

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

In re

**SCOTTISH HOLDINGS, INC., et al.,**  
Debtors.<sup>1</sup>

Chapter 11

Case No. 18-10160 (LSS)

Jointly Administered

**RE: D.I. 381, 418, 424, 437**

**NOTICE OF FILING OF SECOND ADDENDUM TO PLAN SUPPLEMENT FOR  
THIRD AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF  
SCOTTISH HOLDINGS, INC., AND SCOTTISH ANNUITY & LIFE  
INSURANCE COMPANY (CAYMAN) LTD.**

**PLEASE TAKE NOTICE THAT** on August 1, 2018, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Notice of Filing of Plan Supplement for Second Amended Joint Chapter 11 Plan of Reorganization of Scottish Holdings, Inc. and Scottish Annuity & Life Insurance Company (Cayman) Ltd.* [D.I. 418] (the “Original Plan Supplement”) in support of the *Debtors’ Second Amended Joint Chapter 11 Plan of Reorganization of Scottish Holdings, Inc. and Scottish Annuity & Life Insurance Company (Cayman) Ltd.* [D.I. 381].

**PLEASE TAKE FURTHER NOTICE THAT** on August 6, 2018, the Debtors filed the *Notice of Filing of First Addendum to Plan Supplement for Second Amended Joint Chapter 11 Plan of Reorganization of Scottish Holdings, Inc. and Scottish Annuity & Life Insurance Company (Cayman) Ltd.* [D.I. 424] (the “First Addendum”), to which was attached as Plan Supplement **Exhibit G** a proposed form of Distribution Trust Agreement

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<sup>1</sup> The Debtors, along with the last four digits of their federal tax identification numbers, are as follows: Scottish Holdings, Inc. (4408) and Scottish Annuity & Life Insurance Company (Cayman) Ltd. (3285). The Debtors’ mailing address for purposes of these Chapter 11 Cases is 14120 Ballantyne Corporate Place, Suite 300, Charlotte, NC 28277.

**PLEASE TAKE FURTHER NOTICE THAT** on August 9, 2018, the Debtors filed the *Third Amended Joint 11 Plan of Reorganization of Scottish Holdings, Inc. and Scottish Annuity & Life Insurance Company (Cayman) Ltd.* [D.I. 437] (as it may be further amended, modified or supplemented from time to time and together with all exhibits, schedules and supplements thereto, the “Plan”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE THAT** the Debtors hereby file this second addendum to the Original Plan Supplement (the “Second Addendum,” and together with the Original Plan Supplement and the First Addendum, the “Plan Supplement”) in support of the Plan.

**PLEASE TAKE FURTHER NOTICE THAT** this Second Addendum contains revised Plan Supplement **Exhibit G** (Form of Distribution Trust Agreement) and a blackline comparing the revised Plan Supplement **Exhibit G** to the version filed with the First Addendum.

**PLEASE TAKE FURTHER NOTICE THAT** the Debtors reserve all rights to alter, amend, modify, or supplement any document in the Plan Supplement, including, without limitation, this Second Addendum; provided that if any document in the Plan Supplement is altered, amended, modified, or supplemented in any material respect prior to the entry of the Confirmation Order, the Debtors will file a blackline of such document with the Bankruptcy Court.

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to in the Plan.

Dated: August 21, 2018  
Wilmington, Delaware

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

*/s/ Gregory W. Werkheiser*

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**Plan Supplement Exhibit G**

**(Revised Form of Distribution Trust Agreement)**

*Draft*  
*August 21, 2018*

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**THE OLD SCOTTISH HOLDINGS DISTRIBUTION TRUST**  
**DISTRIBUTION TRUST AGREEMENT**  
**BY AND AMONG**  
**THE DISTRIBUTION TRUSTEE**  
**THE OVERSIGHT COMMITTEE,**  
**THE DELAWARE TRUSTEE,**  
**SCOTTISH ANNUITY AND LIFE INSURANCE COMPANY (CAYMAN) LTD.**  
**AND**  
**SCOTTISH HOLDINGS, INC.**

[•], 2018

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**Exhibits and Schedules**

Exhibit A – Certificate of Trust

Schedule A – Distribution Trustee Compensation



## THE OLD SCOTTISH HOLDINGS DISTRIBUTION TRUST DISTRIBUTION TRUST AGREEMENT

This Distribution Trust Agreement, dated as of [●], 2018 (this “Agreement”), is entered into by and among Scottish Annuity and Life Insurance Company (Cayman) Ltd. (“SALIC”) and Scottish Holdings, Inc. (“SHI,” each as a debtor and debtor-in-possession, and collectively, the “Debtors”), [●], as Delaware Trustee, Clifford Zucker as Distribution Trustee and the Oversight Committee members whose names appear as such on the signature page to this Distribution Trust Agreement.

### RECITALS

A. On January 28, 2018, the Debtors filed voluntary petitions with the United States Bankruptcy Court for the District of Delaware for relief under chapter 11 of title 11 of the Bankruptcy Code, thereby commencing their respective bankruptcy cases (together, the “Bankruptcy Case”), which are jointly administered.

B. By its Order, dated [\_\_\_\_\_], 2018 [D.I. \_\_\_] (the “Confirmation Order”), the Bankruptcy Court confirmed the *Third Amended Joint Chapter 11 Plan of Reorganization of Scottish Holdings, Inc., and Scottish Annuity & Life Insurance Company (Cayman) Ltd.*, dated June 29, 2018 [D.I. 381] (as altered, amended, modified or supplemented from time to time including in accordance with its terms, any Plan Supplement, the Bankruptcy Code or the Bankruptcy Rules, the “Plan”).

C. The Plan and the Confirmation Order provide for the irrevocable transfer, effective as of the Effective Date, of the Distribution Trust Assets, the Available Plan Distribution Funding Amount and the Distribution Trust Reserves (collectively, the “Transferred Property”) to the trust to be formed on or prior to the Effective Date in accordance with the provisions of Section 6.3 of the Plan and this Agreement for the payment of Allowed Claims and for the benefit of the Distribution Trust Beneficiaries as set forth in the Plan (the “Distribution Trust”) and the subsequent administration and distribution of the Transferred Property, to the extent not consumed in the administration of the Distribution Trust, to the Holders of (a) Allowed Administrative Claims, Allowed Priority Claims, and Allowed Secured Claims not satisfied in full by Closing Date Plan Distributions and (b) the Holders of Allowed Claims in Classes 4, 5, 6 and 7 under the Plan, whether Allowed on or after the Effective Date.

D. The Plan contemplates that the Distribution Trust shall be created for the primary purpose of liquidating and distributing the Transferred Property in accordance with Treas. Reg. § 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 purposes of the Distribution Trust and the Plan.

E. Except as provided in Section 9.2(c), the Distribution Trust is intended to qualify as a “grantor trust” for United States federal income tax purposes, pursuant to Sections 671-677 of the Internal Revenue Code of 1986, as amended (the “Tax Code”), with the

Distribution Trust Beneficiaries to be treated as the grantors of the Distribution Trust and deemed to be the owners of the Transferred Property for federal income tax purposes and as such taxed on the income there from, and consequently, the transfer of the Transferred Property to the Distribution Trust shall be treated as a deemed transfer of those assets from the Debtors and their Estates to the Distribution Trust Beneficiaries followed by a deemed transfer by such Distribution Trust Beneficiaries to the Distribution Trust for federal income tax purposes.

F. Under the terms of the Plan, as of the Effective Date, the Transferred Property held by the Debtors immediately before the Effective Date, the Available Plan Distribution Funding Amount and the Distribution Trust Reserves shall be transferred to, and vest in, and shall be deemed to have been irrevocably transferred to the Distribution Trust free and clear of all Liens, Claims, and encumbrances (except for Liens, Claims or obligations provided for in the Plan), for and on behalf of the Distribution Trust Beneficiaries, with no reversionary interest in the Debtors.

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained herein, the parties hereto agree as follows:

## **ARTICLE I** **DEFINITIONS**

1.1 Definitions Incorporated from the Plan. Other than the terms defined below or elsewhere in this Agreement, capitalized terms shall have the meaning assigned to them in the Plan.

1.2 Other Definitions.

- (a) “Agreement” has the meaning assigned in the Preamble.
- (b) “Allowed Claim in Classes 4, 5, 6 and 7 under the Plan” means a Claim in Classes 4, 5, 6 and/or 7 under the Plan that is at any relevant time Allowed.
- (c) “Allowed TruPS Claims” means all SALIC TruPS Claims and SHI TruPS Claims that are Allowed.
- (d) “Cause” means, with respect to any Oversight Committee member or the Distribution Trustee,
  - (i) such person’s conviction of a felony or any other crime involving moral turpitude; or
  - (ii) any act or failure to act by such person involving actual dishonesty, fraud, misrepresentation, theft or embezzlement; or
  - (iii) such person’s willful and repeated failure to substantially perform his/her duties under this Agreement and the Trust Act; or

(iv) such person's incapacity, such that s/he is unable to substantially perform his/her duties under this Agreement and the Trust Act for more than ninety (90) consecutive days; or

(v) such person's repeated failure to effectively perform in material respects his or her duties under this Agreement.

(e) "Certificate of Trust" means the certificate of trust of the Distribution Trust as required by sections 3810 of the Trust Act, substantially in the form set forth in Exhibit A to this Agreement, and filed in connection with the formation of the Distribution Trust.

(f) "Confidentiality Parties" has the meaning assigned in Section 12.7.

(g) "Confirmation Order" has the meaning assigned in the Recitals.

(h) "Debtors" has the meaning assigned in the Preamble.

(i) "Delaware Trustee" means [●], or its successor, which is appointed in accordance with this Agreement to comply with the requirement of section 3807 of the Trust Act.

(j) "Disbursing Agent" means any agent appointed or engaged by the Distribution Trustee on behalf of the Distribution Trust to facilitate or assist with distributions to Distribution Trust Beneficiaries.

(k) "Disputed Claim" means a Claim that at any relevant time is Disputed.

(l) "Disputed Claims Estimation Date" means the date on which the Estimated Amount has been determined for all Disputed Claims, which date shall occur after the Administrative Claims Bar Date and the Rejection Claim Bar Date.

(m) "Disputed Claims Reserve" means the reserve maintained by the Distribution Trust and the Cash held therein, together with all Distribution Trust Property theretofore distributed in respect of the Interests held by such reserve, for distribution to holders of Disputed Claims that are subsequently Allowed.

(n) "Distributable Trust Assets" means Cash constituting Distribution Trust Property, other than (i) Cash in an amount, (x) as of the date hereof mutually agreed by the Debtors, the Official Committee and the Purchaser or (y) after the date hereof determined by the Distribution Trustee, in each case allocated to the Trust Administration Reserve or the Professional Fee Reserve and (ii) Cash held in the Disputed Claims Reserve.

(o) "Distribution Record Date" means a date selected by the Distribution Trustee preceding each Trust Distribution Date, as the record date for determining Beneficiaries (including the Disputed Claims Reserve) entitled to participate in the distribution on such Trust Distribution Date.

(p) “Distribution Trust” has the meaning assigned in the Recitals.

(q) “Distribution Trust Agents” means the advisors, professionals and other agents, including without limitation any Disbursing Agent, of the Distribution Trust appointed or engaged by the Distribution Trustee in accordance with the provisions of this Agreement.

(r) “Distribution Trust Bailee” has the meaning assigned in Section 2.5(b)(i).

(s) “Distribution Trust Beneficiaries” means (i) the holders of Interests and (ii) any holder of a Disputed Claim that may in the future be entitled to receive Cash or an Interest held by the Disputed Claims Reserve. The Distribution Trust Beneficiaries are sometimes referred to as “Beneficiaries.”

(t) “Distribution Trust Causes of Action” means any and all Causes of Action that are Distribution Trust Assets.

(u) “Distribution Trust Property” means all property held from time to time by the Distribution Trust, including (i) all Initial Assets and the proceeds therefrom, including interest thereon accruing from and after the Effective Date, and (ii) all Cash and non-Cash assets held in the Disputed Claims Reserve, the Trust Administration Reserve and the Professional Fee Reserve.

(v) “Distribution Trustee” means the trustee of the Distribution Trust having primary responsibility for the Distribution Trust, as provided in Article V.

(w) “Estimated Amount” means the estimated amount of a Disputed Claim, as determined by the Distribution Trustee, which shall either be (i) pursuant to an order of the Bankruptcy Court entered in the Bankruptcy Case, (ii) an amount mutually agreed between the Distribution Trustee and the holder of such Disputed Claim or (iii) if no agreement has been reached and no order of the Bankruptcy Court has been entered with respect to such Disputed Claim by such time as determined by the Distribution Trustee in its discretion, an amount sufficient to cover the pro rata distributions described in Section 6.3(f)(i) of the Plan.

(x) “FDIC” means the Federal Deposit Insurance Corporation or any successor institution.

(y) “Fiscal Year” means any fiscal year of the Distribution Trust, as provided in Section 2.9 hereof.

(z) “Initial Assets” means the Distribution Trust Assets, and any portion of the Plan Funding Payment (including the Distribution Trust Reserves) actually received by the Trust.

(aa) “Initial Distribution Record Date” means the record date for determining Beneficiaries (including the Disputed Claims Reserve) entitled to receive the

DT Initial Distribution, which such date shall not be prior to the Disputed Claims Estimation Date.

(bb) “Initial Interest Issuance Date” means the date determined by the Distribution Trustee occurring as soon as reasonably practicable after the Disputed Claims Estimation Date, on which the Distribution Trust makes, or causes to be made, the initial issuance of Interests to (i) holders of Allowed Claims in Classes 4, 5, 6 and 7 under the Plan entitled to receive Interests hereunder as of the Initial Interests Issuance Record Date and (ii) the Disputed Claims Reserve.

(cc) “Initial Interests Issuance Record Date” means the Effective Date, which is the record date for determining the Distribution Trust Beneficiaries holding Allowed Claims that are entitled to receive Interests on the Initial Interest Issuance Date; provided that to the extent the allowance of a Claim as of the Initial Interest Issuance Record Date is contingent only upon the effectiveness of the Plan, such Claim shall be deemed to be Allowed as of the Initial Interest Issuance Record Date.

(dd) “Interest” has the meaning assigned in Section 3.1(a).

(ee) “Interest Issuance Date” means a date, as determined from time to time by the Distribution Trustee, on which Interests shall be allocated by the Distribution Trust (including Interests previously allocated to the Disputed Claims Reserve) to holders of Disputed Claims in Classes 4, 5, 6 and 7.

(ff) “Interest Register” has the meaning assigned in Section 3.3(a).

(gg) “Majority Consent” means the affirmative consent of a majority of the members constituting the whole Oversight Committee whether by a meeting in person or by written consent in lieu of a meeting, or if at the time there shall be only one member of the Oversight Committee, the consent of such member.

(hh) “Material Action” means each of the following:

(i) the filing of any complaint or arbitration demand commencing a Cause of Action against any SRGL Equity Holder;

(ii) the settlement, abandonment or dismissal of any Cause of Action against any SRGL Equity Holder;

(iii) entry into any contingency fee agreement or litigation funding agreement in connection with any Cause of Action against any SRGL Equity Holder;

(iv) any borrowing pursuant to Section 4.8 of this Agreement;

(v) settlement of any Disputed Claim where the remaining claim amount after settlement exceeds \$250,000.00;

(vi) determination of the amount of insurance coverage to be purchased by the Distribution Trust from time to time with respect to the liabilities and obligations of the Oversight Committee (in the form of an errors and omission policy, fiduciary policy or otherwise); and

(vii) the addition, or one or more related additions, of funds to the Trust Administration Reserve pursuant to Section 7.4 in an amount such that the aggregate amount of funds deposited in the Trust Administration Reserve exceeds the Trust Administration Reserve Cap.

(ii) “Nominating Party” means any Person entitled to select a member of the Oversight Committee pursuant to Section 6.2(a).

(jj) “Oversight Committee” means the 3-member committee appointed to consult with the Distribution Trustee regarding the affairs of the Distribution Trust and to perform such other duties as are provided in this Agreement.

(kk) “Oversight Committee Member” means each initial Oversight Committee member whose name appears as such on the signature page to this Agreement and any member of the Oversight Committee subsequently appointed pursuant to Section 6.2(e).

(ll) “Percentage Interests” means the percentage interest of each holder of an Interest as set forth on the Interest Register, which percentage interest shall initially be calculated as a fraction, expressed as a percentage, the numerator of which is amount of the Allowed Claim in respect of which such Interest was initially issued and the denominator of which is the sum of (i) the aggregate amount of all the Allowed Claims in respect of which all Interests were issued and (ii) the Estimated Amount of all Disputed Claims which, if Allowed, would be entitled to receive Interests, and shall thereafter be adjusted to reflect transfers of Interests, or portions thereof, as provided in Section 3.4(c) and Section 3.5, issuance of additional as provided in Section 3.3(b), and adjustments to the Disputed Claims Reserve, as provided in Section 4.4(c), Section 4.4(d) and Section 4.5(c).

(mm) “Permissible Investments” has the meaning assigned in Section 5.6.

(nn) “Plan” has the meaning assigned in the Recitals.

(oo) “Plan Documents” means, collectively, the Plan, the Confirmation Order, those material documents executed or to be executed in order to consummate the transactions contemplated under the Plan, including without limitation the Plan Supplement, and this Agreement.

(pp) “Registrar” has the meaning assigned in Section 3.3(a).

(qq) “Tax Authority” means a federal, state, local, or foreign government, or agency, instrumentality, or employee thereof, court or other body (if any) charged with the administration of any law relating to Taxes.

(rr) “Tax Code” means the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

(ss) “Taxes” means all (a) federal, state, local, or foreign taxes, including, without limitation, all net income, alternative minimum, net worth or gross receipts, capital, value added, franchise, profits, estimated, property, transfer and sales or use taxes, and (b) interest, penalties, fines, additions to tax or additional amounts imposed by any Tax Authority or paid in connection with any item described in clause (a) hereof.

(tt) “Tax Return” means a return, declaration, form, election, letter, report, statement, estimate, information return, or other information filed or required to be filed with respect to any Taxes, including any schedule or attachment thereto or amendment thereof, including any claim for a Tax refund.

(uu) “Transferred Property” has the meaning assigned in the Recitals.

(vv) “Trust Act” means, the Delaware Statutory Trust Act, 12 Del. C. § 3801 et seq., as the same may from time to time be amended, or any successor statute.

(ww) “Trust Administration Reserve Cap” means the sum of (i) \$1,400,000, plus (ii) any reasonably foreseeable fees payable by the Distribution Trust pursuant to 28 U.S.C. § 1930.

(xx) “Trust Distribution Date” means any date, as determined by the Distribution Trustee, on which the Distribution Trust makes a distribution of Distributable Trust Assets to Beneficiaries (including the Disputed Claims Reserve).

(yy) “Trustee” means any of the Distribution Trustee and the Delaware Trustee.

(zz) “Unanimous Consent” means the affirmative consent of all members constituting the whole Oversight Committee whether by a meeting in person or by written consent in lieu of a meeting, or if at the time there shall be only one member of the Oversight Committee, the consent of such member.

1.3 Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neutral, if appropriate; words importing the singular number shall include the plural number and vice versa; and words importing persons shall include firms, associations, corporations and other entities. All references herein to Articles, Sections and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code; the Bankruptcy Rules; the Tax Code; or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the word “herein” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision of this Agreement. The term “including” shall mean “including, without limitation.”

**ARTICLE II**  
**CREATION OF DISTRIBUTION TRUST**

2.1 Creation of Trust.

(a) The Distribution Trust shall be deemed to have been created effective as of the filing of the Certificate of Trust.

(b) The Distribution Trust shall bear the name “OLD SCOTTISH HOLDINGS DISTRIBUTION TRUST” and the Distribution Trustee may, in connection with the exercise of its powers and duties hereunder, either use this name or such variation thereof as he may deem appropriate.

(c) The Trustees of the Trust shall be the Delaware Trustee and the Distribution Trustee.

2.2 Purpose of Distribution Trust.

(a) The Distribution Trust is established for the purpose of liquidating and distributing the Distribution Trust Property in accordance with Treasury Regulations 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, its liquidating purpose hereunder.

(b) This Distribution Trust Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Distribution Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall any of the Trustees or the Beneficiaries, for any purpose be, or be deemed to be or be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Beneficiaries to the Trustees shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Distribution Trust Agreement.

2.3 Status of Distribution Trust.

(a) Subject to the terms of the Confirmation Order, the Distribution Trust shall be the successor-in-interest to the Debtors with respect to any Distribution Trust Causes of Action that was or could have been commenced by any of the Debtors prior to the Effective Date and shall be deemed substituted for each such Debtor as the party in any such litigation.

(b) From and after the Effective Date, the Distribution Trust, acting through the Distribution Trustee in consultation with the Oversight Committee, will be the representative of the Estates, as that term is used in section 1123(b)(3)(B) of the Bankruptcy Code, and shall have the rights and powers provided in the Bankruptcy Code in addition to any rights and powers granted in the Plan Documents, in each case for purposes of carrying



out the purposes and intents of this Distribution Trust Agreement, including but not limited to the right to object to General Unsecured Claims.

(c) All Distribution Trust Causes of Action are preserved and retained and may be enforced by the Distribution Trust pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

#### 2.4 Retention of Professionals.

(a) The Distribution Trustee shall have the right to retain such professionals and other Distribution Trust Agents as are necessary and proper to discharge its functions, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court.

(b) The Distribution Trustee shall adopt reasonable policies regarding the billing practices, hourly rates, discounts and required budget practices of professionals retained to provide services to the Distribution Trust to ensure the Distribution Trust receives cost-effective, efficient representation in the best interest of the Distribution Trust Beneficiaries.

#### 2.5 Transfer of Distribution Trust Property.

(a) Except to the extent provided for in the Plan, on the Effective Date, the Debtors or the Reorganized Debtors, as the case may be, shall transfer all assets constituting the Initial Assets, in the form existing on such date, to the Distribution Trust, free and clear of any and all liens, claims, encumbrances and interests (legal, beneficial or otherwise) of all other persons and entities to the maximum extent contemplated by and permissible under section 1141 of the Bankruptcy Code. The Distribution Trust shall have such incidents of ownership in the Distribution Trust Property as are necessary to undertake the actions and transactions authorized in the Plan Documents. The transfer of the Transferred Property shall be exempt from any stamp, real estate transfer, mortgage recording, sales, use or other similar Tax pursuant to section 1146 of the Bankruptcy Code.

