, filing a tax election to treat the Trust Claims Reserve as a disputed ownership fund ("DOF") or other separate entity within the meaning of Treasury Regulation section 1.468B-9 for federal income tax purposes rather than to tax such reserve as a part of the Creditor Trust (and, to the extent permitted by applicable law, report consistently with the foregoing for United States federal, state, and local income tax purposes) (the "DOF Election"). -If a DOF Election is made, the Creditor Trust shall comply with all federal and

state tax reporting and tax compliance requirements of the DOF or other separate entity, including, but not limited to, the filing of a separate federal tax return for the DOF or other separate entity and the payment of federal and/or state income tax due.

(iii) The Creditor Trust shall be responsible for payments, out of the Creditor Trust Assets, of any taxes imposed on the Creditor Trust or the Creditor Trust Assets, including the Trust Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Trust Claims Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (1) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (2) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts distributable by the Creditor ~~Trustee~~ Trust as a result of the resolutions of such Disputed Claims.

(iv) The Creditor Trust may request an expedited determination of taxes of the Creditor Trust, including the Trust Claims Reserve, under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Creditor Trust for all taxable periods through the dissolution of the Creditor Trust.

~~12.3~~ 11.3 Other

The Creditor Trustee shall file (or cause to be filed) any other statement, returns or disclosures relating to the Creditor Trust or the Creditor Trust Assets, that are required by the IRS or any other governmental unit.

ARTICLE XIII.

TRANSFER OF BENEFICIARIES' INTERESTS

~~13.1~~ Transfer of Beneficiaries' Interests

~~The beneficial interests in the Creditor Trust shall not be represented by certificates, receipts, or in any other form or manner, except as maintained in the books and records of the Creditor Trust by the Creditor Trustee. The Creditor Trustee may make distributions and send communications to Beneficiaries based on its books and records identifying holders of General~~

~~Unsecured Claims and Purported Prepetition Lenders' Secured Claims (if applicable) as of the Distribution Record Date as set forth in the Plan, and in so doing the Creditor Trustee shall be fully protected and incur no liability to any purported transferee or any other person or entity.~~

~~ARTICLE XIV.~~

ARTICLE XII

CREDITOR TRUSTEE PROFESSIONALS AND NON-PROFESSIONALS

~~14.12.1~~ Retention of Creditor ~~Trustee Trust~~ Professionals and Non-Professionals

(a) The Creditor ~~Trustee Trust~~ shall have the right to retain its own professionals including, without limitation, claims, disbursing and transfer agents, legal counsel, accountants, experts and other agents or advisors, as the Creditor ~~Trustee Trust~~ deems appropriate (the “~~Creditor Trustee Trust~~ Professionals”) and on such terms as the Creditor ~~Trustee Trust~~ deems appropriate. ~~The Creditor Trustee Trust Professionals shall be compensated in accordance with section 14.12.2 hereof. The Creditor Trustee Trust Professionals so retained need not be “disinterested” as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors of the Debtors or the Committee.~~

(b) The Creditor ~~Trustee Trust~~ shall have the right to retain non-professionals including, without limitation, employees, independent contractors or other agents as the Creditor Trustee deems appropriate (the “~~Creditor Trustee Trust~~ Non-Professionals”) and on such terms as the Creditor ~~Trustee Trust~~ deems appropriate. Such Creditor ~~Trustee Trust~~ Non-Professionals shall be compensated in accordance with section ~~14.2.2~~ hereof. ~~The Creditor Trustee Trust Non-Professionals so retained need not be “disinterested” as that term is defined in the Bankruptcy Code and may include, without limitation, employees, independent contractors or agents of the Debtors, the Committee, or its members.~~

~~14.2.2~~ Payment to Creditor ~~Trustee Trust~~ Professionals and Creditor ~~Trustee Trust~~ Non-Professionals

After the Effective Date, Creditor Trustee Professionals shall be required to submit reasonably detailed invoices on a periodic basis to the Creditor ~~Trustee Trust~~, including in such invoices a description of the work performed, who performed such work, and if billing on an hourly basis, the hourly rate of each such person, plus an itemized statement of expenses. ~~The Creditor~~

~~Trustee shall have ten (10) days after receipt of any such invoice to advise the Creditor Trustee Professional in writing of any objections to the invoice. If no objection to the invoice is made within that time period, then the Creditor Trustee shall pay that invoice, without Bankruptcy Court approval. If there is a dispute as to a part of an invoice, the Creditor Trustee shall pay the undisputed portion and the Bankruptcy Court shall resolve any disputed amount; *provided, however,* that the parties shall first attempt to resolve the dispute before submitting the dispute to the Bankruptcy Court for resolution.~~ All payments to Creditor Trustee Professionals or Creditor Trustee Non-Professionals shall be paid out of the Creditor Trust Assets.