(b) Notwithstanding the foregoing, if on the Effective Date, the Distribution Trustee determines that any of the Initial Assets cannot be transferred to the Distribution Trust or deems it impractical to do so, for any reason, for example, because the Distribution Trust has not yet established accounts for the purpose of holding Cash or because of a restriction on transferability under applicable non-bankruptcy law that is not superseded by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code:

(i) Subject to clause (ii) of this Section 2.5(b), the Reorganized Debtors (each a “Distribution Trust Bailee”) shall continue to hold such Distribution Trust Property, as bailee for the account of the Distribution Trust, and the Distribution Trustee shall be deemed to have been designated as a representative of the Debtors pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such Distribution Trust Property on behalf of the Debtors until such time as the Distribution Trust informs the

applicable Distribution Trust Bailee that the Distribution Trust may receive such Distribution Trust Property, whereupon such Distribution Trust Property shall be promptly transferred to the Distribution Trust; provided that the proceeds of the sale or other disposition of any such assets retained by a Distribution Trust Bailee shall nevertheless be deemed to constitute Distribution Trust Property, and to likewise be held by the applicable Distribution Trust Bailee, and be turned over as soon as practicable to the Distribution Trust pursuant to this Agreement as if such transfer had not been restricted under applicable non-bankruptcy law; and

(ii) the Distribution Trustee shall use commercially reasonable efforts to promptly cause the transfer of such Distribution Trust Property to the Distribution Trust.

For the avoidance of doubt, the Reorganized Debtors shall not be a Distribution Trust Bailee in respect of the SFL Shares.

(c) The Distribution Trust may commence an action in the Bankruptcy Court to resolve any dispute regarding the allocation of the proceeds of any Distribution Trust Property retained by a Distribution Trust Bailee (or any successors thereto) pursuant to the Plan Documents.

(d) In connection with the Distribution Trust Causes of Action, any applicable privilege or immunity of the Debtors or the Reorganized Debtors (including, but not limited to, any attorney-client privilege or work-product privilege) attaching to any documents or communications (whether written or oral), and all defenses, claims, counterclaims, and rights of setoff or recoupment shall vest in the Distribution Trust and may be asserted by the Distribution Trustee or, as directed by the Distribution Trustee, any Distribution Trust Agent or other representative of the Distribution Trust. Nothing in this Distribution Trust Agreement nor any action taken by the Debtors or the Reorganized Debtors, shall (or shall be deemed to be) a waiver of any privilege or immunity, including any attorney-client privilege or work-product privilege attaching to any documents or communications (whether written or oral). Notwithstanding the provision by any Debtor or Reorganized Debtor of any privileged information to the Distribution Trust (including to the Oversight Committee, the Distribution Trustee, any Distribution Trust Agent or other party or person associated with the Distribution Trust), such privileged information shall remain privileged. The Distribution Trust shall have no right to waive the attorney-client privilege, work product, or other protection or immunity of any new information received from the Reorganized Debtors. The Reorganized Debtors retain the right to waive their own privileges or immunities.

(e) Subject to Section 7.6, the Debtors or the Reorganized Debtors, as the case may be, upon reasonable advance notice, shall deliver or cause to be delivered to the Distribution Trust copies of any and all books and records that relate primarily to or that may be reasonably required in connection with the Distribution Trust Property, whether held by the Debtors or the Reorganized Debtors, their agents, representatives, advisors, attorneys, accountants and any other professionals hired by the Debtors or the Reorganized Debtors, as

the case may be, and upon reasonable advance notice, provide reasonable access to such employees, agents, advisors, attorneys, accountants or any other professionals with knowledge of matters relevant to the Distribution Trust Property.

(f) On or prior to the Effective Date, the Debtors or the Reorganized Debtors shall deliver, or cause to be delivered, to the Distribution Trust a complete list of all Claims in Classes 4, 5, 6 and 7 under the Plan, reflected on the claims registry as of the Initial Interest Distribution Record Date. The list shall include, to the extent reasonably available to the Debtors or Reorganized Debtors, the names and addresses of the holders of such Claims and the amounts thereof, and in the case of General Unsecured Claims that are known to the Debtors or Reorganized Debtors to be Disputed, the amounts thereof as filed and the Estimated Amounts thereof. The list of Disputed Claims shall include the details of all known objections (whether asserted or not) in respect of such Claims to the extent reasonably available to the Debtors or Reorganized Debtors.

(g) The Distribution Trust, as successor in interest to the Estates to the extent provided for in the Plan Documents, may (i) execute and deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed), and (ii) take, or cause to be taken, all such further action in order to evidence, vest, perfect or effectuate the transfer of all of the Distribution Trust Property to the Distribution Trust and consummate transactions contemplated by and to otherwise carry out the intent of the Plan Documents.

2.6 Title to Transferred Property. Subject to Sections 2.5(a) and 2.5(b), on the Effective Date the Distribution Trust shall succeed to all of the right, title and interest in the Transferred Property, and no other Person, including the Debtors or Reorganized Debtors, will have any further rights or interest in or with respect to the Initial Assets or the Distribution Trust.

2.7 Valuation. As soon as reasonably practicable after the Effective Date, but in no event later than one hundred and twenty (120) days thereafter, the Distribution Trustee shall make a good faith determination of the value of the assets transferred to the Distribution Trust. Such aggregate valuation shall be delivered to the Beneficiaries in accordance with Section 12.4,<sup>1</sup> and shall be in such detail and including such supporting information as determined by the Distribution Trustee, in reliance on its professionals, to be reasonably necessary or appropriate for the use and understanding thereof, and shall be used consistently by all parties (including, without limitation, the Debtors, the Reorganized Debtors, the Distribution Trust and the Beneficiaries) for all federal income tax purposes.

2.8 No Reversion to Debtors; Distribution of Remaining Assets.

(a) In no event shall any part of the Distribution Trust Property revert to or be distributed to or for the benefit of any Debtor or the Reorganized Debtors.

(b) To the extent that after satisfaction in full of all of the costs and expenses of the administration of the Distribution Trust, after all Disputed Claims have been

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<sup>1</sup> Internal Note: Consider allowing delivery by posting to the Trust's website.

either Allowed or disallowed, after all Allowed Claims in Classes 4, 5, 6 and 7 under the Plan have been paid pursuant to the Plan Documents, after satisfaction of all other obligations or liabilities of the Distribution Trust incurred or assumed in accordance with the Plan Documents, after the Distribution Trust has made the maximum distribution of Distributable Trust Assets to the Beneficiaries to the extent reasonably practicable, and after the affairs of the Distribution Trust have been finally wound up and concluded in accordance with the provisions of Section 11.1 hereof and section 3808 of the Trust Act, there shall remain any Distribution Trust Property, the Distribution Trust shall distribute such remaining Distribution Trust Property to an organization, selected by Distribution Trustee after consultation with the Oversight Committee, described in section 501(c)(3) of the Tax Code and exempt from U.S. federal income tax under section 501(a) of the Tax Code that is unrelated to the Reorganized Debtors, the Distribution Trustee or any member of the Oversight Committee.

2.9 Fiscal Year. Except for the first and last years of the Distribution Trust, the Fiscal Year of the Distribution Trust shall be the calendar year. For the first and last years of the Distribution Trust, the Fiscal Year of the Distribution Trust shall be such portion of the calendar year that the Distribution Trust is in existence. The term fiscal quarter, or similar references, as used in this Agreement, shall have a correlative meaning.

2.10 [Reserved].

2.11 Insurance. The Distribution Trust shall maintain customary insurance coverage, including any appropriate tail coverage, for the protection of the Delaware Trustee, the Oversight Committee Members and the Distribution Trustee (which coverage shall be primary to any other coverage potentially available to such persons) and may procure insurance coverage for such employees as the Distribution Trustee may determine in its discretion after consultation with the Oversight Committee.

2.12 Books and Records.

(a) The Distribution Trustee shall cause to be stored and maintained books and records for the period commencing on the date hereof through the termination of the Distribution Trust, containing such information concerning the Distribution Trust Property, the conduct of the affairs of the Distribution Trust and rights and treatment of the Beneficiaries, in such detail and for such periods of time as may be necessary to enable the Distribution Trust to make full and proper accounting in respect thereof and to comply with applicable provisions of law. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting requirements of the Distribution Trust.

(b) The Distribution Trust shall be authorized without further application to the Bankruptcy Court or notice to any party, to abandon or otherwise destroy books and records (whether in electronic or paper format) in accordance with and subject to Section 11.3; provided that the Distribution Trustee, after consultation with the Oversight Committee, may at any time petition the Bankruptcy Court for permission to destroy such books and records as the Distribution Trustee determines are not necessary or useful for the

conduct of the affairs of the Distribution Trust or the protection of its interests of the interests of the Beneficiaries; and provided further that if any such petition implicates or involves the books, records or interests of the Reorganized Debtors, such petition shall be made on notice to the Reorganized Debtors whether or not such notice is required by applicable law.

(c) Anything in the Trust Act to the contrary notwithstanding, and without limiting the provisions of Section 7.6(d), no Beneficiary shall have the right to obtain from the Distribution Trust any of its books or records except as expressly provided in this Agreement or by order of the Bankruptcy Court, or as may otherwise be expressly permitted by the Distribution Trustee.

2.13 No Interest or Accruals. Except as otherwise may be expressly provided in the Plan Documents, Beneficiaries shall not be entitled to interest on the distributions provided for in this Agreement, regardless of whether such distributions are made on or at any specified time after the Effective Date.

### **ARTICLE III** **INTERESTS IN THE TRUST**

#### 3.1 Interests.

(a) Each holder of an Allowed Claim in Classes 4, 5, 6 and 7 under the Plan, whether Allowed on or after the Effective Date shall be entitled to receive an interest or interests in the Distribution Trust (each an “Interest”), as shall be necessary, in accordance and consistent with the Plan, to satisfy such Allowed Claim against the Debtors, provided, that with respect to any Allowed TruPS Claims, the holder of record of the respective TruPS as of the Effective Date, as the same appears on the register maintained for this purpose under the applicable indenture, shall be deemed the holder of such Allowed Claim for all purposes hereunder. The Interests received by holders of Allowed Claims in Classes 4, 5, 6 and 7 under the Plan entitled to receive such Interests hereunder and under the Plan shall be in full and final satisfaction of such Allowed Claims (other than for income tax purposes to the extent set forth in Treasury Regulations section 1.468B-9).

(b) The Disputed Claims Reserve shall receive an Interest in respect of Disputed Claims in Classes 4, 5, 6 and 7 pending the resolution of such claims. References in this Agreement to the transfer of an Interest from the Disputed Claims Reserve to any person shall mean the transfer of an applicable portion of the Interest held in the Disputed Claims Reserve.

#### 3.2 [Reserved].

#### 3.3 Evidence of Interests.

(a) Except as otherwise provided in this Agreement, Interests shall be evidenced by recordation in a register (the “Interest Register”) maintained for this purpose by a registrar designated by the Distribution Trustee for such purpose (the “Registrar”), except that the Distribution Trustee shall be the initial Registrar, and, for the avoidance of doubt, need not appoint a successor Registrar. The Registrar shall record on the Interest Register

each Beneficiary's Interests and Percentage Interest and (whether such Interests were issued in respect of Allowed TruPS Claims, provided, that any holder or deemed holder of an Allowed TruPS Claim entitled to receive Interests on the Initial Interest Issuance Date may direct the Distribution Trust in writing to record such holder's or deemed holder's Interests and Percentage Interest directly in such holder's or deemed holder's name or in the name of such holder's or deemed holder's nominee. The Interest Registrar shall reflect all transfers of Interests.

(b) If additional Interests are issued at any time to comply with any legal or regulatory requirements, appropriate adjustments shall be made on the Interest Register.

### 3.4 Manner of Issuance of Interests.

(a) On the Initial Interest Issuance Date, or as soon as practicable thereafter, the Registrar shall record on the Interest Register (i) the name of each holder or deemed holder of an Allowed Claim in Classes 4, 5, 6 and 7 under the Plan as of the Initial Interest Issuance Record Date and (ii) the applicable Percentage Interest of such holder.

(b) On the Initial Interest Issuance Date, or as soon as practicable thereafter, the Distribution Trustee shall record on the Interest Register the Disputed Claims Reserve as a holder of an Interest, in respect of Disputed Claims in Classes 4, 5, 6 and 7, together with the respective Percentage Interest of the Disputed Claims Reserve.

(c) As of each date on which Disputed Claims in Classes 4, 5, 6 and 7 under the Plan are Allowed, in whole or in part, or as soon as practicable thereafter, the Registrar shall record on the Interest Register the name of each holder of Disputed Claims in Classes 4, 5, 6 and 7 under the Plan whose Claims were Allowed and shall update the Interest Register to reflect the transfer of an applicable portion of the Interest recorded in the name of the Disputed Claims Reserve to the holder whose Disputed Claim in Classes 4, 5, 6 and 7 under the Plan has been Allowed.

(d) The Distribution Trust shall be authorized to withhold and retain Interests otherwise issuable to Beneficiaries that are subject to tax withholding to the extent required by applicable Tax laws, and any Interests so withheld shall be deemed issued in satisfaction of such Beneficiaries' Claims for all purposes of the Plan and this Agreement provided, however, that the Distribution Trust shall cooperate with the Beneficiaries to prevent or minimize any withholding and shall not withhold any taxes with respect to any Beneficiary that delivers a properly completed and duly executed IRS Form W- 8 or W-9 to the Distribution Trust. The Distribution Trust shall also be authorized to apply cash and other Distribution Trust Property allocable to amounts distributed in respect of any such retained Interests to satisfy such Tax withholding obligations in accordance with Section 4.6.

### 3.5 Transfers of Interests; Absence of Market for Interests.

(a) Interests, and any portions thereof, shall be freely negotiable and transferable to the extent provided herein and the provisions of applicable securities laws. Transfers of Interests, or any portions thereof, shall be recorded on the Interest Register by the Registrar in accordance with such practices and procedures as shall be prescribed by the

Distribution Trustee; provided that that the Distribution Trustee may direct the Registrar not to reflect any transfer and to give notice to such holder that no transfer has been recognized in the event (i) the Distribution Trustee reasonably believes that such transfer may constitute a violation of applicable laws, (ii) might cause the Distribution Trust to be required to register Interests under, and/or to become subject to the reporting requirements of Sections 13 or 15(d) of, the Securities Exchange Act of 1934, as amended (the “Exchange Act”) or (iii) the Distribution Trustee determines that the transferee is a defendant (or potential defendant) in a pending (or potential) action brought (or to be brought) by the Distribution Trust; and provided further that the Distribution Trustee may request from any proposed transferor any information or any representations regarding the transfer which it reasonably deems necessary in order to determine whether the Distribution Trust might, immediately after such transfer, become required to so register Interests under, and/or become subject to the such reporting requirements of, the Exchange Act.

(b) The Interests shall not be listed by the Distribution Trust on a national securities exchange or interdealer quotation system. Neither the Distribution Trust nor anyone acting on its behalf shall, directly or indirectly, engage in any activity designed to facilitate or promote trading in the Interests, including by placing advertisements, distributing marketing materials, or collecting or publishing information regarding prices at which the interests may be transferred; provided that no activity undertaken by the Distribution Trust in compliance with the terms of the Plan Documents shall be deemed to facilitate or promote trading in the Interests for these purposes.

3.6 Rights of Beneficiaries. Each Beneficiary shall be entitled to participate in the rights and benefits due to it hereunder on account of its Interest. Each Beneficiary shall take and hold the same, subject to all the terms and conditions of the Plan Documents. The interest of a Beneficiary is hereby declared and shall be, in all respects, personal property.

3.7 Interest Beneficial Only. Except as expressly provided hereunder, a Beneficiary shall have no title to, right to, possession of, management of or control of the Distribution Trust or the Distribution Trust Property. The ownership of Interests shall not entitle any Beneficiary to any title in or to the Distribution Trust Property or to any right to call for a partition or division of such assets or to require an accounting, except as may be specifically provided herein.

3.8 Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to one or more Interests, or a beneficial interest therein, the Distribution Trust (as determined by the Distribution Trustee) shall be entitled to refuse to comply with any such conflicting claims or demands. In so refusing, the Distribution Trust may elect to make partial or no payments or distributions with respect to the Interests at issue pending the resolution of such conflict, and the Distribution Trust shall be entitled to refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive and continuing jurisdiction over resolution of such conflicting claims or demands. Neither the Distribution Trust, the Oversight Committee, the Distribution Trustee nor the Distribution Trust Agents shall be or become liable to any party for either (i) a determination to continue making distributions pursuant to its books and records, without regard to the conflicting claims or demands; or (ii) a determination to partially or completely cease payments or distributions with

respect to the subject Interest or Interests. In the event that the Distribution Trust determines to cease payments, it shall be entitled to refuse to act until either (x) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court (or such other court of proper jurisdiction) or (y) all differences have been resolved by a written agreement among all of such parties and the Distribution Trust, which agreement shall include a complete release of the Distribution Trust, the Oversight Committee, the Distribution Trustee and the Distribution Trust Agents from liability resulting from any actions taken or not taken pursuant to this Section 3.8, which release shall be in form and substance reasonably satisfactory to the Distribution Trustee.

3.9 Beneficiary Liability to Third Persons. No Beneficiary shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Distribution Trust Property or the affairs of the Distribution Trust, to the fullest extent provided by Section 3803(a) of the Trust Act.

3.10 Actions in the Right of the Distribution Trust. No Beneficiary or Beneficiaries shall have the right to bring an action in the right of the Distribution Trust to recover a judgment pursuant to section 3816 of the Trust Act, unless such Beneficiary or Beneficiaries, individually or collectively, own twenty-five percent (25%) or more of the Percentage Interests.

#### **ARTICLE IV**

#### **DISTRIBUTIONS TO BENEFICIARIES**

#### 4.1 Distributions.

(a) General. The holders of Interests shall be entitled to receive Distributable Trust Assets distributed by the Distribution Trust, when and as such distributions are made pursuant to this Agreement in accordance with this Section 4.1.

#### (b) Distributions of Distributable Trust Assets.

(i) Initial Distribution. On the DT Initial Distribution Date, the Distribution Trust shall distribute to each holder of an Interest set forth on the Interest Register as of the Initial Distribution Record Date (including the Disputed Claims Reserve) such holder's pro rata share of the Cash (calculated in accordance with such holder's Percentage Interest on such date) constituting Distributable Trust Assets, as determined by the Distribution Trustee, as of the Effective Date, provided, that, the amount of such distribution to any holder of an Interest that was issued in respect of an Allowed TruPS Claim (as set forth on the Interest Register), shall be reduced, pro rata, in an amount sufficient, in the aggregate, to fund the items set forth in Section 4.1(d)(ii)(1)-(3) of the Plan, including the funding of the Post-Effective Date Indenture Trustee Fee Reserve.

(ii) Subsequent Distributions of Distributable Trust Assets. After the DT Initial Distribution Date, to the extent that Distributable Trust Assets become available for distribution, as determined by the Distribution Trustee, the Distribution Trustee shall establish a Distribution Record Date and a Trust Distribution Date for the distribution of such assets, and the Distribution Trust shall make distribution of such



assets on such Trust Distribution Date (including the Disputed Claims Reserve) to the holders of Interests, as set forth on the Interest Register on such Distribution Record Date, pro rata in accordance with such holders' Percentage Interests. Distributions of Distributable Trust Assets shall be made at least annually; provided, however, that annual distributions are not required to be made if the Distribution Trustee, upon consultation with the Oversight Committee, determines that the aggregate amount of Distributable Trust Assets at the time is such as would make the distribution impracticable, in which case such Distributable Trust Assets will be included in Distributable Trust Assets on a subsequent Trust Distribution Date.

4.2 Special Provisions Applicable to Administrative Claims, Priority Claims, and Secured Claims. Anything to the contrary in this Agreement notwithstanding, the following provisions shall exclusively apply with respect to Administrative Claims, Priority Claims and Secured Claims that become Allowed following the Effective Date:

(a) If any Administrative Claim, Priority Claim or Secured Claim is or becomes Allowed following the Effective Date and prior to the DT Initial Distribution Date, the Distribution Trust shall distribute from the Trust Distributable Assets available on the DT Initial Distribution Date to the holders of each such Administrative Claim, Priority Claim or Secured Claim, Cash in the Allowed amount of such Claim, and the amount of Distributable Trust Assets available for distribution on the DT Initial Distribution Date to the holders of Interests in accordance with Section 4.1(b)(i) shall be correspondingly reduced.

(b) If and to the extent any Administrative Claims Priority Claims or Secured Claims are Disputed as of the Effective Date, or are determined to be disputed following the Effective Date and prior to the DT Initial Distribution Date, the Distribution Trust shall set aside in a separate subaccount in the Disputed Claims Reserve an amount in Cash equal to the Estimated Amount of all such Claims.

(c) If a Disputed Administrative Claim, Priority Claim or Secured Claim becomes Allowed following the DT Initial Distribution Date, as soon as practicable but in any event within 30 days thereafter, the Distribution Trust shall distribute to the holder of such Claim from the Disputed Claims Reserve an amount in Cash equal to the Allowed amount of such Claim.

(d) If a Disputed Administrative Claim, Priority Claim or Secured Claim with respect to which funds have been set aside in the Disputed Claims Reserve as provided in the preceding subsection (c) is disallowed at any time following DT Initial Distribution Date, the funds so set aside shall, in the discretion of the Distribution Trustee either (i) be released from the Disputed Claims Reserve and become Distributable Trust Assets, (ii) be released from the Disputed Claims Reserve and be added to the Trust Administrative Reserve; or (iii) continue to be held in the Disputed Claims Reserve, either in the Administrative Claim, Priority Claim or Secured Claim subaccount or otherwise, if the Distribution Trustee determines that such funds may be necessary to satisfy Disputed Claims that may become Allowed in the future.

(e) For the avoidance of doubt, in no event will the holders of Administrative Claims, Priority Claims or Secured Claims be entitled to participate in distributions made by the Distribution Trust to holders of Interests.

#### 4.3 Distribution Record Date; Distributions.

(a) The provisions of this Section 4.3 shall separately apply to all distributions made pursuant to Section 4.1.

(b) The Distribution Record Date for purposes of determining the Beneficiaries entitled to receive a distribution on any Trust Distribution Date shall be no less than fifteen (15) and no more than thirty (30) days prior to the corresponding Trust Distribution Date.

(c) Except with respect to the DT Initial Distribution Date, the Distribution Trustee shall make a determination of the Distributable Trust Assets distributable on any Trust Distribution Date in advance of the corresponding Distribution Record Date, giving due regard for the Cash anticipated to be held by the Distribution Trust as of such Trust Distribution Date (not including Cash held in the Disputed Claims Reserve or the other reserves maintained by the Distribution Trust), and the sufficiency of the Cash held in or that may be required to be added to the Trust Administration Reserve.

(d) Following its determination of the Distributable Trust Assets to be distributed on any Trust Distribution Date pursuant to Section 4.3(c), but no later than five (5) Business Days in advance of the corresponding Distribution Record Date, unless otherwise determined by the Distribution Trustee for good reason shown, the Distribution Trust shall deliver a notice to each Beneficiary entitled to receive a distribution setting forth the Distribution Record Date, the Trust Distribution Date and the Distributable Trust Assets to be distributed, in the aggregate and on a Percentage Interest basis, as applicable. Such notice may be given as provided in Section 12.4 or by press release of general circulation.

(e) For purposes of making any distribution of Distributable Trust Assets, the term “of record” or any similar term means the Beneficiaries reflected on the Interest Register.

#### 4.4 Distributions in Respect of Disputed Claims.

(a) The Distribution Trust shall resolve or cause to be resolved Disputed Claims, as provided in Section 7.2.

(b) If a Disputed Claim is Allowed, in whole or in part:

(i) if such Claim is an Administrative Claim, Priority Claim or Secured Claim, the provisions of Section 4.2 shall apply; and

(ii) if such Disputed Claim is a Claim in Classes 4, 5, 6 and 7 under the Plan, there shall be transferred to the holder thereof from the Disputed Claims Reserve, on the Interest Issuance Date next following the

date that such Claim becomes Allowed (i) an Interest, with a corresponding Percentage Interest as shall be necessary, in accordance and consistent with the Plan, to satisfy such Allowed Claim in Classes 4, 5, 6 and/or 7 under the Plan and (ii) the Distributable Trust Assets, if any, distributed to the Disputed Claims Reserve in respect of such transferred Interests since the Effective Date.

(c) Subject to Section 2.8(b), if a Disputed Claim is disallowed, in whole or in part, then:

(i) if such Claim is an Administrative Claim, Priority Claim or Secured Claim, the provisions of Section 4.2 shall apply; and

(ii) if such Disputed Claim is a Claim in Classes 4, 5, 6 and 7 under the Plan, on the Interest Issuance Date next following the date of the determination not to Allow such Claim, in whole or in part, the Interest Register shall be updated to decrease the respective Percentage Interest of the Disputed Claims Reserve by taking into account the amount of such Disputed Claim that was not Allowed and to correspondingly increase the respective Percentage Interests of the Beneficiaries on a pro rata basis, in accordance with their then-existing Percentage Interests; and the Distributable Trust Assets if any, distributed to the Disputed Claims Reserve in respect of such Disputed Claim since the Effective Date, shall, in each case, become unreserved and unrestricted, and which shall be either (A) added to the Trust Administration Reserve or (B) made available for distribution to the Beneficiaries in accordance with the distribution provisions set forth in Section 4.1, as determined by the Distribution Trustee; provided that the Distribution Trustee may, in its sole discretion, retain such Interests and such amount of Distributable Trust Assets in the Disputed Claims Reserve, if it determines that such Distributable Trust Assets may be necessary to satisfy Disputed Claims that may become Allowed in the future.

(d) At such time as all Disputed Claims have been resolved, any (i) Cash deposited in the Disputed Claims Reserve in respect of any Disputed Claim pursuant to Section 4.2 shall be subject to the provisions set forth in Section 4.2(d) and (ii) remaining Distributable Trust Assets in the Disputed Claims Reserve not subject to subsection (i), shall become unreserved and unrestricted, and shall be either (x) added to the Trust Administration Reserve, or (y) made available for distribution to the Beneficiaries pursuant to Section 4.1, as determined by the Distribution Trustee.

(e) From and after the date of any modification of the Interest Register pursuant to this Section 4.4, all distributions of Distributable Trust Assets shall be distributed pursuant to Section 4.1 after taking into account such modification.

(f) Notwithstanding anything to the contrary in this Trust Agreement, no distribution of Distributable Trust Assets shall be made to any holder of any Disputed Claims

in Classes 4, 5, 6 and 7 under the Plan if, after taking into account such proposed distribution, the amount of Cash held in the Disputed Claims Reserve would be less than the amount necessary to cover payment in full of the Face Amount of all Disputed Claims (that are Disputed at the time of such proposed distribution) that are Administrative Claims (other than Professional Fee Claims), Priority Claims or Secured Claims.

#### 4.5 Determinations of and Adjustments to Estimated Amounts.

(a) As soon as practicable on or after the Effective Date, the Distribution Trustee, after consultation with the Oversight Committee, shall determine or cause to be determined the Estimated Amount for all Disputed Claims. The Distribution Trustee from time to time may make immaterial technical adjustments, or seek an adjusted determination from the Bankruptcy Court of, the Estimated Amounts of the Disputed Claims.

(b) If there shall be an increase in the Estimated Amounts of any Disputed Claims in accordance with Section 4.5(a) following the Disputed Claims Estimation Date, including, for the avoidance of doubt, any Disputed Claims in Classes 4, 5, 6 and 7 under the Plan, the Percentage Interest of the Disputed Claims Reserve and the Beneficiaries, as set forth on the Interest Register shall not be modified. In such a case, however, the Distribution Trustee may determine to retain in the Disputed Claims Reserve such amount of Distributable Trust Assets as would be necessary to satisfy the increase in Estimated Amounts, as provided in Section 4.4(c)(ii).

(c) If there shall be a decrease in the Estimated Amounts of the Disputed Claims in accordance with Section 4.5(a) following the Disputed Claims Estimation Date, the Distribution Trustee may, but shall not be required to, if such Disputed Claim was a Claim in Classes 4, 5, 6 and 7 under the Plan, cause the registrar of the Interest Register to update the Percentage Interest of the Disputed Claims Reserve and the Beneficiaries to take into account such decrease in the Estimated Amounts. Any (i) Cash deposited in the Disputed Claims Reserve in respect of such Disputed Claim pursuant to Section 7.3(a) or (ii) the Distributable Trust Assets distributed to the Disputed Claims Reserve in respect of such Disputed Claims shall be either (x) added to the Trust Administration Reserve, or (y) made available for distribution to the Beneficiaries in accordance with the distribution provisions set forth in Section 4.1; provided that the Distribution Trustee, may, in its sole discretion, retain such amount of Distributable Trust Assets in the Disputed Claims Reserve, if it determines that such Distributable Trust Assets may be necessary to satisfy Disputed Claims that may become Allowed in the future.

#### 4.6 Withholding and Reporting Requirements.

(a) The Distribution Trust may withhold and pay to the appropriate Tax Authority all amounts required to be withheld pursuant to the Tax Code or any provision of any foreign, state or local tax law with respect to any payment or distribution to the Beneficiaries, provided, however, that the Distribution Trust shall cooperate with the Beneficiaries to prevent or minimize any withholding and shall not withhold any taxes with respect to any Beneficiary that delivers a properly completed and duly executed IRS Form W- 8 or W-9 to the Distribution Trust. All such amounts withheld and paid to the appropriate

Tax Authority shall be treated as amounts distributed to such holders for all purposes of the Plan and this Agreement. To the extent an amount has been placed in escrow pending resolution of the need to withhold, and the Distribution Trust determines that no withholding is required, such amounts shall be distributed to the Beneficiaries with respect to whom such amounts were previously withheld.

(b) The Distribution Trust shall be authorized to collect such tax information from the Beneficiaries (including social security numbers or other tax identification information) as it in its sole discretion deems necessary to effectuate the Plan and this Agreement. To that end, the Distribution Trust shall send to each Beneficiary a written communication requesting that the Beneficiary provide certain tax information and the specifics of their holdings to the extent the Distribution Trust or Disbursing Agent deems appropriate (including completing the appropriate Internal Revenue Service Form W-8 or Internal Revenue Service Form W-9, as applicable to each holder). The Distribution Trust may refuse to make a distribution to any Beneficiary that fails to furnish such information in a timely fashion, until such information is delivered; provided, however, that, upon the delivery of such information by a Beneficiary, the Distribution Trust shall make such distribution(s) to which the Beneficiary is entitled, without interest; provided further that, if the holder fails to comply with such a request within one (1) year, during which time the Distribution Trust has made reasonable efforts to follow up on such request, (i) any pending distribution(s) allocated to such Beneficiary shall be deemed an unclaimed distribution to be treated as the Distribution Trustee determines in its discretion; and (ii) the Distribution Trust shall not be required to allocate any future distributions to such holder unless and until the holder provides the requested tax information; and provided further that, if the Distribution Trust fails to withhold in respect of amounts received or distributable with respect to any such holder and the Distribution Trust is later held liable for the amount of such withholding, such holder shall reimburse the Distribution Trust for such liability including interest, penalties, fines and other additional amounts with respect thereto. Notwithstanding the foregoing, each Beneficiary that receives a distribution under the Plan shall have the sole and exclusive responsibility for the payment of any income Taxes imposed by any governmental unit on account of such distribution.

4.7 Disbursing Agent. The Distribution Trustee shall initially be the Disbursing Agent responsible for issuing Interests. The Distribution Trustee may engage one or more agents to make distributions. References in this Agreement to distributions by the Distribution Trust shall include distributions made by a Disbursing Agent.

4.8 Incurrence of Debt. If the Distribution Trustee, after consultation with the Oversight Committee, determines that there are, or there are likely to be, insufficient funds in the Trust Administration Reserve to satisfy the costs and expenses described in Section 7.4(a) and other obligations and liabilities incurred, assumed or reasonably anticipated by the Distribution Trust (or to which the Distribution Trust Property are otherwise subject), the Distribution Trust may borrow sufficient funds, on terms approved by the Distribution Trustee, after consultation with the Oversight Committee, to satisfy such cost and expenses or pay such costs, fees and expenses, as applicable.

**ARTICLE V**  
**DUTIES AND POWERS OF THE DISTRIBUTION TRUSTEE**

5.1 Distribution Trustee. The initial Distribution Trustee shall be Clifford A. Zucker of CohnReznick LLP. In the event of the death, resignation or removal from office for Cause of the initial Distribution Trustee, a successor shall be appointed by the Oversight Committee, subject to Bankruptcy Court approval.

5.2 Powers of Distribution Trustee. Except as otherwise set forth in this Agreement, the Plan or the Confirmation Order, the Distribution Trustee is hereby authorized to perform those acts necessary to accomplish the purposes of the Distribution Trust, conduct the affairs of the Distribution Trust, perform the functions and take the actions provided for or permitted under this Agreement, the Plan or any agreement executed by the Distribution Trust, and have such other functions, authority and duties as customarily appertain to the trustee of a liquidating trust, including but not limited to:

(a) have general responsibility for the administration of the Distribution Trust;

(b) effect the distribution of Distributable Trust Assets to Distribution Trust Beneficiaries consistent with the terms of the Plan and this Agreement;

(c) administer, dispute, object to, compromise, or otherwise resolve Disputed Claims that were not otherwise resolved prior to the Effective Date;

(d) hire, supervise, compensate and terminate employees of the Distribution Trust, and retain, oversee, compensate and terminate any service professionals and other Distribution Trust Agents engaged with respect to the administration of the Distribution Trust;

(e) carry out any filings required to be made by the Distribution Trust, and provide the statements to Distribution Trust Beneficiaries required to be furnished to them in accordance with Section 9.2(a);

(f) execute contracts, agreements, leases, undertakings and other documents in the name and on behalf of the Distribution Trust; and

(g) communicate with Distribution Trust Beneficiaries and other interested persons on behalf of the Distribution Trust;

(h) protect and enforce the rights to the Distribution Trust Property vested in the Distribution Trust by the Plan by any method deemed appropriate in his discretion, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(i) invest funds (in the manner set forth in this Agreement), make distributions and pay any other obligations owed by the Distribution Trust from the Distribution Trust Property as provided herein and in the Plan;

(j) subject to Section 5.3 and Section 6.5(a), prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle Causes of Action comprising Distribution Trust Property, including retaining and overseeing counsel and other professionals engaged for the purposes thereof;

(k) pay expenses and make disbursements necessary to administer the Distribution Trust and to preserve, liquidate, and enhance the Distribution Trust Property;

(l) purchase such insurance coverage (in the form of an errors and omissions policy, fiduciary policy or otherwise) in such amount as the Distribution Trustee, deems necessary and appropriate with respect to the liabilities and obligations of the Distribution Trustee which such amount shall be determined in his sole discretion, or the Oversight Committee which such amount shall be determined by the Distribution Trustee upon the consent of the Oversight Committee (such consent not to be unreasonably withheld) or with Bankruptcy Court approval;

(m) retain and pay, as applicable, the Distribution Trust Agents;

(n) incur any reasonable and necessary expenses in liquidating and converting the Distribution Trust Property to Cash, pursuing Causes of Action, or otherwise administering the Distribution Trust, as set forth in the Plan or this Agreement; and

(o) exercise such other powers as may be vested in or assumed by the Distribution Trust pursuant to the Plan or Bankruptcy Court order, or as may be necessary and proper to carry out the provisions of the Plan or this Agreement.

### 5.3 General Authority of the Distribution Trustee

Unless specifically stated otherwise herein, the Distribution Trustee 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 Plan. The Distribution Trustee shall obtain approval of the Oversight Committee before taking any Material Action. In the event the Distribution Trustee desires to take any Material Action and the Oversight Committee does not approve the taking of such Material Action, the Distribution Trustee may petition the Bankruptcy Court for approval of such Material Action, and upon receipt of an order of the Bankruptcy Court approving the taking of such Material Action, the Distribution Trustee may take such Material Action. The Oversight Committee shall have the right to respond to any filing with the Bankruptcy Court made by the Distribution Trustee pursuant to this Section 5.3.

### 5.4 Limitation of Distribution Trustee's Authority; No On-Going Business

(a) For federal tax purposes, the Distribution Trustee shall not be authorized to engage in any trade or business with respect to the Distribution Trust Property or any proceeds therefrom except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Distribution Trust. The Distribution Trustee shall take such actions consistent with the prompt orderly liquidation of the Distribution Trust Property as required by applicable law and consistent with the treatment of the Distribution Trust as a

liquidating trust under Treasury Regulations section 301.7701-4(d), to the extent such actions are permitted by this Agreement.

(b) Notwithstanding anything in this Agreement to the contrary, in determining whether to provide or decline their consent and in connection with any actions to be taken by the Oversight Committee hereunder, the Oversight Committee shall always act in furtherance of the purposes of the Distribution Trust and the treatment of the Distribution Trust as a liquidating trust within the meaning of Treasury Regulations section 301.7701-4(d).

#### 5.5 Other Activities

The Distribution Trustee shall be entitled to retain CohnReznick LLP as a Distribution Trust Agent in accordance with the terms of this Agreement to assist with the administration of the Distribution Trust. CohnReznick LLP and the Distribution Trustee may be retained in matters that are unrelated to the Distribution Trust by banks, bank groups or other institutional lenders or debt holders who are, or whose Affiliates are, Beneficiaries, or lenders or indenture trustees to Beneficiaries or their Affiliates, so long as such other retention does not involve holding or representing any interest adverse to the interests of the Distribution Trust, or otherwise preclude or impair the Distribution Trustee from performing his duties under this Agreement.

#### 5.6 Investment and Safekeeping of Distribution Trust Property

All monies and other assets received by the Distribution Trustee shall, until distributed or paid over as herein provided, be segregated from all other monies and assets of the Distribution Trustee, and further, shall be held in trust for the benefit of the Distribution Trust Beneficiaries, but need not be segregated from other Distribution Trust Property, unless and to the extent required by the Plan. The Distribution Trustee shall promptly invest any such monies in the manner set forth in this Section 5.6, but shall otherwise be under no liability for interest or income on any monies received by the Distribution Trust hereunder and held for distribution or payment to the Beneficiaries, except as such interest or income shall actually be received. Investment of any monies held by the Distribution Trust shall be administered in accordance with the general duties and obligations hereunder. The right and power of the Distribution Trustee to invest the Distribution Trust Property, the proceeds thereof, or any income earned by the Distribution Trust, shall be limited to the right and power to (i) invest such Distribution Trust Property (pending distributions in accordance with the Plan or this Agreement) in (a) short-term direct obligations of, or obligations guaranteed by, the United States of America or (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 (ii) deposit such assets in demand deposits at any bank or trust company, which has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000 (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 Regulations section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise.



5.7 Compensation

(a) The Distribution Trustee shall be entitled to receive compensation for services rendered on behalf of the Distribution Trust and reimbursement of expenses as provided on Schedule A hereto, or such other compensation as may be agreed upon by the Distribution Trustee and the Oversight Committee or ordered by the Bankruptcy Court.

(b) All compensation and other amounts payable to the Distribution Trustee shall be paid out of the Trust Administration Reserve or from any proceeds of Distribution Trust Causes of Action.

5.8 Termination

The duties, responsibilities and powers of the Distribution Trustee will terminate on the date the Distribution Trust is dissolved under applicable law in accordance with the Plan, or by an order of the Bankruptcy Court.

5.9 No Bond

The Distribution Trustee shall serve without bond.

5.10 Removal

The Distribution Trustee may be removed by order of the Bankruptcy Court upon application of the members of the Oversight Committee acting unanimously, but only for Cause; *provided however*, that the Distribution Trustee may not be removed until a successor Distribution Trustee has been named or is capable of being named immediately upon such removal. Any fees and unreimbursed expenses that have been properly incurred by the Distribution Trustee in accordance with the terms of this Agreement that are owing to the Distribution Trustee as of the date of the Distribution Trustee's removal shall be paid to the Distribution Trustee within 5 days of the removal date.

5.11 Resignation

The Distribution Trustee may resign by giving not less than sixty (60) days' prior written notice thereof to the Bankruptcy Court and the Oversight Committee.

**ARTICLE VI**  
**OVERSIGHT COMMITTEE**

6.1 General. The affairs of the Distribution Trust shall be monitored by the Oversight Committee, which except as expressly set forth herein shall have only consultation rights in the administration of the Distribution Trust.

6.2 Oversight Committee Membership.

(a) The Oversight Committee shall consist of three (3) Oversight Committee Members, one of whom shall be selected by the Hildene Master Funds and two of

whom shall be selected by the Official Committee with the consent of the Debtors and the Hildene Master Funds, such consent not to be unreasonably withheld. Each Oversight Committee Member shall be a Person or an entity regularly engaged in the provision of fiduciary services, provided, that if such Oversight Committee Member is a natural person, such Oversight Committee Member shall be at least 18 years of age. The initial Oversight Committee Members are set forth on the signature page to this Agreement. By execution hereof, each Oversight Committee Member agrees to the terms set forth herein.

(b) Each Oversight Committee Member shall hold office until the earlier of (i) the termination of the Distribution Trust, (ii) the resignation, death or disability of such Oversight Committee Member or (iii) the removal of such Oversight Committee Member in accordance with this Agreement.

(c) Any Oversight Committee Member may resign upon thirty (30) days' prior written notice to the other members of the Oversight Committee.

(d) An Oversight Committee Member may be removed only for Cause by order of the Bankruptcy Court upon application of the Distribution Trustee or the other members of the Oversight Committee acting unanimously.

(e) In the event of a vacancy on the Oversight Committee, whether as a result of the resignation, death, disability or removal of an Oversight Committee Member, the remaining Oversight Committee Members, acting by unanimous vote, shall select a replacement Oversight Committee Member. If, thirty days after the occurrence of such vacancy, the remaining Oversight Committee Members cannot agree on a replacement Oversight Committee Member, the remaining Oversight Committee Members and the Distribution Trustee, acting by majority vote, shall select a replacement Oversight Committee Member.

6.3 Compensation. The initial aggregate compensation of each member of the Oversight Committee shall be \$10,000 per annum in addition to reimbursement of actual, reasonable and necessary expenses incurred by such Oversight Committee Members in the course of fulfilling his, her or its duties as an Oversight Committee Member, which such expenses shall not include the fees and expenses of any professional advisors engaged by such Oversight Committee Member. The Oversight Committee shall have the authority, by Unanimous Consent of the Oversight Committee Members and the Distribution Trustee, or Bankruptcy Court order, to alter the compensation of the Oversight Committee Members.

6.4 Authority. Except as otherwise expressly provided herein, the Oversight Committee shall have no authority to act on behalf of the Distribution Trust.

6.5 Rights and Powers of the Oversight Committee. In addition to such other rights as are set forth in this Agreement, the Oversight Committee shall have the right to:

(a) consent to the taking of any Material Action by the Distribution Trustee subject to the provision of Section 5.3;

- (b) receive and review the reports of the Distribution Trustee and consult with same on any matters related to the Distribution Trust or the Distribution Trust Property;
- (c) review and consult with the Distribution Trustee regarding:
  - (i) distributions to Distribution Trust Beneficiaries;
  - (ii) the prosecution, settlement, transfer, release or abandonment of any Causes of Action on behalf of the Distribution Trust.
  - (iii) the amendment of this Agreement as provided in Section 12.10 of this Agreement; and
  - (iv) such other actions as are specified in this Agreement;
- (d) appoint a successor Distribution Trustee with Bankruptcy Court approval as provided in Section 5.10 this Agreement;
- (e) apply to the Bankruptcy Court for the removal of an Oversight Committee member as provided in Section 6.2(b) of this Agreement;
- (f) have access to all reports, documents, memoranda and other work product of the Distribution Trustee;
- (g) monitor the actions of the Distribution Trustee and receive monthly status reports from the Distribution Trustee as to the status of the litigation, settlement, administration and pursuit of the Causes of Action; and
- (h) monitor and receive periodic reports and updates from the Distribution Trustee regarding the status of the administration of the Distribution Trust Property and the assets, liabilities and transfers of the Distribution Trust.

#### 6.6 Fiduciary Duty and Standard of Care.

(a) Each Oversight Committee Member's rights and powers hereunder are exercisable solely in a fiduciary capacity on behalf of the Distribution Trust and the Distribution Trust Beneficiaries consistent with, and in furtherance of, the purpose of the Distribution Trust and not otherwise, and in accordance with applicable law, including the Trust Act. Each Oversight Committee Member in the exercise of his or her rights and powers hereunder shall act in accordance with principles of good faith and fair dealing.

(b) No Oversight Committee Member shall have the authority to bind the Distribution Trust.

### **ARTICLE VII** **OPERATION OF THE DISTRIBUTION TRUST**

#### 7.1 Prohibited Activities.

(a) The Delaware Trustee, the Distribution Trustee, the Oversight Committee, and the Distribution Trust Agents shall hold the Distribution Trust out as a trust in the process of liquidation, whose activities are limited to the liquidation of the Distribution Trust Property on behalf, and for the benefit, of the Distribution Trust Beneficiaries and the other purposes set forth in this Agreement. Without limiting the foregoing, the Distribution Trust shall not hold itself out as an investment company, and no part of the Distribution Trust Property shall be caused by the Distribution Trustee to be used or disposed of in furtherance of any trade or business.

(b) The Distribution Trust shall not engage in any investments or activities inconsistent with the treatment of the Distribution Trust as a liquidating trust within the meaning of Treasury Regulations section 301.7701-4(d) or under applicable Internal Revenue Service guidelines, rulings or other controlling authorities, including Revenue Procedure 94-45, 1994-2 C.B. 684.