~~ARTICLE XV.~~

ARTICLE XIII TERMINATION OF CREDITOR TRUST

~~15.13.1~~ Duration and Extension

(a) Notwithstanding any provision of the Plan to the contrary, the Creditor Trust shall be dissolved and the Creditor Trustee shall be discharged no later than the fifth (5th) anniversary of the Effective Date; *provided, however,* that, the Bankruptcy Court, upon motion by a party in interest, including the Creditor Trust, may extend the term of the Creditor Trust if it is necessary to the liquidation and/or distribution of the Creditor Trust Assets, without prejudice to further extensions, so long as (i) adequate funding exists for such extension period ~~as determined by the Bankruptcy Court~~, and (ii) Bankruptcy Court approval of such extension is obtained in conformity with IRS Revenue Procedure 94-45, 1994-2 C.B.; *provided, however,* that in no event shall the term of the Creditor Trust extend past the tenth (10th) anniversary of the Effective Date unless a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Creditor Trust as a liquidating trust for federal income tax purposes is obtained; *provided, further* that neither this Agreement nor the continued existence of the Creditor Trust shall prevent the ~~Debtors~~Creditor Trust from ~~closing~~seeking to close the Chapter 11 Cases pursuant to section 350 of the Bankruptcy Code and ~~obtaining~~obtain a Final Decree pursuant to Bankruptcy Rule 3022. The Creditor Trust may be terminated earlier than its scheduled termination if (i) the Bankruptcy Court has entered a Final Order closing all of or the last of the Chapter 11 Cases pursuant to section 350(a) of the Bankruptcy Code and (ii) the Creditor ~~Trustee~~Trust has administered all Creditor Trust Assets and performed all other duties required by the Plan, the Confirmation Order, and this Agreement ~~and the Creditor Trust~~.

~~15.213.2~~ Diligent Administration

The Creditor Trustee shall not unduly prolong the duration of the Creditor Trust and shall at all times endeavor to resolve, settle or otherwise dispose of all claims that constitute Creditor Trust Assets and to effect the distribution of the Creditor Trust Assets in accordance with the terms of this Agreement and the Plan and terminate the Creditor Trust as soon as practicable. -Prior to and upon termination of the Creditor Trust, the Creditor Trust Assets will be distributed to the Beneficiaries of the Creditor Trust, pursuant to the provisions set forth in this Agreement. -If at any time the Creditor Trustee ~~determined~~determines that the expense of administering the Creditor Trust is likely to exceed the value of the Creditor Trust Assets, the Creditor Trustee shall have the authority to (i) cause the Creditor Trust distribute to the Beneficiaries any Cash balance remaining in excess of necessary costs to pay outstanding expenses of the Creditor Trust, including any fees and expenses of the Creditor ~~Trustee~~Trust Professionals and ~~its professionals~~Creditor Trust Non-Professionals, (ii) donate any Creditor Trust Assets remaining in the Creditor Trust to a ~~non-religious~~ charitable organization exempt from federal income tax under section 501(c)(3) of the IRC that is unrelated to the Debtors and any Insider of the Debtors, and (iii) dissolve the Creditor Trust.

~~ARTICLE XVI.~~

ARTICLE XIV
AMENDMENT AND WAIVER

~~16.1~~14.1 Amendment and Waiver

Any substantive provision of this Agreement may be materially amended or waived only by order of the Bankruptcy Court if necessary to implement the Plan; *provided, however*, that no change may be made to this Agreement that would adversely affect the federal income tax status of the Creditor Trust as a “liquidating grantor trust.” Technical or non-material amendments to or waivers of portions of this Agreement may be made as necessary, to clarify this Agreement or to enable the Creditor Trust to effectuate the terms of this Agreement, ~~withat~~ the ~~consent~~sole discretion of the Creditor Trustee.

~~ARTICLE XVII.~~

ARTICLE XV
MISCELLANEOUS PROVISIONS

~~17.1~~15.1 Intention of Parties to Establish Grantor Trust

This Agreement is intended to create a liquidating grantor trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as a grantor trust.