#### 7.2 Resolution of Disputed Claims.

(a) The Distribution Trustee is authorized to administer, dispute, object to compromise or otherwise resolve, on behalf of the Distribution Trust, all Disputed Claims without further Bankruptcy Court order and may delegate this authority to one or more Distribution Trust Agents. If the Distribution Trustee or a Distribution Trust Agent, as applicable, and the holder of a Disputed Claim are unable to reach a settlement on a Disputed Claim, or if the Distribution Trustee or a Distribution Trust Agent, as applicable, determines to disallow a Disputed Claim, the Distribution Trustee shall submit an objection to the Disputed Claim to the Bankruptcy Court for resolution. Service of this objection shall be made in accordance with any of the following manners: (i) in accordance with Bankruptcy Rule 3007, (ii) to the extent counsel for a holder of the Disputed Claim is unknown, by first-class mail, postage prepaid, on the signatory on the proof of claim filed such holder or other representative identified on the proof of claim or any attachment thereto (or at the last known address of such holder if no proof of claim is Filed or if the Distribution Trustee have been notified in writing of a change of address), or (iii) by first-class mail, postage prepaid, on any counsel that has appeared on behalf of the holder and has not withdrawn such appearance. If it is determined that the Bankruptcy Court does not have jurisdiction to resolve any Disputed Claim, then such Disputed Claim shall be submitted to the United States District Court for the District of Delaware for resolution. The Distribution Trustee shall file with the Bankruptcy Court a bi-annual notice of Disputed Claims resolved and/or settled during the prior six month period as soon as practicable following January 1 and July 1 of each calendar year, starting with the first such date after the Effective Date, provided, that the first such notice shall include all Disputed Claims resolved and/or settled from the Effective Date until the date of such notice. Any objections to Disputed Claims shall be served and filed on or before the later of (i) one year after the Effective Date, or (ii) such other date as may be fixed by the Bankruptcy Court, after notice and a hearing, with notice only to those parties entitled to notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002.

(b) Disputed Claims that become Allowed, in whole or in part, shall be satisfied exclusively out of the Disputed Claims Reserve, in the manner provided in Article III and Article IV, and in the order in which such Disputed Claims are Allowed. After all

Distributable Trust Assets have been distributed from the Disputed Claims Reserve, no further distributions shall be made in respect of Disputed Claims.

### 7.3 Disputed Claims Reserve.

(a) On or as soon as practicable following the Effective Date, the Distribution Trust shall establish the Disputed Claims Reserve and fund the Disputed Claims Reserve with an amount of Cash sufficient to cover the distributions and payments described in Section 6.3(f)(i) of the Plan. On or as soon as practicable following the Disputed Claims Estimation Date, the Interest Register shall be modified to reflect the Percentage Interests of the Beneficiaries and the Disputed Claims Reserve in accordance with Section 3.4(a)-(b). All Interests of and other assets in the Disputed Claims Reserve shall be the property of the Distribution Trust and not of the holder of any Claim or any other person.

(b) All Cash held in the Disputed Claims Reserve shall be maintained with a United States FDIC insured financial institution, and may be maintained in an interest-bearing account, as the Distribution Trustee may from time to time determine. The Cash in the Disputed Claims Reserve shall be held separately and shall not be commingled with any other Cash constituting Distribution Trust Property.

### 7.4 Trust Administration Reserve.

(a) On the Effective Date, there shall be established a Trust Administration Reserve not to exceed the trust Administration Reserve Cap for the purpose of maintaining Cash allocated and retained by the Distribution Trust from time to time in an amount necessary to cover the costs of administration of the Distribution Trust, including to (i) fund the reasonable fees and expenses of the Distribution Trustee, Distribution Trustee and the Distribution Trust Agents that the Distribution Trustee may engage to assist him, her or it in the discharge of the Distribution Trustee's duties under the Plan and this Agreement, including, without limitation, fees and expenses related to prosecute and resolve Causes of Action and objections to Claims; (ii) fund premium payments for an errors and omissions insurance policy for the benefit of the Distribution Trust, the Trustees, the Oversight Committee and the Distribution Trust Agents, (iii) meet contingent liabilities and maintain the value of the Distribution Trust Assets during liquidation, (iv) pay other reasonably incurred or anticipated expenses (including, without limitation, any Taxes imposed on or payable by the Distribution Trust or in respect of the Distribution Trust Assets, including with respect to such assets as are allocable to Disputed Claims), (v) pay any fees due to the U.S. Trustee in accordance with the Plan and (vi) satisfy other liabilities incurred or anticipated by the Distribution Trust in accordance with the Plan or this Agreement. The Trust Administration Reserve shall initially be funded from Cash included in the Distribution Trust Assets, in such amount as determined by the Debtors, the Official Committee, and the Purchaser, provided that the initial funding of (i) the Trust Administration Reserve pursuant to this Section 7.4(b) shall be not less than the sum of (y) \$1.4 million, plus (z) any reasonably foreseeable fees payable by the Distribution Trust pursuant to 28 U.S.C. § 1930. Thereafter, additional amounts may be added to the Trust Administration Reserve, in each case in such amounts and at such times as determined by the Distribution Trustee after consultation with the Oversight Committee, but in no event until after the distributions to be

made or reserved on the DT Initial Distribution Date are effected, including, if the Distribution Trustee, after consultation with the Oversight Committee determines in accordance with Section 7.5(c) that all or a portion of the funds in the Professional Fee Reserve are not required for the purposes described in Section 7.5(a) and/or Section 7.5(b), by transfer of funds from the Professional Fee Reserve, the proceeds of any indebtedness incurred by the Distribution Trust in accordance with Section 4.8 or recoveries on Distribution Trust Causes of Action.

(c) If the Distribution Trustee determines that any funds in the Trust Administration Reserve are not required for purposes set forth in Section 7.4(a), such funds shall be distributed to Beneficiaries in accordance with Section 4.1(c)

(d) Except as determined by the Distribution Trustee, the Trust Administration Reserve shall not be required to be held separately and may be commingled with unrestricted funds of the Distribution Trust; provided that funds in the Trust Administration Reserve shall be separately accounted for.

#### 7.5 Professional Fee Reserve; Indenture Trustee Fee Reserve.

(a) Pursuant to the Plan, on the Effective Date, there shall be established a Professional Fee Reserve for the purpose of maintaining Cash allocated and retained by the Distribution Trust to pay in full all amounts then owing or that may later become owing to any Professionals for professional fees and expenses incurred through the Effective Date and approved by the Bankruptcy Court.

(b) The Professional Fee Reserve shall be funded as provided in the Plan. Thereafter, to the extent the final fee applications of Professionals seek reimbursement for professional fees and expenses of an aggregate amount in excess of the amount in the Professional Fee Reserve on the date such final applications are due, the amount of such excess shall be added to the Professional Fee Reserve, by transfer of funds constituting Distributable Trust Assets as of the date hereof as soon as practicable after such date.

(c) If the Distribution Trustee, after consultation with the Oversight Committee, determines that the amount of funds in the Professional Fee Reserve exceeds the amount that is necessary to pay in full all Professional Fee Claims that have not been Allowed and paid in full or finally disallowed such that such excess funds in the Professional Fee Reserve are not required for the purposes described in Section 7.5(a) and/or Section 7.5(b), such excess funds shall be applied as follows:

(i) *First*, to the extent the Distribution Trustee determines that any additional amounts are required therefor, such funds shall be deposited to the Trust Administration Reserve; and

(ii) *Second*, any such remaining funds shall be distributed to the Beneficiaries in accordance with Section 4.1(c).

(d) Except as determined by the Distribution Trustee, funds in the Professional Fee Reserve shall not be required to be held separately and may be commingled

with unrestricted funds of the Distribution Trust; provided that funds in the Professional Fee Reserve shall be separately accounted for.

(e) On the Effective Date, there shall be established a Post-Effective Date Indenture Trustee Fee Reserve for the purpose of paying disputed Indenture Trustee Fees, in accordance with Section 4.1(d)(ii) of the Plan. Upon resolution of all disputes related to, and the payment of, Indenture Trustee Fees, any remaining funds in the Post-Effective Date Indenture Trustee Fee Reserve shall be distributed to the holders of Interests originally issued to the applicable holders of TruPS Claims Holders (as set forth on the Interest Register) that funded the Post-Effective Date Indenture Trustee Fee Reserve in accordance with Section 4.1(d)(iv)(B) of the Plan.

#### 7.6 Reporting and Access to Information.

(a) Each of the Reorganized Debtors and the Distribution Trustee shall mutually cooperate with the other in accordance with Section 6.3(e) of the Plan.

(b) The Distribution Trustee shall cause to be prepared financial and other reports as, in the determination of the Distribution Trustee, are necessary or desirable for administering the Distribution Trust, and as are otherwise in furtherance of the intents and purposes of this Agreement. Without limitation, the Distribution Trustee shall also cause to be timely prepared, filed and distributed such additional statements, reports and submissions (x) as may be necessary to cause the Distribution Trust to be in compliance with applicable law, including to the extent otherwise necessary to allow the Interests to be transferrable and tradable in accordance with applicable law, or (y) as may be otherwise required from time to time by the Bankruptcy Court.

(c) The Distribution Trustee shall provide to the Beneficiaries (i) a bi-annual statement in narrative form briefly describing the activities of the Distribution Trust during the preceding six months, in such detail and covering such matters as the Distribution Trustee determines is appropriate in its discretion and (ii) notice, in such detail as the Distribution Trustee deems appropriate, of the occurrence of any of the events described in clause (ii) of the definition of Material Action, or the entry of a judgment with respect to any of the matters referred to therein, in each case reasonably promptly after the occurrence of such event. The Distribution Trustee may also provide such other information regarding the affairs of the Distribution Trust as the Oversight Committee reasonably requests, or the Distribution Trustee determines, from time to time to provide in its discretion.

(d) Section 3819(a) of the Trust Act notwithstanding, Distribution Trust Beneficiaries shall have the right to obtain from the Distribution Trust only (i) the materials required to be provided by the Distribution Trustee in Section 7.6(c) and (ii) a copy of the governing instrument and the Certificate of Trust and all amendments thereto, together with copies of any written powers attorney pursuant to which the governing instrument and any certificate and any amendments thereto have been executed.

7.7 Distribution Trust Agents. The Distribution Trust may employ such Distribution Trust Agents, including counsel, advisors, administrators and other professionals,

as deemed reasonably necessary or desirable by the Distribution Trustee to carry out the intents and purposes of the Distribution Trust, without further order from the Bankruptcy Court. Distribution Trust Agents shall be appointed, and their appointment may be terminated, by the Distribution Trustee. Distribution Trust Agents shall be compensated on such basis as approved by the Distribution Trustee and shall be paid without further motion, application, notice or other order of the Bankruptcy Court. The fees and expenses of Distribution Trust Agents shall be satisfied out of the Trust Administration Reserve or the proceeds of Distribution Trust Property.

**ARTICLE VIII**  
**DELAWARE TRUSTEE**<sup>2</sup>

8.1 Appointment. The Delaware Trustee shall act solely for the purpose of complying with the requirement of section 3807 of the Trust Act, and its powers and obligations hereunder shall become effective upon its execution of this Agreement.

8.2 Powers.

(a) Notwithstanding any provision hereof to the contrary, the duties and responsibilities of the Delaware Trustee shall be limited solely to (i) accepting legal process served on the Distribution Trust in the State of Delaware and (ii) the execution of any certificates required to be filed with the office of the Delaware Secretary of State that the Delaware Trustee is required to execute under section 3811 of the Trust Act (including without limitation the Certificate of Trust). Except as provided in the foregoing sentence, the Delaware Trustee shall have no management responsibilities or owe any fiduciary duties to the Distribution Trust, the Distribution Trustee, the Oversight Committee, the Distribution Trust Beneficiaries or any other distributee of the Distribution Trust hereunder. The filing of the Certificate of Trust with the Secretary of State of the State of Delaware as provided under the Trust Act is hereby ratified.

(b) By its execution hereof, the Delaware Trustee accepts the trusteeship of the Distribution Trust on the terms set forth herein. Except as otherwise expressly set forth in Section 8.2(a), the Delaware Trustee shall not have any duty or liability with respect to the administration of the Distribution Trust, the investment of the Distribution Trust Property or the distribution of the Distribution Trust Property to the Beneficiaries, and no such duties shall be implied. The Delaware Trustee shall not be liable for the acts or omissions of the Distribution Trustee or the Oversight Committee, nor shall the Delaware Trustee be liable for supervising or monitoring the performance of the duties and obligations of the Distribution Trustee or the Oversight Committee under this Agreement. The Delaware Trustee shall not be obligated to give any bond or other security for the performance of any of its duties hereunder. The Delaware Trustee shall not be personally liable under any circumstances, except for its own gross negligence, bad faith or willful misconduct in the performance of its express duties under this Agreement. Without limiting the foregoing:

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<sup>2</sup> NTD: Subject to Delaware Trustee counsel.



(i) the Delaware Trustee shall not be personally liable for any error of judgment made in good faith, except to the extent such error of judgment constitutes willful misconduct, bad faith or gross negligence in the performance of its express duties under this Agreement;

(ii) the Delaware Trustee shall not have any duty or obligation to manage or deal with the Distribution Trust Property, or to otherwise take or refrain from taking any action under this Agreement except as expressly provided in Section 8.2(a), and no implied trustee duties or obligations shall be deemed to be imposed on the Delaware Trustee;

(iii) no provision of this Agreement shall require the Delaware Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of its rights or powers hereunder if the Delaware Trustee has reasonable grounds to believe that the payment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to it;

(iv) the Delaware Trustee shall not be personally liable for the validity or sufficiency of this Agreement, the value or sufficiency of the Distribution Trust Property or for the due execution hereof by the other parties hereto;

(v) the Delaware Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect;

(vi) the Delaware Trustee may request the Distribution Trustee to provide a certificate with regard to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, and such certificate shall constitute full protection to the Delaware Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon;

(vii) in the exercise of its duties hereunder, the Delaware Trustee (I) may act directly or through agents or attorneys pursuant to agreements entered into with any of them and shall not be liable for the acts or omissions of any agents or attorneys selected by it in good faith, and (II) may consult with counsel selected by it in good faith and employed by it, and it shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel;

(viii) the Delaware Trustee acts solely as Delaware Trustee hereunder and not in its individual capacity, and all persons having any claim against the Delaware Trustee by reason of the transactions contemplated by this Agreement shall look only to the Distribution Trust Property for payment or satisfaction thereof;

(ix) the Delaware Trustee shall not be personally liable for any representation, warranty, covenant, agreement, or indebtedness of the Distribution Trust;

(x) the Delaware Trustee shall not incur liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper (or copy thereof) reasonably believed by it to be genuine and reasonably believed by it to be signed by the proper party or parties. The Delaware Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any entity party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, the Delaware Trustee may for all purposes hereof conclusively rely on a certificate, signed by an officer of the Distribution Trust, as to such fact or matter, and such certificate shall constitute full protection to the Delaware Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon; and

(xi) the Delaware Trustee shall have no duty to inquire as to the authenticity of, or to require substantiating evidence of any kind in respect of, any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper provided pursuant to subsection (v), (vi) or (x) of this Section 8.2(b).

(xii) the Delaware Trustee shall not have any duty or obligation to file Tax Returns or otherwise report Taxes for or on behalf of the Distribution Trust or Distribution Trust Beneficiaries;

(xiii) the Delaware Trustee shall not have any duty or obligation to act or respond to any notice, direction or other request or instruction unless given or made in writing and otherwise in accordance with this Agreement;

(xiv) the Delaware Trustee shall not have any duty or obligation to perform, and shall not incur any liability for the failure of any other person to perform, any duty or obligation incurred by or imposed upon any other party to this Agreement;

(xv) this Agreement is executed and delivered by [●] not individually or personally but solely as trustee of the Distribution Trust, in the exercise of the powers and authority expressly conferred and vested in it under this Agreement.

8.3 Compensation. The Delaware Trustee shall be entitled to receive compensation out of the Trust Administration Reserve for the services that the Delaware Trustee performs in accordance with this Agreement in accordance with such fee schedules as shall be agreed from time to time by the Delaware Trustee and the Distribution Trustee, and if

so required by the Plan Documents or applicable law, as approved by the Bankruptcy Court. The Delaware Trustee may also consult with counsel (who may be counsel for the Distribution Trustee) with respect to those matters that relate to the Delaware Trustee's role as the Delaware Trustee of the Distribution Trust, and the reasonable legal fees incurred in connection with such consultation and any other reasonable out-of-pocket expenses of the Delaware Trustee shall be reimbursed out of the Trust Administration Reserve.

8.4 Duration and Replacement. The Delaware Trustee shall serve for the duration of the Distribution Trust or until the earlier of (i) the effective date of the Delaware Trustee's resignation, or (ii) the effective date of the removal of the Delaware Trustee. The Delaware Trustee may resign at any time by giving thirty (30) days' written notice to the Distribution Trustee and the Oversight Committee; provided, however, that such resignation shall not be effective until such time as a successor Delaware Trustee has accepted appointment. The Delaware Trustee may be removed with the Distribution Trustee after consultation with the Oversight Committee, by providing thirty (30) days' written notice to the Delaware Trustee; provided, however, that such removal shall not be effective until such time as a successor Delaware Trustee has accepted appointment. Upon the resignation or removal of the Delaware Trustee, the Distribution Trustee after consultation with the Oversight Committee shall appoint a successor Delaware Trustee. If no successor Delaware Trustee shall have been appointed and shall have accepted such appointment within forty-five (45) days after the giving of such notice of resignation or removal, the Delaware Trustee may petition the Bankruptcy Court for the appointment of a successor Delaware Trustee. Any successor Delaware Trustee appointed pursuant to this Section shall be eligible to act in such capacity in accordance with this Agreement and, following compliance with this Section, shall become fully vested with the rights, powers, duties and obligations of its predecessor under this Agreement, with like effect as if originally named as Delaware Trustee. Any such successor Delaware Trustee shall notify the Delaware Trustee of its appointment by providing written notice to the Delaware Trustee and upon receipt of such notice, the Delaware Trustee shall be discharged of its duties herein. Any such successor Delaware Trustee shall also file an amendment to the Certificate of Trust as required by the Trust Act.

## **ARTICLE IX** **TAX MATTERS**<sup>3</sup>

### 9.1 Tax Treatment.

(a) For all United States federal income tax purposes, all parties (including, without limitation, the Debtors, the Reorganized Debtors, the Distribution Trustee, the Oversight Committee and the Beneficiaries) shall treat the transfer of the Initial Assets to the Distribution Trust as:

(i) a transfer of the Distribution Trust Property (subject to any obligations relating to those assets) directly to Beneficiaries, other than Distribution Trust Property that is allocable to Disputed Claims (x) in Classes 4, 5, 6 and 7 under the Plan (which shall be treated as a transfer of

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<sup>3</sup> NTD Subject to Tax review.

such assets to the Disputed Claims Reserve based on the Percentage Interest of the Disputed Claims Reserve) and (y) that are an Administrative Claim (other than a Professional Fee Claim), Priority Claim or Secured Claim, (which shall be treated as a transfer of such assets to the Disputed Claims Reserve based on the amount of Cash deposited into the Disputed Claims Reserve pursuant to Section 7.3(a) in respect of such Disputed Claims), in each case followed by

(ii) the transfer by such Beneficiaries to the Distribution Trust of such Distribution Trust Property in exchange for the Interests.

(b) Accordingly, those holders of Allowed Claims in Classes 4, 5, 6 and 7 under the Plan receiving Interests shall be treated for United States federal income tax purposes as the grantors and owners of their respective shares of the Distribution Trust Property other than Distribution Trust Property that are allocable to Disputed Claims (which shall be treated as a transfer of such assets to the Disputed Claims Reserve based on the Percentage Interest of the Disputed Claims Reserve). The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

## 9.2 Tax Reporting.

(a) The Distribution Trust shall file Tax Returns treating the Distribution Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with the Plan. The Distribution Trust also shall annually send (or otherwise make available) to each holder of a beneficial interest in the Distribution Trust 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 United States federal income tax returns or to forward the appropriate information to their respective beneficial holders with instructions to report such items on their United States federal income tax returns. The Distribution Trust also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Distribution Trust that are required by any Governmental Unit or Tax Authority.

(b) Allocations of Distribution Trust taxable income among the Beneficiaries will 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 restrictions on distributions described in the Plan) if, immediately prior to such deemed distribution, the Distribution Trust had distributed all of its other assets (valued at their tax book value) to the Beneficiaries, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Distribution Trust. Similarly, taxable loss of the Distribution 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 Distribution Trust Property (valued at their tax book value). The tax book value of the Distribution Trust Property for this purpose will equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Tax Code, and applicable tax regulations, and other applicable administrative and judicial authorities and pronouncements.

(c) Unless otherwise determined by the Distribution Trustee, the Distribution Trust shall (A) treat the Disputed Claims Reserve, and the Distribution Trust Property allocable thereto, as a “disputed ownership fund” governed by Treasury Regulation section 1.468B-9 by timely making an election, (B) file such Tax Returns and pay such Taxes as may be required consistent with such treatment, and (C) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes.

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

### 9.3 Tax Payment.

(a) The Distribution Trust shall be responsible for the payment of any Taxes imposed on the Distribution Trust or the Distribution Trust Property, out of (i) the Trust Administration Reserve, or (ii) after the distributions to be made or reserved on the DT Initial Distribution Date are effected, then out of the Trust Administration Reserve and the proceeds of Distribution Trust Property.

(b) The Distribution Trust shall utilize Cash in the Disputed Claims Reserve for the payment of any Taxes imposed in respect thereof; provided that in the event, and to the extent, that the Cash in the Disputed Claims Reserve is insufficient to pay all or any portion of such Taxes, or if as a result of the payment of such Taxes, the Cash in the Disputed Claims Reserve will be insufficient to cover payment in full of the Face Amount all Disputed Claims (that are Disputed at the time of such proposed distribution) that are Administrative Claims (other than Professional Fee Claims), Priority Claims or Secured Claims, such Taxes shall be paid first by the Distribution Trust from the Trust Administration Reserve and shall be reimbursed to the Trust Administration Reserve by the Disputed Claims Reserve to the extent that Cash subsequently becomes available therefor in the Disputed Claims Reserve, and then from any proceeds of Distribution Trust Property.

## **ARTICLE X**

### **LIMITATION OF LIABILITY AND INDEMNIFICATION**

#### 10.1 Limitation of Liability.

(a) None of the Delaware Trustee, the Distribution Trustee, Oversight Committee Members, Distribution Trust Agents, or any Nominating Party or their respective principals, advisors or professionals, shall be liable to the Distribution Trust, any Beneficiary or any holder of a Disputed Claim for any damages arising out of the creation, operation or termination of the Distribution Trust, including actions taken or omitted in fulfillment of his, her or its duties with respect to the Distribution Trust, except as may be determined by Final Order to have arisen out of such party’s gross negligence, bad faith or willful misconduct; provided that in no event will any such party be liable for punitive, exemplary, consequential or special damages under any circumstances. Furthermore, none of the Delaware Trustee, the Distribution Trustee or any Oversight Committee Member shall be liable to the

Distribution Trust, any Beneficiary or any holder of a Disputed Claim for any action taken in good faith reliance upon the advice of professionals employed by the Distribution Trust.

(b) None of the Delaware Trustee, the Distribution Trustee, any Oversight Committee Member or the Distribution Trust Agents, when acting in such capacities, shall be subject to any personal liability whatsoever, whether in tort, contract or otherwise, to any person, other than the Distribution Trust or the Distribution Trust Beneficiaries, in connection with the affairs of the Distribution Trust to the fullest extent provided under section 3803 of the Trust Act, and all persons claiming against any of the Delaware Trustee, the Distribution Trustee, the Oversight Committee members or Distribution Trust Agent, or otherwise asserting claims of any nature in connection with affairs of the Distribution Trust, shall look solely to the Distribution Trust Property for satisfaction of any such claims.

(c) Nothing contained in the Plan Documents shall be deemed to be an assumption by the Delaware Trustee, the Distribution Trustee, any Oversight Committee Member, or any Distribution Trust Agent of any of the liabilities, obligations or duties of the Debtors or shall be deemed to be or contain a covenant or agreement by any of them to assume or accept any such liability, obligation or duty.

(d) The exercise by a Nominating Party of its rights hereunder shall not, in any way, cause such Nominating Party to become, or result in such Nominating Party becoming, a fiduciary to the Debtors, their estates, creditors or equity holders, to the Distribution Trust, the Distribution Trustee, the Oversight Committee or to any other person or constituency. Neither a Nominating Party nor any of its subsidiaries, affiliates, successors and assigns and its present or former employees, agents, officers, directors or principals shall have or incur any liability, nor shall any of them be subject to any claim or cause of action, of any kind in connection with, arising out of, or related to, the exercise by a Nominating Party of its rights hereunder, or any act taken or omitted to be taken in connection therewith.

## 10.2 Indemnification.

(a) The Delaware Trustee, the Distribution Trustee, the Oversight Committee Members, any Disbursing Agent and their respective affiliates, and the officers, directors, partners, managers, members, and employees of each of them, as the case may be (all persons so entitled to indemnification, collectively, the “Covered Parties”), shall be indemnified and held harmless, to the fullest extent permitted by law by the Distribution Trust from and against any and all losses, claims, taxes, damages, reasonable expenses and liabilities (including liabilities under state or federal securities laws) of any kind and nature whatsoever, to the extent that such expenses arise out of or are imposed upon or asserted against such indemnified persons with respect to the creation, operation or termination of the Distribution Trust or the execution, delivery or performance of this Agreement or the transactions contemplated hereby and shall not be liable for actions taken or omitted in their capacity, as Delaware Trustee, Distribution Trustee, Disbursing Agent or Oversight Committee Member, on behalf of, or in fulfillment of their duties with respect to, the Distribution Trust, except those acts or omissions that are determined by Final Order to have arisen out of such party’s own gross negligence, bad faith or willful misconduct, and each shall be entitled to be indemnified, held harmless, and reimbursed for fees and expenses

including, without limitation, reasonable attorney's fees, which such persons and entities may incur or may become subject to or in connection with any action, suit, proceeding or investigation that is brought or threatened against such persons or entities regarding the implementation or administration of the Plan Documents or the discharge of their respective duties hereunder or thereunder or in respect thereof, except for any actions or inactions that are determined by Final Order to have arisen out of their own gross negligence, bad faith, or willful misconduct.

(b) The Covered Parties shall be entitled to obtain advances from the Distribution Trust to cover their reasonable expenses of defending themselves in any action threatened or brought against them as a result of the acts or omissions, actual or alleged, of any such party in its capacity as such; provided, however, that the Covered Parties receiving such advances shall repay the amounts so advanced to the Distribution Trust immediately upon the entry of a Final Order finding that such parties were not entitled to any indemnity under the provisions of this Section 10.2.

(c) Any claim of the Covered Parties to be indemnified, held harmless, or reimbursed shall be satisfied solely from the Distribution Trust Property, bonds (if any) or any applicable insurance that the Distribution Trust has purchased, as provided in Section 2.11. The rights of the Covered Parties under this Section 10.2 shall survive the resignation or removal of any Oversight Committee Member, Disbursing Agent, the Distribution Trustee or the Delaware Trustee and the termination of this Agreement.

(d) The Distribution Trust may also determine to provide indemnification to other Distribution Trust Agents and their respective officers, directors, partners, managers, members and employees, on such terms as the Distribution Trustee may determine, after consultation with the Oversight Committee.

## **ARTICLE XI**

### **DURATION OF DISTRIBUTION TRUST**

#### 11.1 Duration.

(a) The Distribution Trust shall dissolve upon the date that is the earliest to occur of: (i) the distribution of all Distribution Trust Property pursuant to the Plan Documents, (ii) the determination of the Distribution Trustee that the administration of the Distribution Trust Property is not likely to yield sufficient additional proceeds to justify further pursuit, or (iii) all the distributions required to be made under this Agreement have been completed; provided, however, that in no event shall the Distribution Trust dissolve later than five (5) years from the Effective Date, unless (x) the Bankruptcy Court or other court with jurisdiction over the Distribution Trust, within the ninety (90) days prior to the fifth (5th) anniversary of the Effective Date (or within ninety (90) days prior to the end of an extension period), determines that a fixed-period extension, not to exceed three (3) years, together with any prior extensions, is necessary to facilitate or complete the recovery on and liquidation of the Distribution Trust Property or (y) the Distribution Trust obtains a favorable private letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the trust as a Distribution Trust for United States federal income

tax purposes. Upon dissolution, the Distribution Trustee shall wind up and liquidate the Distribution Trust in accordance with section 3808 of the Trust Act and the Delaware Trustee shall file a Certificate of Cancellation in accordance with the Trust Act and thereupon this Agreement shall terminate.

(b) If at any time the Distribution Trustee determines, in reliance upon its professionals and after consultation with the Oversight Committee, that the expense of administering the Distribution Trust, including the making of a final distribution to the Beneficiaries, is likely to exceed the value of the assets remaining in the Distribution Trust, the Distribution Trustee may apply to the Bankruptcy Court for authority to (i) reserve any amounts necessary to dissolve the Distribution Trust, (ii) donate any balance to an organization selected by the Distribution Trustee which is described in section 501(c)(3) of the Tax Code and exempt from United States federal income tax under section 501(a) of the Tax Code, as provided in Section 2.8(b) hereof, and (iii) dissolve the Distribution Trust.

11.2 Post-Termination. After the dissolution of the Distribution Trust and solely for the purpose of liquidating and winding up the affairs of the Distribution Trust, the Oversight Committee Members and the Distribution Trustee shall continue to act as such until their duties have been fully performed. Upon distribution of all the Distribution Trust Property, the Distribution Trustee shall designate a Distribution Trust Agent to retain all books and records pertaining to the Debtors or the Distribution Trust that have been delivered to or created by the Distribution Trust, subject to the provisions of Section 11.3.

11.3 Destruction of Books and Records. All books and records pertaining to the Distribution Trust that have been delivered to or created by the Distribution Trust may be destroyed at any time following (x) the date that is six (6) years after the final distribution of Distribution Trust Property (unless such records and documents are necessary to fulfill the Distribution Trust's remaining obligations) subject to the terms of any joint prosecution and common interests agreement(s) to which the Distribution Trust may be a party, or (y) such earlier date as may be approved by the Distribution Trustee in consultation with the Oversight Committee; provided, however, that the Distribution Trust shall, upon at least ten (10) Business Days' advance written notice to the Reorganized Debtors, obtain an order of the Bankruptcy Court or the written consent of the Reorganized Debtors before disposing of any books and records that were transferred to the Distribution Trust by the Debtors or Reorganized Debtors, or are reasonably likely to pertain to pending litigation in which the Debtors or Reorganized Debtors or their current or former officers or directors are a party.

11.4 Discharge. Except as otherwise specifically provided herein, upon the final distribution of Distribution Trust Property and the filing by the Delaware Trustee of a Certificate of Cancellation with the Secretary of State of the State of Delaware, the Trustees and the Oversight Committee Members shall be deemed discharged and have no further duties or obligations hereunder, the Interests shall be cancelled and the Distribution Trust will be deemed to have been dissolved. In the event that there is Distribution Trust Property at the termination of the Distribution Trust, the Distribution Trustee after consultation with the Oversight Committee shall cause to be donated such Distribution Trust Property to a charitable organization of the Distribution Trustee's choice described in section 501(c)(3) of the Tax



Code and exempt from United States federal income tax under section 501(a) of the Tax Code, as provided in Section 2.8(b).

**ARTICLE XII**  
**MISCELLANEOUS PROVISIONS**

12.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (without reference to conflicts of law).

12.2 Jurisdiction. Subject to the proviso below, the parties agree that the Bankruptcy Court shall have exclusive jurisdiction over the Distribution Trust, including, without limitation, the administration and activities of the Distribution Trust; provided, however, that notwithstanding the foregoing or anything to the contrary set forth in the Plan, the Distribution Trust shall have power and authority to bring (or cause to be brought) any action in any court of competent jurisdiction to prosecute any Distribution Trust Causes of Action.

12.3 Severability. In the event that any provision of this Agreement or the application thereof to any person or circumstances shall be determined by Final Order to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to persons or circumstances or in jurisdictions other than those as to or in which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.4 Notices. Any notice or other communication required or permitted to be made under this Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally or by facsimile, sent by nationally recognized overnight delivery service, or mailed by first-class mail:

(i) if to the Delaware Trustee, to:

[     ]  
[     ]  
[     ]  
Attention: [     ]

(iii) if to the Distribution Trust, to:

[     ]  
[     ]  
[     ]  
[     ]; and

(iii) if to any Beneficiary or holder of a Disputed Claim, to the last known address of such Beneficiary or holder according to the records of the Distribution Trust. In addition, any Beneficiary or holder of a Disputed Claim may designate at least one counsel or other agent at any given time to receive copies of notices or other

communications provided pursuant to this Section 12.4(c) by notifying the Distribution Trustee in writing of such designation.

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

12.6 Plan Documents. Nothing contained herein shall modify the terms of any other Plan Document, which are intended to be supplemented by the terms of this Agreement. However, to the extent that the terms of any of the other Plan Documents are inconsistent with the terms set forth in this Agreement with respect to the Distribution Trust, then the terms of each Plan Document shall have controlling effect in the following order of priority (i) the Confirmation Order, (ii) the Plan and (iii) this Agreement.

12.7 Confidentiality. The Trustees, the Oversight Committee Members and the Distribution Trust Agents, and their respective officers, directors, partners, managers, members and employees (the "Confidentiality Parties"), shall hold strictly confidential and not use for personal gain any material, non-public information of which they have become aware in their capacity as a Confidentiality Party of or pertaining to the Debtors, the Reorganized Debtors, the Distribution Trust, the Distribution Trust Beneficiaries or the Distribution Trust Property; provided, however, that such information may be disclosed if—

(i) it is now or in the future becomes generally available to the public other than as a result of a disclosure by any of the Confidentiality Parties;

(ii) such disclosure is (x) required of any of the Confidentiality Parties pursuant to legal process, including subpoena or other court order or other applicable laws or regulations or (y) would have been required to produce in response to appropriate discovery measures; or

(iii) the Distribution Trustee determines that such disclosure is in the interests of the Distribution Trust or the Beneficiaries, provided, that in respect of material, non-public information pertaining to the Reorganized Debtors the Confidentiality Parties may disclose such information only (v) to a person in accordance with the terms of any confidentiality or similar agreement between such person and the Reorganized Debtors; (w) to a person pursuant to an agreement of any other person with the Reorganized Debtors allowing such disclosure to such person; (x) in connection with pursuing the Distribution Trust Causes of Action or otherwise pursuing, preserving or protecting the Distribution Trust Causes of Action, or the resolution of any Disputed Claim, to any party that has been advised of the confidential nature of such information and has agreed to comply with the provisions of this Section 12.7; (y) in a filing made in any legal proceeding commenced in connection with the matters set forth in clause (x) of this subsection, provided that the Confidentiality Parties shall (A) provide reasonable notice to the Reorganized Debtors prior to such filing and (B) upon request of the Reorganized Debtors take reasonable measures to file or otherwise maintain such material, non-public information under seal; or (z) as otherwise agreed by the Reorganized Debtors.

12.8 Entire Agreement. This Agreement, including the Exhibits attached hereto, the Plan and the Confirmation Order, contain the entire agreement between the parties and supersede all prior and contemporaneous agreements or understandings between the parties with respect to the subject matter hereof. For the avoidance of doubt, to the extent holders of Allowed Claims that would otherwise be entitled to receive Interests have established or in the future establish trusts or other entities or vehicles to facilitate the implementation of the Plan with respect to their Interests or for other purposes, the agreements governing such trusts or other entities or vehicles shall not limit or impose requirements in any way on the Distribution Trust, the Oversight Committee Members, the Trustees, Distribution Trust Agents or any other employee, agent or representative of the Distribution Trust, and to the extent there is any conflict between the provisions of such agreements and this Agreement, this Agreement shall have controlling effect.

12.9 Named Party. In pursuing any Distribution Trust Causes of Action, or in disposing of any Distribution Trust Property, or otherwise administering the Distribution Trust or any Distribution Trust Property, including, without limitation, the execution of documents, such as bills of sale, releases, and agreements, the Distribution Trustee may authorize the pursuit of such matters and/or execution of any such documents in the name of “Old Scottish Holdings Distribution Trust” or in such other names or such representative capacities as necessary or appropriate.

12.10 Amendment.

(a) Unless otherwise specified in this Section 12.10, this Agreement may be amended with the unanimous written consent of the Trustees and the Oversight Committee; provided, however, that Bankruptcy Court approval shall be required for any changes or amendments to this Agreement that are inconsistent with the terms of the Plan or the Confirmation Order.

(b) Any amendment, waiver, or modification of this Agreement (or any provision herein) that materially and adversely affects the rights of any Reorganized Debtor shall require the reasonable consent of such Reorganized Debtor.

(c) Notwithstanding anything to the contrary in this Section 12.10, this Agreement may be amended by order of the Bankruptcy Court upon motion of (i) the Distribution Trustee after consultation with the Oversight Committee, or (ii) the members of the Oversight Committee, in each case, subject to the right of the Oversight Committee or the Distribution Trustee, respectively, to respond to such motion.

(d) Notwithstanding this Section 12.10, no amendments to this Agreement shall be inconsistent with the purpose and intention of the Distribution Trust to liquidate in an orderly manner the Distribution Trust Property (which will maximize the value of such assets) in accordance with Treasury Regulations section 301.7701-4(d). In the event that the Distribution Trust shall fail or cease to qualify as a liquidating trust in accordance with Treasury Regulations section 301.7701-4(d), this Agreement may be amended with Majority Consent of the Oversight Committee or Bankruptcy Court approval, to the extent necessary to take such action as the Distribution Trustee deem appropriate to have the Distribution

Trust classified as a partnership for federal tax purposes under Treasury Regulations section 301.7701-3 (but not a publicly traded partnership under section 7704 of the Tax Code), including, if necessary, creating or converting it into a Delaware limited liability partnership or limited liability company that is so classified. Notice of any amendment, waiver or modification to this Agreement shall be delivered to each Beneficiary in accordance with Section 12.4, unless such amendment, waiver or modification is immaterial.

12.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed original, but such counterparts shall together constitute one and the same instrument. A facsimile or portable document file (PDF) signature of any party shall be considered to have the same binding legal effect as an original signature.

**[REMAINDER OF PAGE BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement or caused this Agreement to be duly executed by their respective officers, representatives or agents, effective as of the date first above written.

DEBTORS

By: \_\_\_\_\_  
Name:  
Title:

DELAWARE TRUSTEE

By: \_\_\_\_\_  
Name:  
Title:

DISTIRBUTION TRUSTEE

\_\_\_\_\_  
Clifford Zucker

Hildene Master Funds as Oversight Committee Member

By: \_\_\_\_\_  
Name:  
Title:

Wilmington Trust Company, as Oversight Committee  
Member

By: \_\_\_\_\_  
Name:  
Title:

EJF Capital LLC, as Oversight Committee Member

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

**FORM OF**  
**CERTIFICATE OF TRUST**  
**OF**  
**OLD SCOTTISH HOLDINGS DISTRIBUTION TRUST**

This Certificate of Trust of Old Scottish Holdings Distribution Trust is being duly executed and filed on behalf of such trust by the undersigned, as trustee, to form a statutory trust under the Delaware Statutory Trust Act (12 Del. C. § 3801 et seq.) (the "Trust Act").

1. Name. The name of the Delaware statutory trust formed by this Certificate of Trust is OLD SCOTTISH HOLDINGS DISTRIBUTION TRUST.

2. Delaware Trustee. The name and business address of the trustee of the Trust with a principal place of business in the State of Delaware are [●].

3. Effective Date. This Certificate of Trust shall be effective upon its filing with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Trust in accordance with section 3811(a)(1) of the Trust Act.

Clifford Zucker, not in its individual capacity but solely  
as trustee

\_\_\_\_\_  
Name:

## **SCHEDULE A**

### **Distribution Trustee Compensation**

The Distribution Trustee shall be compensated on an hourly rate basis for the services of Clifford Zucker and any other Cohn Reznick LLP professionals performing services on behalf of the Distribution Trust at a blended rate of \$500/hour for himself and any other CohnReznick LLP professionals assisting him, in addition to reimbursement of reasonable and necessary expenses incurred in connection with Mr. Zucker serving as the Distribution Trustee. Unless otherwise agreed by the Oversight Committee or ordered by the Bankruptcy Court, the Distribution Trustee shall not be entitled to a success fee or contingency fee. Should a successor Distribution Trustee be appointed, compensation shall be as approved by the Oversight Committee or ordered by the Bankruptcy Court.

**Blackline Comparison Against First Addendum Exhibit G**  
**(Form of Distribution Trust Agreement)**



*KLN&F Draft*  
*August 6, 21, 2018*

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**THE OLD SCOTTISH HOLDINGS DISTRIBUTION TRUST**  
**DISTRIBUTION TRUST AGREEMENT**  
**BY AND AMONG**  
**THE DISTRIBUTION TRUSTEE**  
**THE OVERSIGHT COMMITTEE,**  
**THE DELAWARE TRUSTEE,**  
**SCOTTISH ANNUITY AND LIFE INSURANCE COMPANY (CAYMAN) LTD.**  
**AND**  
**SCOTTISH HOLDINGS, INC.**

[•], 2018

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## THE OLD SCOTTISH HOLDINGS DISTRIBUTION TRUST DISTRIBUTION TRUST AGREEMENT

This Distribution Trust Agreement, dated as of [●], 2018 (this “Agreement”), is entered into by and among Scottish Annuity and Life Insurance Company (Cayman) Ltd. (“SALIC”) and Scottish Holdings, Inc. (“SHI,” each as a debtor and debtor-in-possession, and collectively, the “Debtors”), [●], as Delaware Trustee, Clifford Zucker as Distribution Trustee and the Oversight Committee members whose names appear as such on the signature page to this Distribution Trust Agreement.

### RECITALS

A. On January 28, ~~2018 (the “Petition Date”)~~, 2018, the Debtors filed voluntary petitions with the United States Bankruptcy Court for the District of Delaware for relief under chapter 11 of title 11 of the Bankruptcy Code, thereby commencing their respective bankruptcy cases (together, the “Bankruptcy Case”), which are jointly administered.

B. By its Order, dated [\_\_\_\_\_], 2018 [D.I. \_\_\_] (the “Confirmation Order”), the Bankruptcy Court confirmed the ~~Second~~Third Amended Joint Chapter 11 Plan of Reorganization of Scottish Holdings, Inc., and Scottish Annuity & Life Insurance Company (Cayman) Ltd., dated June 29, 2018 [D.I. 381] (as altered, amended, modified or supplemented from time to time including in accordance with its terms, any Plan Supplement, the Bankruptcy Code or the Bankruptcy Rules, the “Plan”).

C. The Plan and the Confirmation Order provide for the irrevocable transfer, effective as of the Effective Date, of the Distribution Trust Assets, the Available Plan Distribution Funding Amount and the Distribution Trust Reserves (collectively, the “Transferred Property”) to the trust to be formed on or prior to the Effective Date in accordance with the provisions of Section 6.3 of the Plan and this Agreement for the payment of Allowed Claims and for the benefit of the Distribution Trust Beneficiaries as set forth in the Plan (the “Distribution Trust”) and the subsequent administration and distribution of the Transferred Property, to the extent not consumed in the administration of the Distribution Trust, to the Holders of (a) Allowed Administrative Claims, Allowed Priority Claims, and Allowed Secured Claims not satisfied in full by Closing Date Plan Distributions and (b) the Holders of Allowed Claims in Classes 4, 5, 6 and 7 under the Plan, whether Allowed on or after the Effective Date.

D. The Plan contemplates that the Distribution Trust shall be created for the primary purpose of liquidating and distributing the Transferred Property in accordance with Treas. Reg. § 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 purposes of the Distribution Trust and the Plan.

E. ~~The~~Except as provided in Section 9.2(c), the Distribution Trust is intended to qualify as a “grantor trust” for United States federal income tax purposes, pursuant to Sections 671-677 of the Internal Revenue Code of 1986, as amended (the “Tax Code”), with the Distribution Trust Beneficiaries to be treated as the grantors of the Distribution Trust and

deemed to be the owners of the Transferred Property for federal income tax purposes and as such taxed on the income there from ~~(subject to the rights of the applicable Distribution Trust Beneficiaries of the Distribution Trust)~~, and consequently, the transfer of the Transferred Property to the Distribution Trust shall be treated as a deemed transfer of those assets from the Debtors and their Estates to the Distribution Trust Beneficiaries followed by a deemed transfer by such Distribution Trust Beneficiaries to the Distribution Trust for federal income tax purposes.

F. Under the terms of the Plan, as of the Effective Date, the Transferred Property held by the Debtors immediately before the Effective Date, the Available Plan Distribution Funding Amount and the Distribution Trust Reserves shall be transferred to, and vest in, and shall be deemed to have been irrevocably transferred to the Distribution Trust free and clear of all Liens, Claims, and encumbrances (except for Liens, Claims or obligations provided for in the Plan), for and on behalf of the Distribution Trust Beneficiaries, with no reversionary interest in the Debtors.

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained herein, the parties hereto agree as follows:

## **ARTICLE I DEFINITIONS**

1.1 Definitions Incorporated from the Plan. Other than the terms defined below or elsewhere in this Agreement, capitalized terms shall have the meaning assigned to them in the Plan.