~~17.2~~15.2 Preservation of Privilege

In connection with the vesting and transfer of the Creditor Trust Assets, including rights and Retained Causes of Action, any attorney-client privilege, work-product protection, or other privilege or immunity attaching or relating to any documents or communications (of any kind, whether written or oral, electronic or otherwise) held by the Debtors or the Committee shall be transferred to the Creditor Trust and shall vest in the Creditor Trust.- Accordingly, in connection with the prosecution and/or investigation of the Retained Causes of Action by the Creditor Trust, acting by and through the Creditor Trustee, any and all directors, officers, employees, counsel, agents, or attorneys-in-fact, of the Debtors or the Committee, cannot assert any attorney-client privilege, work product protection, or other privilege or immunity attaching or relating to any documents or communications (of any kind, whether written or oral, electronic or otherwise) held by the Debtors or the Committee or otherwise prevent, hinder, delay, or impede production or discussion of documents or communications requested by the Creditor Trustee in discovery (whether formal or informal, and including without limitation, depositions, written discovery, and interviews). -The Debtors, the Committee, and the Creditor ~~Trustee~~Trust shall take all necessary actions to protect the transfer of such privileges, protections and immunities. -The transfer to and vesting in the Creditor Trust of the Creditor Trust Assets on the Effective Date shall not effect a waiver of any privilege of the Debtors or the Committee, and upon such transfer, the Creditor Trust, acting by and through the Creditor Trustee, shall hold all rights with respect to such privileges, including the right to waive such privileges in its discretion.

~~17.3~~15.3 Standing

The Creditor Trust and the Creditor Trustee shall have standing to object to Claims against the Debtors' estates ~~and~~, to assert and prosecute the Retained Causes of Action, ~~and to be heard on any other matters that may affect or relate to the Creditor Trust Assets and, as applicable,~~ shall stand in the shoes of the Debtors with respect thereto.

~~17.4~~15.4 Laws as to Construction

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to rules governing the conflict of law.

~~17.5~~15.5 Severability

If any provision of this Agreement or the application thereof to any Person or entity or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to Persons or entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

~~17.6~~15.6 Notices

Any notices or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered by electronic mail (at the addresses set forth below) and deposited, postage prepaid, in a post office or letter box addressed to the person or entity (or their successors or replacements) for whom such notice is intended at such address as set forth below, or such other addresses as may be filed with the Bankruptcy Court:

Creditor Trustee:

~~Meta~~META Advisors LLC

175 Greenwich Street

3 World Trade Center

New York, NY 10007

With a copy to:

[•]

[•]

~~17.7~~15.7 Notices if to a Beneficiary

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the person or entity for whom such notice is intended, or via electronic mail, to the name and address (1) set forth on such Beneficiary's proof in the underlying Proof of claim-Claim, if filed, (2) set forth on the Debtors' Schedules, if no Proof of Claim is filed, or such other notice (3) pursuant to a written change of address filed with the Bankruptcy Court, or if none of the above has been filed, to the address set forth in the Debtors' Schedules or books and records or provided delivered to the Creditor Trustee pursuant to section 13.1 Trust.

~~17.8~~15.8 Survivability

Notwithstanding any provision of the Plan to the contrary, the terms and provisions of this Agreement shall remain fully binding enforceable notwithstanding any vacancy in the position of the Creditor Trustee.

~~17.9~~15.9 Headings

The section headings contained in this Agreement are solely for the convenience of reference and shall not affect the meaning or interpretation of this Agreement or of any term or provision hereof.

~~17.10~~15.10 Conflicts with Plan Provisions

Except as otherwise expressly stated herein, if any of the terms and/or provisions of this Agreement conflict with the terms and/or provisions of the Plan, then ~~the Plan~~this Agreement shall govern.

~~17.11~~15.11 ~~Exemption from Registration~~

~~The rights of the Beneficiaries arising under this Agreement may be deemed "securities" under applicable law. However, such rights have not been defined as "securities" under the Plan because (a) the parties hereto intend that such rights shall not be securities and (b) if the rights under this Agreement in favor of the Beneficiaries are deemed to be "securities," the exemption from registration under section 1145 of the Bankruptcy Code is intended to be applicable to such securities. No Party to this Agreement shall make a contrary or different contention.~~

~~17.12~~15.11 Counterparts

This Agreement may be signed by the Parties hereto, in counterparts, which, when taken together, shall constitute one and the same document.

15.12 Jurisdiction

The Bankruptcy Court shall have jurisdiction regarding the Debtors, Creditor Trust, Creditor Trustee, and Creditor Trust Assets, including, without limitation, the determination of all disputes arising out of or related to administration of the Creditor Trust. The Bankruptcy Court shall have continuing jurisdiction and venue to hear and finally determine all disputes and related matters among the Parties arising out of or related to this Agreement or the administration of the Creditor Trust. The Parties expressly consent to the Bankruptcy Court hearing and exercising such judicial power as is necessary to finally determine all such disputes and matters. If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in this Agreement, the provisions of this Agreement shall have no effect on and shall not control, limit or prohibit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter, and all applicable references in this Agreement to an order or decision of the Bankruptcy Court shall instead mean an order or decision of such other court of competent jurisdiction.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have either executed and acknowledged this Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first written above.

[Signatures forthcoming]