1.2 Other Definitions.

(a) “Agreement” has the meaning assigned in the Preamble.

(b) “Allowed Claim in Classes 4, 5, 6 and 7 under the Plan” means a Claim in Classes 4, 5, 6 and/or 7 under the Plan that is at any relevant time Allowed.

(c) “Allowed TruPS Claims” means all SALIC TruPS Claims and SHI TruPS Claims that are Allowed.

(d) “Cause” means, with respect to any Oversight Committee member or the Distribution Trustee,

(i) such person’s conviction of a felony or any other crime involving moral turpitude; or

(ii) any act or failure to act by such person involving actual dishonesty, fraud, misrepresentation, theft or embezzlement; or

(iii) such person’s willful and repeated failure to substantially perform his/her duties under this Agreement and the Trust Act; or

(iv) such person's incapacity, such that s/he is unable to substantially perform his/her duties under this Agreement and the Trust Act for more than ninety (90) consecutive days; or

(v) such person's repeated failure to effectively perform in material respects his or her duties under this Agreement.

(e) "Certificate of Trust" means the certificate of trust of the Distribution Trust as required by sections 3810 of the Trust Act, substantially in the form set forth in Exhibit A to this Agreement, and filed in connection with the formation of the Distribution Trust.

(f) "Confidentiality Parties" has the meaning assigned in Section 11.7~~12.7~~.

(g) "Confirmation Order" has the meaning assigned in the Recitals.

(h) "Debtors" has the meaning assigned in the Preamble.

(i) "Delaware Trustee" means [●], or its successor, which is appointed in accordance with this Agreement to comply with the requirement of section 3807 of the Trust Act.

(j) "Disbursing Agent" means any agent appointed or engaged by the Distribution Trustee on behalf of the Distribution Trust to facilitate or assist with distributions to Distribution Trust Beneficiaries.

(k) "Disputed Claim" means a Claim that at any relevant time is Disputed.

(l) "Disputed Claims Estimation Date" means the date on which the Estimated Amount has been determined for all Disputed Claims~~}, which ~~such~~ date shall occur after the Administrative Claims Bar Date and the Rejection Claim Bar Date~~}~~.~~

(m) "Disputed Claims Reserve" means the reserve maintained by the Distribution Trust and the Cash held therein, together with all Distribution Trust Property theretofore distributed in respect of the Interests held by such reserve, for distribution to holders of Disputed Claims that are subsequently Allowed.

(n) "Distributable Trust Assets" means Cash constituting Distribution Trust Property, other than (i) Cash in an amount, (x) as of the date hereof mutually agreed by the Debtors, the Official Committee and the Purchaser or (y) after the date hereof determined by the Distribution Trustee, in each case allocated to the Trust Administration Reserve or the Professional Fee Reserve; and (ii) Cash held in the Disputed Claims Reserve; ~~and (iii) Cash constituting Distributable Reserve Assets. (o) — "Distributable Reserve Assets" means Cash constituting Distribution Trust Property, other than Supplemental Reserve Deposits, previously allocated to the Trust Administration Reserve or the Professional Fee Reserve which the Distribution Trustee has determined to withdraw from the Trust Administration Reserve or the Professional Fee Reserve, as applicable for distribution to Beneficiaries;~~

~~provided that no such withdrawal shall be made at any time that Supplemental Reserve Deposits have been made and not distributed as Excess Supplemental Reserve Deposits.~~

(o) ~~(p)~~ “Distribution Record Date” means a date selected by the Distribution Trustee preceding each Trust Distribution Date, as the record date for determining Beneficiaries (including the Disputed Claims Reserve) entitled to participate in the distribution on such Trust Distribution Date.

(p) ~~(q)~~ “Distribution Trust” has the meaning assigned in the Recitals.

(q) ~~(r)~~ “Distribution Trust Agents” means the advisors, professionals and other agents, including without limitation any Disbursing Agent, of the Distribution Trust appointed or engaged by the Distribution Trustee in accordance with the provisions of this Agreement.

(r) ~~(s)~~ “Distribution Trust Bailee” has the meaning assigned in Section 2.5(b)(i).

(s) ~~(t)~~ “Distribution Trust Beneficiaries” means (i) the holders of Interests and (ii) any holder of a Disputed Claim that may in the future be entitled to receive Cash or an Interest held by the Disputed Claims Reserve. The Distribution Trust Beneficiaries are sometimes referred to as “Beneficiaries.”

(t) ~~(u)~~ “Distribution Trust Causes of Action” means any and all Causes of Action that are Distribution Trust Assets.

(u) ~~(v)~~ “Distribution Trust Property” means all property held from time to time by the Distribution Trust, including (i) all Initial Assets and the proceeds therefrom, including interest thereon accruing from and after the Effective Date, and (ii) all Cash and non-Cash assets held in the Disputed Claims Reserve, the Trust Administration Reserve and the Professional Fee Reserve.

(v) ~~(w)~~ “Distribution Trustee” means the trustee of the Distribution Trust having primary responsibility for the Distribution Trust, as provided in Article V.

(w) ~~(x)~~ “Estimated Amount” means the estimated amount of a Disputed Claim, as determined by the Distribution Trustee, which shall either be (i) pursuant to an order of the Bankruptcy Court entered in the Bankruptcy Case, (ii) an amount mutually agreed between the Distribution Trustee and the holder of such Disputed Claim or (iii) if no agreement has been reached and no ~~Estimation Order or other~~ order of the Bankruptcy Court has been entered with respect to such Disputed Claim by such time as determined by the Distribution Trustee in its discretion, ~~the greater of (A) the liquidated amount listed in the Schedules, and (B) the liquidated amount set forth in a proof of claim or application for payment filed with the Bankruptcy Court.~~~~(y) — “Excess Supplemental Reserve Deposits” mean Cash constituting Supplemental Reserve Deposits which the Distribution Trustee has determined to withdraw from the Trust Administration Reserve, the Professional Fee Reserve or the Post-Effective Date Indenture Trustee Fee Reserve, as applicable, for distribution to~~



~~Beneficiaries~~ an amount sufficient to cover the pro rata distributions described in Section 6.3(f)(i) of the Plan.

(x) ~~(z)~~ “FDIC” means the Federal Deposit Insurance Corporation or any successor institution.

(y) ~~(aa)~~ “Fiscal Year” means any fiscal year of the Distribution Trust, as provided in Section 2.9 hereof.

(z) ~~(bb)~~ “Initial Assets” means the Distribution Trust Assets, and any portion of the Plan Funding Payment (including the Distribution Trust Reserves) actually received by the Trust.

(aa) ~~(cc)~~ “Initial Distribution Record Date” means the record date for determining Beneficiaries (including ~~to~~ the Disputed Claims Reserve) entitled to receive the ~~initial distribution of Distributable Trust Assets~~ DT Initial Distribution, which such date shall not be prior to the Disputed Claims Estimation Date.

(bb) ~~(dd)~~ “Initial Interest Issuance Date” means the date determined by the Distribution Trustee occurring as soon as reasonably practicable after the ~~Effective~~ Disputed Claims Estimation Date, on which the Distribution Trust makes, or causes to be made, the initial issuance of Interests to (i) holders of Allowed Claims in Classes 4, 5, 6 and 7 under the Plan entitled to receive Interests hereunder as of the Initial Interests Issuance Record Date and (ii) the Disputed Claims Reserve.

(cc) ~~(ee)~~ “Initial Interests Issuance Record Date” means the ~~{Effective Date}~~, which is the record date for determining the Distribution Trust Beneficiaries holding Allowed Claims that are entitled to receive Interests on the Initial Interest Issuance Date; provided that to the extent the allowance of a Claim as of the Initial Interest Issuance Record Date is contingent only upon the effectiveness of the Plan, such Claim shall be deemed to be Allowed as of the Initial Interest Issuance Record Date; ~~provided further that the holders of Allowed TruPS Claims entitled to receive Interests on the Initial Interest Issuance Date shall be the beneficial holders of such Allowed TruPS Claims (or their nominees to the extent that information concerning such beneficial holders is not available), or their transferees, as of the [Effective Date] as recorded on the TruPS Claims Register.~~

(dd) ~~(ff)~~ “Interest” has the meaning assigned in Section 3.1(a), ~~and shall include the Recovery Distribution Interests and the Reserve Distribution Interests.~~

(ee) ~~(gg)~~ “Interest Issuance Date” means a date, as determined from time to time by the Distribution Trustee, on which Interests shall be allocated by the Distribution Trust (including Interests previously allocated to the Disputed Claims Reserve) to holders of Disputed Claims ~~in Classes 4, 5, 6 and 7.~~

(ff) ~~(hh)~~ “Interest Register” has the meaning assigned in Section 3.3(a).

(ii) ~~—~~ “Petition Date” ~~has the meaning assigned in the Recitals.~~

~~(gg)~~ ~~(jj)~~ “Majority Consent” means the affirmative consent of a majority of the members constituting the whole Oversight Committee whether by a meeting in person or by written consent in lieu of a meeting, or if at the time there shall be only one member of the Oversight Committee, the consent of such member.

~~(hh)~~ ~~(kk)~~ “Material Action” means each of the following:

- (i) the filing of any complaint or arbitration demand commencing a Cause of Action against any SRGL Equity Holder;
- (ii) the settlement, abandonment or dismissal of any Cause of Action against any SRGL Equity Holder;
- (iii) entry into any contingency fee agreement or litigation funding agreement in connection with any Cause of Action against any SRGL Equity Holder;
- (iv) any borrowing pursuant to Section 4.8 of this Agreement;
- (v) settlement of any Disputed Claim where the remaining claim amount after settlement exceeds \$250,000.00;
- (vi) determination of the amount of insurance coverage to be purchased by the Distribution Trust from time to time with respect to the liabilities and obligations of the Oversight Committee (in the form of an errors and omission policy, fiduciary policy or otherwise); and
- (vii) the addition, or one or more related additions, of funds to the Trust Administration Reserve pursuant to Section 7.4 in an amount such that the aggregate amount of funds deposited in the Trust Administration Reserve exceeds the Trust Administration Reserve Cap.

~~(ii)~~ ~~(ll)~~ “Nominating Party” ~~[•]~~ means any Person entitled to select a member of the Oversight Committee pursuant to Section 6.2(a).

~~(jj)~~ ~~(mm)~~ “Oversight Committee” means the 3-member committee appointed to consult with the Distribution Trustee regarding the affairs of the Distribution Trust and to perform such other duties as are provided in this Agreement.

~~(kk)~~ ~~(nn)~~ “Oversight Committee Member” means each initial Oversight Committee member whose name appears as such on the signature page to this Agreement and any member of the Oversight Committee subsequently appointed pursuant to Section 6.2(e).

~~(ll)~~ ~~(oo)~~ “Percentage Interests” means the ~~Recovery—Distribution Percentage Interests and the Reserve Distribution Percentage Interests.~~ percentage interest of each holder of an Interest as set forth on the Interest Register, which percentage interest shall initially be calculated as a fraction, expressed as a percentage, the numerator of which is amount of the Allowed Claim in respect of which such Interest was initially issued and the

denominator of which is the sum of (i) the aggregate amount of all the Allowed Claims in respect of which all Interests were issued and (ii) the Estimated Amount of all Disputed Claims which, if Allowed, would be entitled to receive Interests, and shall thereafter be adjusted to reflect transfers of Interests, or portions thereof, as provided in Section 3.4(c) and Section 3.5, issuance of additional as provided in Section 3.3(b), and adjustments to the Disputed Claims Reserve, as provided in Section 4.4(c), Section 4.4(d) and Section 4.5(c).

(mm) ~~(pp)~~ “Permissible Investments” has the meaning assigned in Section 5.6.

(nn) ~~(qq)~~ “Plan” has the meaning assigned in the Recitals.

(oo) ~~(rr)~~ “Plan Documents” means, collectively, the Plan, the Confirmation Order, those material documents executed or to be executed in order to consummate the transactions contemplated under the Plan, including without limitation the Plan Supplement, and this Agreement.

(pp) ~~(ss)~~ “~~Recovery Distribution Interest~~” means ~~an Interest, the holder of which is entitled to receive distributions from the proceeds of recoveries on Distribution Trust Causes of Action and from Excess Supplemental Reserve Deposits.~~ Registrar” has the meaning assigned in Section 3.3(a).

~~(tt) — “Recovery Distribution Percentage Interest” means, with respect to Recovery Distribution Interests, the percentage interest of each holder of a Recovery Distribution Interest as set forth on the Interest Register, which percentage interest shall initially be calculated as a fraction, expressed as a percentage, the numerator of which is amount of the Allowed Claim in respect of which such Recovery Distribution Interest was initially issued and the denominator of which is the sum of (i) the aggregate amount of all the Allowed Claims in respect of which such all Recovery Distribution Interests were issued and (ii) the Estimated Amount of all Disputed Claims which, if Allowed, would be entitled to receive Recovery Distribution Interests, and shall thereafter be adjusted to reflect transfers of Recovery Distribution Interests, or portions thereof, as provided in Section 3.4(c) and Section 3.5, issuance of additional Recovery Distribution Interests as provided in Section 3.3(b), and adjustments to the Disputed Claims Reserve, as provided in Section 4.4(c), Section 4.4(d) and Section 4.5(c).~~

~~(uu) — “Reserve Distribution Interest” means an Interest, the holder of which is entitled to receive (i) an initial distribution pursuant to Section 4.1(b)(i) and (ii) distributions of Distributable Reserve Assets.~~

~~(vv) — “Reserve Distribution Percentage Interest” means, with respect to Reserve Distribution Interests, the percentage interest of each holder of a Reserve Distribution Interest as set forth on the Interest Register, which percentage interest shall initially be calculated as a fraction, expressed as a percentage, the numerator of which is amount of the Allowed Claim in respect of which such Reserve Distribution Interest was initially issued and the denominator of which is the sum of (i) the aggregate amount of all the Allowed Claims in respect of which such all Reserve Distribution Interests were issued and~~

~~(ii) the Estimated Amount of all Disputed Claims which, if Allowed, would be entitled to receive Reserve Distribution Interests, and shall thereafter be adjusted to reflect transfers of Reserve Distribution Interests, or portions thereof, as provided in Section 3.4(c) and Section 3.5, issuance of additional Recovery Distribution Interests as provided in Section 3.3(b), and adjustments to the Disputed Claims Reserve, as provided in Section 4.4(e), Section 4.4(d) and Section 4.5(c).~~

~~(ww) “Supplemental Reserve Deposits” means any amounts allocated by the Distribution Trustee to the Trust Administration Reserve or the Professional Fee Reserve from the proceeds of recoveries on any Distribution Trust Causes of Action or any borrowings made pursuant to Section 4.8.~~

(qq) ~~(xx)~~ “Tax Authority” means a federal, state, local, or foreign government, or agency, instrumentality, or employee thereof, court or other body (if any) charged with the administration of any law relating to Taxes.

(rr) ~~(yy)~~ “Tax Code” means the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

(ss) ~~(zz)~~ “Taxes” means all (a) federal, state, local, or foreign taxes, including, without limitation, all net income, alternative minimum, net worth or gross receipts, capital, value added, franchise, profits, estimated, property, transfer and sales or use taxes, and (b) interest, penalties, fines, additions to tax or additional amounts imposed by any Tax Authority or paid in connection with any item described in clause (a) hereof.

(tt) ~~(aaa)~~ “Tax Return” means a return, declaration, form, election, letter, report, statement, estimate, information return, or other information filed or required to be filed with respect to any Taxes, including any schedule or attachment thereto or amendment thereof, including any claim for a Tax refund.

(uu) ~~(bbb)~~ “Transferred Property” has the meaning assigned in the Recitals.

~~(eee) “TruPS Claim Distributees” means the persons appearing on the TruPS Claims Register as of the Effective Date entitled to receive distributions under the Plan in respect of TruPS Claims.~~

~~(ddd) “TruPS Claims Register” means a register maintained by [the balloting agent] through the [Effective Date] in which there has been recorded the names and addresses of the beneficial holders of the Allowed TruPS Claims (or their nominees to the extent that information concerning such beneficial holders is not available), or their transferees as recorded on the TruPS Claims Register in accordance with such transfer procedures as have been approved by the Bankruptcy Court, that are entitled to receive distributions under the Plan in respect of Allowed TruPS Claims, together with the respective amounts of such Allowed TruPS Claims, and whether such beneficial holders of TruPS Claims (or their nominees or transferees, as case may be) are entitled to receive only Recovery Distribution Interests or both Recovery Distribution Interests and Reserve Distribution Interests in accordance with the election procedures prescribed under the Plan.~~

~~(eee) “TruPS Returned Cash Percentage” means a fraction, expressed as a percentage, equal to the TruPS Claims of Beneficial Holders who made, or are deemed to make, the New Equity Election divided by divided by the TruPS/GUC Claims Aggregate Amount.~~

(vv) ~~(fff)~~ “Trust Act” means, the Delaware Statutory Trust Act, 12 Del. C. § 3801 et seq., as the same may from time to time be amended, or any successor statute.

(ww) ~~(ggg)~~ “Trust Administration Reserve Cap” means the sum of (i) \$1,400,000, plus (ii) any reasonably foreseeable fees payable by the Distribution Trust pursuant to 28 U.S.C. § 1930.

(xx) ~~(hhh)~~ “Trust Distribution Date” means any date, as determined by the Distribution Trustee, on which the Distribution Trust makes a distribution of Distributable Trust Assets to Beneficiaries (including the Disputed Claims Reserve).

(yy) ~~(iii)~~ “Trustee” means any of the Distribution Trustee and the Delaware Trustee.

(zz) ~~(jjj)~~ “Unanimous Consent” means the affirmative consent of all members constituting the whole Oversight Committee whether by a meeting in person or by written consent in lieu of a meeting, or if at the time there shall be only one member of the Oversight Committee, the consent of such member.

1.3 Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neutral, if appropriate; words importing the singular number shall include the plural number and vice versa; and words importing persons shall include firms, associations, corporations and other entities. All references herein to Articles, Sections and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code; the Bankruptcy Rules; the Tax Code; or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the word “herein” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision of this Agreement. The term “including” shall mean “including, without limitation.”

## **ARTICLE II**

### **CREATION OF DISTRIBUTION TRUST**

#### 2.1 Creation of Trust.

(a) The Distribution Trust shall be deemed to have been created effective as of the filing of the Certificate of Trust.

(b) The Distribution Trust shall bear the name “OLD SCOTTISH HOLDINGS DISTRIBUTION TRUST” and the Distribution Trustee may, in connection with the exercise of its powers and duties hereunder, either use this name or such variation thereof as he may deem appropriate.

(c) The Trustees of the Trust shall be the Delaware Trustee and the Distribution Trustee.

## 2.2 Purpose of Distribution Trust.

(a) The Distribution Trust is established for the purpose of liquidating and distributing the Distribution Trust Property in accordance with Treasury Regulations ~~Section~~[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, its liquidating purpose hereunder.

(b) This Distribution Trust Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Distribution Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall any of the Trustees or the Beneficiaries, for any purpose be, or be deemed to be or be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Beneficiaries to the Trustees shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Distribution Trust Agreement.

## 2.3 Status of Distribution Trust.

(a) Subject to the terms of the Confirmation Order, the Distribution Trust shall be the successor-in-interest to the Debtors with respect to any Distribution Trust Causes of Action that was or could have been commenced by any of the Debtors prior to the Effective Date and shall be deemed substituted for each such Debtor as the party in any such litigation.

(b) From and after the Effective Date, the Distribution Trust, acting through the Distribution Trustee in consultation with the Oversight Committee, will be the representative of the Estates, as that term is used in section 1123(b)(3)(B) of the Bankruptcy Code, and shall have the rights and powers provided in the Bankruptcy Code in addition to any rights and powers granted in the Plan Documents, in each case for purposes of carrying out the purposes and intents of this Distribution Trust Agreement, including but not limited to the right to object to General Unsecured Claims.

(c) All Distribution Trust Causes of Action are preserved and retained and may be enforced by the Distribution Trust pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

## 2.4 Retention of Professionals.

(a) The Distribution Trustee shall have the right to retain such professionals and other Distribution Trust Agents as are necessary and proper to discharge its functions, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court.

(b) The Distribution Trustee shall adopt reasonable policies regarding the billing practices, hourly rates, discounts and required budget practices of professionals retained to provide services to the Distribution Trust to ensure the Distribution Trust receives cost-effective, efficient representation in the best interest of the Distribution Trust Beneficiaries.

2.5 Transfer of Distribution Trust Property.

(a) Except to the extent provided for in the Plan, on the Effective Date, the Debtors or the Reorganized Debtors, as the case may be, shall transfer all assets constituting the Initial Assets, in the form existing on such date, to the Distribution Trust, free and clear of any and all liens, claims, encumbrances and interests (legal, beneficial or otherwise) of all other persons and entities to the maximum extent contemplated by and permissible under section 1141 of the Bankruptcy Code. The Distribution Trust shall have such incidents of ownership in the Distribution Trust Property as are necessary to undertake the actions and transactions authorized in the Plan Documents. The transfer of the Transferred Property shall be exempt from any stamp, real estate transfer, mortgage recording, sales, use or other similar Tax pursuant to section 1146 of the Bankruptcy Code.

(b) Notwithstanding the foregoing, if on the Effective Date, the Distribution Trustee determines that any of the Initial Assets cannot be transferred to the Distribution Trust or deems it impractical to do so, for any reason, for example, because the Distribution Trust has not yet established accounts for the purpose of holding Cash or because of a restriction on transferability under applicable non-bankruptcy law that is not superseded by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code:

(i) Subject to clause (ii) of this Section 2.5(b), the Reorganized Debtors (each a "Distribution Trust Bailee"); shall continue to hold such Distribution Trust Property, as bailee for the account of the Distribution Trust, and the Distribution Trustee shall be deemed to have been designated as a representative of the Debtors pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such Distribution Trust Property on behalf of the Debtors until such time as the Distribution Trust informs the applicable Distribution Trust Bailee that the Distribution Trust may receive such Distribution Trust Property, whereupon such Distribution Trust Property shall be promptly transferred to the Distribution Trust; provided that the proceeds of the sale or other disposition of any such assets retained by a Distribution Trust Bailee shall nevertheless be deemed to constitute Distribution Trust Property, and to likewise be held by the applicable Distribution Trust Bailee, and be turned over as soon as practicable to the Distribution Trust pursuant to this Agreement as if such transfer had not been restricted under applicable non-bankruptcy law; and;

(ii) the Distribution Trustee shall use commercially reasonable efforts to promptly cause the transfer of such Distribution Trust Property to the Distribution Trust.

For the avoidance of doubt, the Reorganized Debtors shall not be a Distribution Trust Bailee in respect of the SFL Shares.

(c) The Distribution Trust may commence an action in the Bankruptcy Court to resolve any dispute regarding the allocation of the proceeds of any Distribution Trust Property retained by a Distribution Trust Bailee (or any successors thereto) pursuant to the Plan Documents.†

(d) In connection with the Distribution Trust Causes of Action, any applicable privilege or immunity of the Debtors or the Reorganized Debtors (including, but not limited to, any attorney-client privilege or work-product privilege) attaching to any documents or communications (whether written or oral), and all defenses, claims, counterclaims, and rights of setoff or recoupment shall vest in the Distribution Trust and may be asserted by the Distribution Trustee or, as directed by the Distribution Trustee, any Distribution Trust Agent or other representative of the Distribution Trust. Nothing in this Distribution Trust Agreement nor any action taken by the Debtors or the Reorganized Debtors, shall (or shall be deemed to be) a waiver of any privilege or immunity, including any attorney-client privilege or work-product privilege attaching to any documents or communications (whether written or oral). Notwithstanding the provision by any Debtor or Reorganized Debtor of any privileged information to the Distribution Trust (including to the Oversight Committee, the Distribution Trustee, any Distribution Trust Agent or other party or person associated with the Distribution Trust), such privileged information shall remain privileged. The Distribution Trust shall have no right to waive the attorney-client privilege, work product, or other protection or immunity of any new information received from the Reorganized Debtors. The Reorganized Debtors retain the right to waive their own privileges or immunities.

(e) Subject to Section 7.6, the Debtors or the Reorganized Debtors, as the case may be, upon reasonable advance notice, shall deliver or cause to be delivered to the Distribution Trust copies of any and all books and records that relate primarily to or that may be reasonably required in connection with the Distribution Trust Property, whether held by the Debtors or the Reorganized Debtors, their agents, representatives, advisors, attorneys, accountants and any other professionals hired by the Debtors or the Reorganized Debtors, as the case may be, and upon reasonable advance notice, provide reasonable access to such employees, agents, advisors, attorneys, accountants or any other professionals with knowledge of matters relevant to the Distribution Trust Property.

(f) On or prior to the Effective Date, the Debtors or the Reorganized Debtors shall deliver, or cause to be delivered, to the Distribution Trust a complete list of all Claims in Classes 4, 5, 6 and 7 under the Plan, reflected on the claims registry as of the Initial Interest Distribution Record Date. The list shall include, to the extent reasonably available to the Debtors or Reorganized Debtors, the names and addresses of the holders of such Claims and the amounts thereof, and in the case of General Unsecured Claims that are known to the Debtors or Reorganized Debtors to be Disputed, the amounts thereof as filed and the Estimated Amounts thereof. The list of Disputed Claims shall include the details of all known objections (whether asserted or not) in respect of such Claims to the extent reasonably available to the Debtors or Reorganized Debtors. ~~Notwithstanding the foregoing, in lieu of~~



~~delivering the information specified in the preceding sentences of this Section 2.5(f) with respect to the Allowed TruPS Claims, the Reorganized Debtors shall deliver, or cause to be delivered, the TruPS Claims Register.~~

(g) The Distribution Trust, as successor in interest to the Estates to the extent provided for in the Plan Documents, may (i) execute and deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed), and (ii) take, or cause to be taken, all such further action in order to evidence, vest, perfect or effectuate the transfer of all of the Distribution Trust Property to the Distribution Trust and consummate transactions contemplated by and to otherwise carry out the intent of the Plan Documents.

2.6 Title to ~~Initial Assets~~ Transferred Property. Subject to Sections 2.5(a) [and 2.5(b)], on the Effective Date the Distribution Trust shall succeed to all of the right, title and interest in the ~~Initial Assets~~ Transferred Property, and no other Person, including the Debtors or Reorganized Debtors, will have any further rights or interest in or with respect to the Initial Assets or the Distribution Trust.

2.7 Valuation. As soon as reasonably practicable after the Effective Date, but in no event later than one hundred and twenty (120) days thereafter, the Distribution Trustee shall make a good faith determination of the value of the assets transferred to the Distribution Trust. Such aggregate valuation shall be delivered to the Beneficiaries in accordance with Section 12.4,<sup>1</sup> and shall be in such detail and including such supporting information as determined by the Distribution Trustee, in reliance on its professionals, to be reasonably necessary or appropriate for the use and understanding thereof, and shall be used consistently by all parties (including, without limitation, the Debtors, the Reorganized Debtors, the Distribution Trust and the Beneficiaries) for all federal income tax purposes.<sup>2</sup>

2.8 No Reversion to Debtors; Distribution of Remaining Assets.

(a) In no event shall any part of the Distribution Trust Property revert to or be distributed to or for the benefit of any Debtor or the Reorganized Debtors.

(b) To the extent that after satisfaction in full of all of the costs and expenses of the administration of the Distribution Trust, after all Disputed Claims have been either Allowed or disallowed, after all Allowed Claims in Classes 4, 5, 6 and 7 under the Plan have been paid pursuant to the Plan Documents, after satisfaction of all other obligations or liabilities of the Distribution Trust incurred or assumed in accordance with the Plan Documents, after the Distribution Trust has made the maximum distribution of Distributable Trust Assets to the Beneficiaries to the extent reasonably practicable, and after the affairs of the Distribution Trust have been finally wound up and concluded in accordance with the provisions of Section 11.1 hereof and section 3808 of the Trust Act, there shall remain any Distribution Trust Property, the Distribution Trust shall distribute such remaining Distribution Trust Property to an organization, selected by Distribution Trustee after

<sup>1</sup> Internal Note: Consider allowing ~~distribution~~ delivery by posting to the Trust's website.

<sup>2</sup> ~~Internal Note: Subject to tax review.~~

consultation with the Oversight Committee, described in section 501(c)(3) of the Tax Code and exempt from U.S. federal income tax under section 501(a) of the Tax Code that is unrelated to the Reorganized Debtors, the Distribution Trustee or any member of the Oversight Committee.

2.9 Fiscal Year. Except for the first and last years of the Distribution Trust, the Fiscal Year of the Distribution Trust shall be the calendar year. For the first and last years of the Distribution Trust, the Fiscal Year of the Distribution Trust shall be such portion of the calendar year that the Distribution Trust is in existence. The term fiscal quarter, or similar references, as used in this Agreement, shall have a correlative meaning.

2.10 [Reserved].

2.11 Insurance. The Distribution Trust shall maintain customary insurance coverage, including any appropriate tail coverage, for the protection of the Delaware Trustee, the Oversight Committee Members and the Distribution Trustee (which coverage shall be primary to any other coverage potentially available to such persons) and may procure insurance coverage for such employees as the Distribution Trustee may determine in its discretion after consultation with the Oversight Committee.

2.12 Books and Records.

(a) The Distribution Trustee shall cause to be stored and maintained books and records for the period commencing on the date hereof through the termination of the Distribution Trust, containing such information concerning the Distribution Trust Property, the conduct of the affairs of the Distribution Trust and rights and treatment of the Beneficiaries, in such detail and for such periods of time as may be necessary to enable the Distribution Trust to make full and proper accounting in respect thereof and to comply with applicable provisions of law. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting requirements of the Distribution Trust.

(b) The Distribution Trust shall be authorized without further application to the Bankruptcy Court or notice to any party, to abandon or otherwise destroy books and records (whether in electronic or paper format) in accordance with and subject to Section 11.3; provided that the Distribution Trustee, after consultation with the Oversight Committee, may at any time petition the Bankruptcy Court for permission to destroy such books and records as the Distribution Trustee determines are not necessary or useful for the conduct of the affairs of the Distribution Trust or the protection of its interests of the interests of the Beneficiaries; and provided further that if any such petition implicates or involves the books, records or interests of the Reorganized Debtors, such petition shall be made on notice to the Reorganized Debtors whether or not such notice is required by applicable law.

(c) Anything in the Trust Act to the contrary notwithstanding, and without limiting the provisions of Section 7.6(d), no Beneficiary shall have the right to obtain from the Distribution Trust any of its books or records except as expressly provided in this

Agreement or by order of the Bankruptcy Court, or as may otherwise be expressly permitted by the Distribution Trustee.

2.13 No Interest or Accruals. Except as otherwise may be expressly provided in the Plan Documents, Beneficiaries shall not be entitled to interest on the distributions provided for in this Agreement, regardless of whether such distributions are made on or at any specified time after the Effective Date.

### **ARTICLE III INTERESTS IN THE TRUST**

#### 3.1 Interests.

(a) Each holder of an Allowed Claim in Classes 4, 5, 6 and 7 under the Plan, whether Allowed on or after the Effective Date shall be entitled to receive an interest or interests in the Distribution Trust (each an “Interest”), as shall be necessary, in accordance and consistent with the Plan, to satisfy such Allowed Claim against the Debtors.—~~Notwithstanding the foregoing, Interests in, provided, that with respect of to any Allowed TruPS Claims shall be distributed to the TruPS Claims Distributees, in accordance with the Allowed amount of the Allowed TruPS Claims and the other information associated on the TruPS Claims Register with respect to each of them.~~

~~(b) The Interests shall be issued in two classes, Recovery Distribution Interests and the Reserve Distribution Interests, as follows: [Describe allocation of Recovery Distribution Interests to all Claim holders and Reserve Distribution Interests to cash electing Allowed TruPS Claim holders and all other GUCs.]~~

~~(c) The Disputed Claims Reserve shall be entitled to receive a Recovery Distribution Interest and a Reserve Distribution Interest in respect of Disputed Claims pending the resolution of such claims. References in this Agreement to the transfer of an Interest from the Disputed Claims Reserve to any person shall mean the transfer of an applicable portion of the Recovery Distribution Interest and/or Reserve Distribution Interest held in the Disputed Claims Reserve.~~

3.2 Issuance of Interests in Satisfaction of Claims, the holder of record of the respective TruPS as of the Effective Date, as the same appears on the register maintained for this purpose under the applicable indenture, shall be deemed the holder of such Allowed Claim for all purposes hereunder. The Interests received by holders of Allowed Claims in Classes 4, 5, 6 and 7 under the Plan entitled to receive such Interests hereunder and under the Plan shall be in full and final satisfaction of such Allowed Claims (other than for income tax purposes to the extent set forth in Treasury Regulations section 1.468B-9). ~~Notwithstanding the foregoing, distributions of Interests to the TruPS Claims Distributees shall be deemed to be in full and final satisfaction of the Allowed TruPS Claims.—~~

(b) The Disputed Claims Reserve shall receive an Interest in respect of Disputed Claims in Classes 4, 5, 6 and 7 pending the resolution of such claims. References

in this Agreement to the transfer of an Interest from the Disputed Claims Reserve to any person shall mean the transfer of an applicable portion of the Interest held in the Disputed Claims Reserve.

3.2 [Reserved].

3.3 Evidence of Interests.

(a) Except as otherwise provided in this Agreement, Interests shall be evidenced by recordation in a register (the “Interest Register”) maintained for this purpose by ~~the Distribution Trustee. The Interest Register shall separately record the Recovery Distribution Interests, together with the related Recovery Distribution Percentage Interests associated with each of them, and the Reserve Distribution Interests, together with the related Reserve Distribution Percentage Interests associated with each of them. The Distribution Trustee~~ a registrar designated by the Distribution Trustee for such purpose (the “Registrar”), except that the Distribution Trustee shall be the initial Registrar, and, for the avoidance of doubt, need not appoint a successor Registrar. The Registrar shall record on the Interest Register each Beneficiary’s Interests and Percentage Interest and ~~whether such Interest is a Reserve Distribution Interest and shall reflect thereon~~ (whether such Interests were issued in respect of Allowed TruPS Claims, provided, that any holder or deemed holder of an Allowed TruPS Claim entitled to receive Interests on the Initial Interest Issuance Date may direct the Distribution Trust in writing to record such holder’s or deemed holder’s Interests and Percentage Interest directly in such holder’s or deemed holder’s name or in the name of such holder’s or deemed holder’s nominee. The Interest Registrar shall reflect all transfers of Interests. ~~The Distribution Trustee shall serve as the initial registrar.~~

(b) If additional Interests are issued at any time to comply with any legal or regulatory requirements, appropriate adjustments shall be made on the Interest Register.

3.4 Manner of Issuance of Interests.

(a) On the Initial Interest Issuance Date, ~~the Distribution Trustee~~ or as soon as practicable thereafter, the Registrar shall record on the Interest Register (i) the name of each holder or deemed holder of an Allowed Claim in Classes 4, 5, 6 and 7 under the Plan as of the Initial Interest Issuance Record Date ~~(or, in the case of the Allowed TruPS Claims, in the name of each TruPS Claim Distributees), (ii) whether such holder’s Interest is a Recovery Distribution Interest or a Reserve Distribution Interest and (iii) and (ii)~~ the applicable Percentage Interest ~~or Percentage Interests~~ of such holder.

(b) On the Initial Interest Issuance Date, or as soon as practicable thereafter, the Distribution Trustee shall record on the Interest Register the Disputed Claims Reserve as a holder of ~~a Recovery Distribution Interest and a Reserve Distribution Interest, an Interest, in respect of Disputed Claims in Classes 4, 5, 6 and 7,~~ together with the respective Percentage ~~Interests~~ Interest of the Disputed Claims Reserve.

(c) As of each date on which Disputed Claims in Classes 4, 5, 6 and 7 under the Plan are Allowed, in whole or in part, ~~the registrar~~ or as soon as practicable

~~thereafter, the Registrar~~ shall record on the Interest Register the name of each holder of Disputed Claims in Classes 4, 5, 6 and 7 under the Plan whose Claims were Allowed and shall update the Interest Register to reflect the transfer of an applicable portion of the ~~respective Interests~~Interest recorded in the name of the Disputed Claims Reserve to the holder whose Disputed Claim in Classes 4, 5, 6 and 7 under the Plan has been Allowed.

(d) ~~{~~The Distribution Trust shall be authorized to withhold and retain Interests otherwise issuable to Beneficiaries that are subject to tax withholding to the extent required by applicable Tax laws, and any Interests so withheld shall be deemed issued in satisfaction of such Beneficiaries' Claims for all purposes of the Plan and this Agreement provided, however, that the Distribution Trust shall cooperate with the Beneficiaries to prevent or minimize any withholding and shall not withhold any taxes with respect to any Beneficiary that delivers a properly completed and duly executed IRS Form W- 8 or W-9 to the Distribution Trust. The Distribution Trust shall also be authorized to apply cash and other Distribution Trust Property allocable to amounts distributed in respect of any such retained Interests to satisfy such Tax withholding obligations in accordance with Section 4.6.~~}~~

### 3.5 Transfers of Interests; Absence of Market for Interests.

(a) Interests, and any portions thereof, shall be freely negotiable and transferable to the extent provided herein and the provisions of applicable securities laws. Transfers of Interests, or any portions thereof, shall be recorded on the Interest Register by the Registrar in accordance with such practices and procedures as shall be prescribed by the Distribution Trustee; provided that that the Distribution Trustee ~~need~~may direct the Registrar not to reflect any transfer and ~~will~~to give notice to such holder that no transfer has been recognized in the event (i) the Distribution Trustee reasonably believes that such transfer may constitute a violation of applicable laws, (ii) might cause the Distribution Trust to be required to register Interests under, and/or to become subject to the reporting requirements of Sections 13 or 15(d) of, the Securities Exchange Act of 1934, as amended (the "Exchange Act") or (iii) the Distribution Trustee determines that the transferee is a defendant (or potential defendant) in a pending (or potential) action brought (or to be brought) by the Distribution Trust; and provided further that the Distribution Trustee may request from any proposed transferor any information or any representations regarding the transfer which it reasonably deems necessary in order to determine whether the Distribution Trust might, immediately after such transfer, become required to so register Interests under, and/or become subject to the such reporting requirements of, the Exchange Act.

(b) The Interests shall not be listed by the Distribution Trust on a national securities exchange or interdealer quotation system. Neither the Distribution Trust nor anyone acting on its behalf shall, directly or indirectly, engage in any activity designed to facilitate or promote trading in the Interests, including by placing advertisements, distributing marketing materials, or collecting or publishing information regarding prices at which the interests may be transferred; provided that no activity undertaken by the Distribution Trust in compliance with the terms of the Plan Documents shall be deemed to facilitate or promote trading in the Interests for these purposes.

3.6 Rights of Beneficiaries. Each Beneficiary shall be entitled to participate in the rights and benefits due to it hereunder on account of its Interest. Each Beneficiary shall take and hold the same, subject to all the terms and conditions of the Plan Documents. The interest of a Beneficiary is hereby declared and shall be, in all respects, personal property.

3.7 Interest Beneficial Only. Except as expressly provided hereunder, a Beneficiary shall have no title to, right to, possession of, management of or control of the Distribution Trust or the Distribution Trust Property. The ownership of Interests shall not entitle any Beneficiary to any title in or to the Distribution Trust Property or to any right to call for a partition or division of such assets or to require an accounting, except as may be specifically provided herein.

3.8 Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to one or more Interests, or a beneficial interest therein, the Distribution Trust (as determined by the Distribution Trustee) shall be entitled to refuse to comply with any such conflicting claims or demands. In so refusing, the Distribution Trust may elect to make partial or no payments or distributions with respect to the Interests at issue pending the resolution of such conflict, and the Distribution Trust shall be entitled to refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive and continuing jurisdiction over resolution of such conflicting claims or demands. Neither the Distribution Trust, the Oversight Committee, the Distribution Trustee nor the Distribution Trust Agents shall be or become liable to any party for either (i) a determination to continue making distributions pursuant to its books and records, without regard to the conflicting claims or demands; or (ii) a determination to partially or completely cease payments or distributions with respect to the subject Interest or Interests. In the event that the Distribution Trust determines to cease payments, it shall be entitled to refuse to act until either (x) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court (or such other court of proper jurisdiction) or (y) all differences have been resolved by a written agreement among all of such parties and the Distribution Trust, which agreement shall include a complete release of the Distribution Trust, the Oversight Committee, the Distribution Trustee and the Distribution Trust Agents from liability resulting from any actions taken or not taken pursuant to this Section 3.8, which release shall be in form and substance reasonably satisfactory to the Distribution Trustee.

3.9 Beneficiary Liability to Third Persons. No Beneficiary shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Distribution Trust Property or the affairs of the Distribution Trust, to the fullest extent provided by Section 3803(a) of the Trust Act.

3.10 Actions in the Right of the Distribution Trust. No Beneficiary or Beneficiaries shall have the right to bring an action in the right of the Distribution Trust to recover a judgment pursuant to section 3816 of the Trust Act, unless such Beneficiary or Beneficiaries, individually or collectively, own twenty-five percent (25%) or more of the ~~Recovery Distribution~~ Percentage Interests.

**ARTICLE IV**  
**DISTRIBUTIONS TO BENEFICIARIES**

4.1 Distributions.

(a) General. The holders of Interests shall be entitled to receive Distributable Trust Assets ~~distributable~~distributed by the Distribution Trust, when and as such distributions are made pursuant to this Agreement in accordance with this Section 4.1.

(b) Distributions of Distributable Trust Assets.

(i) Initial Distribution. On the DT Initial Distribution Date, the Distribution Trust shall distribute to each holder of ~~a Reserve Distribution~~an Interest set forth on the Interest Register as of the Initial Distribution Record Date (including the Disputed Claims Reserve) such holder's pro rata share of the Cash (calculated in accordance with such holder's ~~Reserve Distribution~~ Percentage Interest on such date) constituting Distributable Trust Assets, as determined by the Distribution Trustee, as of the Effective Date, provided, that, the amount of such distribution to any holder of an Interest that was issued in respect of an Allowed TruPS Claim (as set forth on the Interest Register), shall be reduced, pro rata, in an amount sufficient, in the aggregate, to fund the items set forth in Section 4.1(d)(ii)(1)-(3) of the Plan, including the funding of the Post-Effective Date Indenture Trustee Fee Reserve.

(ii) Subsequent Distributions of Distributable Trust Assets. After the DT Initial Distribution Date, to the extent that Distributable Trust Assets become available for distribution, as determined by the Distribution Trustee, the Distribution Trustee shall establish a Distribution Record Date and a Trust Distribution Date for the distribution of such assets, and the Distribution Trust shall make distribution of such assets on such Trust Distribution Date (including the Disputed Claims Reserve) to the holders of ~~Recovery Distribution~~ Interests, as set forth on the Interest Register on such Distribution Record Date, pro rata in accordance with such holders' ~~Recovery Distributions~~ Percentage Interests. ~~[-Distributions of Distributable Trust Assets shall be made at least annually; provided, however, that annual distributions are not required to be made if the Distribution Trustee, upon consultation with the Oversight Committee, determines that the aggregate amount of Distributable Trust Assets at the time is such as would make the distribution impracticable, in which case such Distributable Trust Assets will be included in Distributable Trust Assets on a subsequent Trust Distribution Date.]-~~

~~(c) — Distributions of Distributable Reserve Assets. As and to the extent that Distributable Reserve Assets, and any amounts released from the Disputed Claims Reserve pursuant to Section 4.4(c) or Section 4.4(d) to the extent (but only to the extent) the same was funded from the Plan Funding Payment, become available for distribution, as determined by the Distribution Trustee after consultation with the Oversight Committee, the Distribution Trustee shall establish a Distribution Record Date and a Trust Distribution Date for the distribution of such Cash, and the Distribution Trust shall distribute on the Trust Distribution Date an amount equal to the TruPS Returned Cash Percentage of such Cash to~~

~~the Hildene Master Funds or their designees in such proportion as they direct; and the remaining portion of such Cash shall be distributed to the holders of Reserve Distribution Interests, as set forth on the Interest Register on such Distribution Record Date, pro rata in accordance with their respective Reserve Distribution Percentage Interest.~~

4.2 ~~TruPS Returned Cash~~Special Provisions Applicable to Administrative Claims, Priority Claims, and Secured Claims. Anything to the contrary in this Agreement notwithstanding, the following provisions shall exclusively apply with respect to Administrative Claims, Priority Claims and Secured Claims that become Allowed following the Effective Date:

(a) If any Administrative Claim, Priority Claim or Secured Claim is or becomes Allowed following the Effective Date and prior to the DT Initial Distribution Date, the Distribution Trust shall distribute from the Trust Distributable Assets available on the DT Initial Distribution Date to the holders of each such Administrative Claim, Priority Claim or Secured Claim, Cash in the Allowed amount of such Claim, and the amount of Distributable Trust Assets available for distribution on the DT Initial Distribution Date to the holders of Interests in accordance with Section 4.1(b)(i) shall be correspondingly reduced.

(b) If and to the extent any Administrative Claims Priority Claims or Secured Claims are Disputed as of the Effective Date, or are determined to be disputed following the Effective Date and prior to the DT Initial Distribution Date, the Distribution Trust shall set aside in a separate subaccount in the Disputed Claims Reserve an amount in Cash equal to the Estimated Amount of all such Claims.

(c) If a Disputed Administrative Claim, Priority Claim or Secured Claim becomes Allowed following the DT Initial Distribution Date, as soon as practicable but in any event within 30 days thereafter, the Distribution Trust shall distribute to the holder of such Claim from the Disputed Claims Reserve an amount in Cash equal to the Allowed amount of such Claim.

(d) If a Disputed Administrative Claim, Priority Claim or Secured Claim with respect to which funds have been set aside in the Disputed Claims Reserve as provided in the preceding subsection (c) is disallowed at any time following DT Initial Distribution Date, the funds so set aside shall, in the discretion of the Distribution Trustee either (i) be released from the Disputed Claims Reserve and become Distributable Trust Assets, (ii) be released from the Disputed Claims Reserve and be added to the Trust Administrative Reserve; or (iii) continue to be held in the Disputed Claims Reserve, either in the Administrative Claim, Priority Claim or Secured Claim subaccount or otherwise, if the Distribution Trustee determines that such funds may be necessary to satisfy Disputed Claims that may become Allowed in the future.

~~(e) Notwithstanding anything else contained herein, the TruPS Returned Cash shall be returned by the Distribution Trust to the Hildene Master Funds, or their designees in such proportion as they direct, on the DT Initial Distribution Date. For the avoidance of doubt, in no event will the holders of Administrative Claims, Priority Claims or~~



[Secured Claims be entitled to participate in distributions made by the Distribution Trust to holders of Interests.](#)

4.3 Distribution Record Date; Distributions.

(a) The provisions of this Section 4.3 shall separately apply to all distributions made pursuant to Section 4.1.

(b) The Distribution Record Date for purposes of determining the Beneficiaries entitled to receive a distribution on any Trust Distribution Date shall be no less than fifteen (15) and no more than thirty (30) days prior to the corresponding Trust Distribution Date.

(c) ~~(i)~~—Except with respect to the DT Initial Distribution Date, the Distribution Trustee shall make a determination of the Distributable Trust Assets distributable on any Trust Distribution Date in advance of the corresponding Distribution Record Date, giving due regard for the Cash anticipated to be held by the Distribution Trust as of such Trust Distribution Date (not including Cash held in the Disputed Claims Reserve or the other reserves maintained by the Distribution Trust), and the sufficiency of the Cash held in or that may be required to be added to the Trust Administration Reserve.

~~(ii) —The Distribution Trustee shall make a determination of the Distributable Reserve Assets distributable on any Trust Distribution Date in advance of the corresponding Distribution Record Date, giving due regard to sufficiency of the Cash held in the Trust Administration Reserve or the Professional Fee Reserve, as applicable, or that may be available to be released from the Trust Administration Reserve or the Professional Fee Reserve as no longer necessary for the purposes thereof, as applicable.~~

(d) Following its determination of the Distributable Trust Assets ~~or Distributable Reserve Assets (as applicable)~~ to be distributed on any Trust Distribution Date pursuant to Section 4.3(c), but no later than five (5) Business Days in advance of the corresponding Distribution Record Date, unless otherwise determined by the Distribution Trustee for good reason shown, the Distribution Trust shall deliver a notice to each Beneficiary entitled to receive a distribution setting forth the Distribution Record Date, the Trust Distribution Date and the Distributable Trust ~~Assets or Distributable Reserve~~ Assets to be distributed, in the aggregate and on a ~~Recovery Distribution Percentage Interest or Reserve Distribution~~ Percentage Interest basis, as applicable. Such notice may be given as provided in Section 12.4 or by press release of general circulation.

(e) For purposes of making any distribution of Distributable Trust Assets, the term “of record” or any similar term means the Beneficiaries reflected on the Interest Register.

4.4 Distributions in Respect of Disputed Claims.

(a) The Distribution Trust shall resolve or cause to be resolved Disputed Claims, as provided in Section 7.2.

(b) If a Disputed Claim is Allowed, in whole or in part:

(i) if such Claim is an Administrative Claim, Priority Claim or Secured Claim, the provisions of Section 4.2 shall apply; and

(ii) if such Disputed Claim is a Claim in Classes 4, 5, 6 and 7 under the Plan, there shall be transferred to the holder thereof from the Disputed Claims Reserve, on the Interest Issuance Date next following the date that such Claim becomes Allowed (i) ~~a Recovery Distributionan Interest, with a corresponding Reserve Distribution Percentage Interest, and a Reserve Distribution Interest, with a corresponding Reserve Distribution Percentage Interest,~~ as shall be necessary, in accordance and consistent with the Plan, to satisfy such Allowed Claim in Classes ~~5, 4, 5, 6~~ and/or 7 under the Plan, ~~as applicable~~ and (ii) the Distributable Trust Assets ~~or Distributable Reserve Assets,~~ if any, distributed to the Disputed Claims Reserve in respect of such transferred Interests since the Effective Date.

(c) Subject to ~~Section 4.52.8~~(b), if a Disputed Claim is disallowed, in whole or in part, then:

(i) if such Claim is an Administrative Claim, Priority Claim or Secured Claim, the provisions of Section 4.2 shall apply; and

(ii) if such Disputed Claim is a Claim in Classes 4, 5, 6 and 7 under the Plan, on the Interest Issuance Date next following the date of the determination not to Allow such Claim, in whole or in part, ~~(i) the Interest Register shall be updated to decrease the respective Percentage Interests~~Interest of the Disputed Claims Reserve by taking into account the amount of such Disputed Claim that was not Allowed and to correspondingly increase the respective Percentage Interests of the Beneficiaries on a pro rata basis, in accordance with their then-existing Percentage Interests; and ~~(ii) the Distributable Trust Assets or Distributable Reserve Assets,~~ if any, distributed to the Disputed Claims Reserve in respect of such Disputed Claim since the Effective Date, shall, in each case, become unreserved and unrestricted, and which shall be either ~~(A)~~ (A) added to the Trust Administration Reserve ~~(and any Distributable Trust Assets so added shall become Supplemental Reserve Deposits) or (B)~~ (B) made available for distribution to the Beneficiaries in accordance with the distribution provisions set forth in Section 4.1, as determined by the Distribution Trustee; provided that the Distribution Trustee may, in its sole discretion, retain such Interests and such amount of Distributable Trust Assets ~~or Distributable Assets~~ in the Disputed Claims Reserve, if it determines that such Distributable Trust Assets may be necessary to satisfy Disputed Claims that may become Allowed in the future.

(d) At such time as all Disputed Claims have been resolved, ~~(i) the Interest Register shall be updated, if and as necessary, to adjust the Percentage Interests of any (i)~~

Cash deposited in the Disputed Claims Reserve ~~and the Beneficiaries by taking into account the amount of any Disputed Claims that were not Allowed. Any~~ in respect of any Disputed Claim pursuant to Section 4.2 shall be subject to the provisions set forth in Section 4.2(d) and (ii) remaining Distributable Trust Assets or Distributable Reserve Assets in the Disputed Claims Reserve not subject to subsection (i), shall become unreserved and unrestricted, and shall be either (x) added to the Trust Administration Reserve ~~(and any Distributable Trust Assets so added shall become Supplemental Reserve Deposits)~~, or (y) made available for distribution to the Beneficiaries pursuant to Section 4.1, as determined by the Distribution Trustee.

(e) From and after the date of any modification of the Interest Register pursuant to this Section 4.4, all distributions of Distributable Trust ~~Assets or Distributable Reserved~~ Assets shall be distributed pursuant to Section 4.1 after taking into account such modification.

(f) Notwithstanding anything to the contrary in this Trust Agreement, no distribution of Distributable Trust Assets shall be made to any holder of any Disputed Claims in Classes 4, 5, 6 and 7 under the Plan if, after taking into account such proposed distribution, the amount of Cash held in the Disputed Claims Reserve would be less than the amount necessary to cover payment in full of the Face Amount of all Disputed Claims (that are Disputed at the time of such proposed distribution) that are Administrative Claims (other than Professional Fee Claims), Priority Claims or Secured Claims.

#### 4.5 ~~¶~~ Determinations of and Adjustments to Estimated Amounts.

(a) ~~¶~~ As soon as practicable on or after the Effective Date, the Distribution Trustee, after consultation with the Oversight Committee, shall determine or cause to be determined the Estimated Amount for all Disputed Claims. The Distribution Trustee from time to time may make immaterial technical adjustments, or seek an adjusted determination from the Bankruptcy Court of, the Estimated Amounts of the Disputed Claims.

(b) If there shall be an increase in the Estimated Amounts of ~~the any~~ Disputed Claims in accordance with Section 4.5(a) following the Disputed Claims Estimation Date, including, for the avoidance of doubt, any Disputed Claims in Classes 4, 5, 6 and 7 under the Plan, the Percentage ~~Interests~~ Interest of the Disputed Claims Reserve and the Beneficiaries, as set forth on the Interest Register shall not be modified. In such a case, however, the Distribution Trustee may determine to retain in the Disputed Claims Reserve such amount of Distributable Trust Assets ~~or Distributable Reserve Assets~~, as would be necessary to satisfy the increase in Estimated Amounts, as provided in Section 4.4(c)(ii).

(c) If there shall be a decrease in the Estimated Amounts of the Disputed Claims in accordance with Section 4.5(a) following the Disputed Claims Estimation Date, the Distribution Trustee may, but shall not be required to, ~~(i) if such Disputed Claim was a Claim in Classes 4, 5, 6 and 7 under the Plan~~, cause the registrar of the Interest Register to update the Percentage ~~Interests~~ Interest of the Disputed Claims Reserve and the Beneficiaries to take into account such decrease in the Estimated Amounts; ~~and, Any (i) Cash deposited in the Disputed Claims Reserve in respect of such Disputed Claim pursuant to Section 7.3(a) or (ii)~~

the Distributable Trust Assets ~~or Distributable Reserve Assets~~ distributed to the Disputed Claims Reserve in respect of such Disputed Claims shall be either (x) added to the Trust Administration Reserve ~~(and any Distributable Trust Assets so added shall become Supplemental Reserve Deposits)~~, or (y) made available for distribution to the Beneficiaries in accordance with the distribution provisions set forth in Section 4.1; provided that the Distribution Trustee, may, in its sole discretion, retain such amount of Distributable Trust Assets in the Disputed Claims Reserve, if it determines that such Distributable Trust Assets may be necessary to satisfy Disputed Claims that may become Allowed in the future.}

#### 4.6 Withholding and Reporting Requirements.

(a) The Distribution Trust may withhold and pay to the appropriate Tax Authority all amounts required to be withheld pursuant to the Tax Code or any provision of any foreign, state or local tax law with respect to any payment or distribution to the Beneficiaries, provided, however, that the Distribution Trust shall cooperate with the Beneficiaries to prevent or minimize any withholding and shall not withhold any taxes with respect to any Beneficiary that delivers a properly completed and duly executed IRS Form W-8 or W-9 to the Distribution Trust. All such amounts withheld and paid to the appropriate Tax Authority shall be treated as amounts distributed to such holders for all purposes of the Plan and this Agreement. To the extent an amount has been placed in escrow pending resolution of the need to withhold, and the Distribution Trust determines that no withholding is required, such amounts shall be distributed to the Beneficiaries with respect to whom such amounts were previously withheld.

(b) The Distribution Trust shall be authorized to collect such tax information from the Beneficiaries (including social security numbers or other tax identification information) as it in its sole discretion deems necessary to effectuate the Plan and this Agreement. To that end, the Distribution Trust shall send to each Beneficiary a written communication requesting that the Beneficiary provide certain tax information and the specifics of their holdings to the extent the Distribution Trust or Disbursing Agent deems appropriate (including completing the appropriate Internal Revenue Service Form W-8 or Internal Revenue Service Form W-9, as applicable to each holder). The Distribution Trust may refuse to make a distribution to any Beneficiary that fails to furnish such information in a timely fashion, until such information is delivered; provided, however, that, upon the delivery of such information by a Beneficiary, the Distribution Trust shall make such distribution(s) to which the Beneficiary is entitled, without interest; provided further that, if the holder fails to comply with such a request within one (1) year, during which time the Distribution Trust has made reasonable efforts to follow up on such request, (i) any pending distribution(s) allocated to such Beneficiary shall be deemed an unclaimed distribution to be treated as the Distribution Trustee determines in its discretion; and (ii) the Distribution Trust shall not be required to allocate any future distributions to such holder unless and until the holder provides the requested tax information; and provided further that, if the Distribution Trust fails to withhold in respect of amounts received or distributable with respect to any such holder and the Distribution Trust is later held liable for the amount of such withholding, such holder shall reimburse the Distribution Trust for such liability including interest, penalties, fines and other additional amounts with respect thereto. Notwithstanding the foregoing, each Beneficiary that receives a distribution under the Plan shall have the sole and

exclusive responsibility for the payment of any income Taxes imposed by any governmental unit, ~~including income, withholding and other Taxes~~, on account of such distribution.

4.7 Disbursing Agent. The Distribution Trustee shall initially be the Disbursing Agent responsible for issuing Interests. The Distribution Trustee may engage one or more agents to make distributions. References in this Agreement to distributions by the Distribution Trust shall include distributions made by a Disbursing Agent.

4.8 Incurrence of Debt. If the Distribution Trustee, after consultation with the Oversight Committee, determines that there are, or there are likely to be, insufficient funds in the Trust Administration Reserve to satisfy the costs and expenses described in Section 7.4(a) and other obligations and liabilities incurred, assumed or reasonably anticipated by the Distribution Trust (or to which the Distribution Trust Property are otherwise subject), the Distribution Trust may borrow sufficient funds, on terms approved by the Distribution Trustee, after consultation with the Oversight Committee, to satisfy such cost and expenses or pay such costs, fees and expenses, as applicable. ~~The proceeds of any such borrowing deposited to the Trust Administrative Reserve shall constitute Supplemental Reserve Deposits.~~

## **ARTICLE V**

### **DUTIES AND POWERS OF THE DISTRIBUTION TRUSTEE**

5.1 Distribution Trustee. The initial Distribution Trustee shall be Clifford A. Zucker of CohnReznick LLP. In the event of the death, resignation or removal from office for Cause of the initial Distribution Trustee, a successor shall be appointed by the Oversight Committee, subject to Bankruptcy Court approval.

5.2 Powers of Distribution Trustee. Except as otherwise set forth in this Agreement, the Plan or the Confirmation Order, the Distribution Trustee is hereby authorized to perform those acts necessary to accomplish the purposes of the Distribution Trust, conduct the affairs of the Distribution Trust, perform the functions and take the actions provided for or permitted under this Agreement, the Plan or any agreement executed by the Distribution Trust, and have such other functions, authority and duties as customarily appertain to the trustee of a liquidating trust, including but not limited to:

- (a) have general responsibility for the administration of the Distribution Trust;
- (b) effect the distribution of Distributable Trust Assets to Distribution Trust Beneficiaries consistent with the terms of the Plan and this Agreement;
- (c) administer, dispute, object to, compromise, or otherwise resolve Disputed Claims that were not otherwise resolved prior to the Effective Date;
- (d) hire, supervise, compensate and terminate employees of the Distribution Trust, and retain, oversee, compensate and terminate any service professionals

and other Distribution Trust Agents engaged with respect to the administration of the Distribution Trust;

(e) carry out any filings required to be made by the Distribution Trust, and provide the statements to Distribution Trust Beneficiaries required to be furnished to them in accordance with Section 9.2(a);

(f) execute contracts, agreements, leases, undertakings and other documents in the name and on behalf of the Distribution Trust; and

(g) communicate with Distribution Trust Beneficiaries and other interested persons on behalf of the Distribution Trust;

(h) protect and enforce the rights to the Distribution Trust Property vested in the Distribution Trust by the Plan by any method deemed appropriate in his discretion, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(i) invest funds (in the manner set forth in this Agreement), make distributions and pay any other obligations owed by the Distribution Trust from the Distribution Trust Property as provided herein and in the Plan;

(j) subject to Section 5.3 and Section 6.5(a), prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle Causes of Action comprising Distribution Trust Property, including retaining and overseeing counsel and other professionals engaged for the purposes thereof;

(k) pay expenses and make disbursements necessary to administer the Distribution Trust and to preserve, liquidate, and enhance the Distribution Trust Property;

(l) purchase such insurance coverage (in the form of an errors and omissions policy, fiduciary policy or otherwise) in such amount as the Distribution Trustee, deems necessary and appropriate with respect to the liabilities and obligations of the Distribution Trustee which such amount shall be determined in his sole discretion, or the Oversight Committee which such amount shall be determined by the Distribution Trustee upon the consent of the Oversight Committee (such consent not to be unreasonably withheld) or with Bankruptcy Court approval;

(m) retain and pay, as applicable, the Distribution Trust Agents;

(n) incur any reasonable and necessary expenses in liquidating and converting the Distribution Trust Property to Cash, pursuing Causes of Action, or otherwise administering the Distribution Trust, as set forth in the Plan or this Agreement; and

(o) exercise such other powers as may be vested in or assumed by the Distribution Trust pursuant to the Plan or Bankruptcy Court order, or as may be necessary and proper to carry out the provisions of the Plan or this Agreement.

### 5.3 General Authority of the Distribution Trustee

Unless specifically stated otherwise herein, the Distribution Trustee 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 Plan. The Distribution Trustee shall obtain approval of the Oversight Committee before taking any Material Action. In the event the Distribution Trustee desires to take any Material Action and the Oversight Committee does not approve the taking of such Material Action, the Distribution Trustee may petition the Bankruptcy Court for approval of such Material Action, and upon receipt of an order of the Bankruptcy Court approving the taking of such Material Action, the Distribution Trustee may take such Material Action. The Oversight Committee shall have the right to respond to any filing with the Bankruptcy Court made by the Distribution Trustee pursuant to this Section 5.3.

### 5.4 Limitation of Distribution Trustee's Authority; No On-Going Business

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

(b) ~~(e)~~—Notwithstanding anything in this Agreement to the contrary, in determining whether to provide or decline their consent and in connection with any actions to be taken by the Oversight Committee hereunder, the Oversight Committee shall always act in furtherance of the purposes of the Distribution Trust and the treatment of the Distribution Trust as a liquidating trust within the meaning of Treasury Regulations ~~Section~~section 301.7701-4(d).

### 5.5 Other Activities

The Distribution Trustee shall be entitled to retain CohnReznick LLP as a Distribution Trust Agent in accordance with the terms of this Agreement to assist with the administration of the Distribution Trust. CohnReznick LLP and the Distribution Trustee may be retained in matters that are unrelated to the Distribution Trust by banks, bank groups or other institutional lenders or debt holders who are, or whose Affiliates are, Beneficiaries, or lenders or indenture trustees to Beneficiaries or their Affiliates, so long as such other retention does not involve holding or representing any interest adverse to the interests of the Distribution Trust, or otherwise preclude or impair the Distribution Trustee from performing his duties under this Agreement.

### 5.6 Investment and Safekeeping of Distribution Trust Property

All monies and other assets received by the Distribution Trustee shall, until distributed or paid over as herein provided, be segregated from all other monies and assets of the Distribution Trustee, and further, shall be held in trust for the benefit of the Distribution Trust Beneficiaries, but need not be segregated from other Distribution Trust Property, unless and to the extent required by the Plan. The Distribution Trustee shall promptly invest any such monies in the manner set forth in this Section 5.6, but shall otherwise be under no liability for interest or income on any monies received by the Distribution Trust hereunder and held for distribution or payment to the Beneficiaries, except as such interest or income shall actually be received. Investment of any monies held by the Distribution Trust shall be administered in accordance with the general duties and obligations hereunder. The right and power of the Distribution Trustee to invest the Distribution Trust Property, the proceeds thereof, or any income earned by the Distribution Trust, shall be limited to the right and power to (i) invest such Distribution Trust Property (pending distributions in accordance with the Plan or this Agreement) in (a) short-term direct obligations of, or obligations guaranteed by, the United States of America or (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 (ii) deposit such assets in demand deposits at any bank or trust company, which has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000 (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 Regulations [§section 301.7701-4\(d\)](#), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise.

#### 5.7 Compensation

(a) The Distribution Trustee shall be entitled to receive compensation for services rendered on behalf of the Distribution Trust and reimbursement of expenses as provided on Schedule A hereto, or such other compensation as may be agreed upon by the Distribution Trustee and the Oversight Committee or ordered by the Bankruptcy Court.

(b) All compensation and other amounts payable to the Distribution Trustee shall be paid out of the Trust Administration Reserve or from any proceeds of Distribution Trust Causes of Action.

#### 5.8 Termination

The duties, responsibilities and powers of the Distribution Trustee will terminate on the date the Distribution Trust is dissolved under applicable law in accordance with the Plan, or by an order of the Bankruptcy Court.

#### 5.9 No Bond

The Distribution Trustee shall serve without bond.

#### 5.10 Removal



The Distribution Trustee may be removed by order of the Bankruptcy Court upon application of the members of the Oversight Committee acting unanimously, but only for Cause; *provided however*, that the Distribution Trustee may not be removed until a successor Distribution Trustee has been named or is capable of being named immediately upon such removal. Any fees and unreimbursed expenses that have been properly incurred by the Distribution Trustee in accordance with the terms of this Agreement that are owing to the Distribution Trustee as of the date of the Distribution Trustee's removal shall be paid to the Distribution Trustee within 5 days of the removal date.

#### 5.11 Resignation

The Distribution Trustee may resign by giving not less than sixty (60) days' prior written notice thereof to the Bankruptcy Court and the Oversight Committee.

### **ARTICLE VI** **OVERSIGHT COMMITTEE**

6.1 General. The affairs of the Distribution Trust shall be monitored by the Oversight Committee, which except as expressly set forth herein shall have only consultation rights in the administration of the Distribution Trust.

#### 6.2 Oversight Committee Membership.

(a) The Oversight Committee shall consist of three (3) Oversight Committee Members, [one of whom shall be selected by the Hildene Master Funds and two of whom shall be selected by the Official Committee with the consent of the Debtors and the Hildene Master Funds, such consent not to be unreasonably withheld]. Each Oversight Committee Member shall be a ~~natural person at least 18 years of age~~ Person or an entity regularly engaged in the provision of fiduciary services, provided, that if such Oversight Committee Member is a natural person, such Oversight Committee Member shall be at least 18 years of age. The initial Oversight Committee Members are set forth on the signature page to this Agreement. By execution hereof, each Oversight Committee Member agrees to the terms set forth herein.

(b) Each Oversight Committee Member shall hold office until the earlier of (i) the termination of the Distribution Trust, (ii) the resignation, death or disability of such Oversight Committee Member or (iii) the removal of such Oversight Committee Member in accordance with this Agreement.

(c) Any Oversight Committee Member may resign upon thirty (30) days' prior written notice to the other members of the Oversight Committee.

(d) An Oversight Committee Member may be removed only for Cause by order of the Bankruptcy Court upon application of the Distribution Trustee or the other members of the Oversight Committee acting unanimously.

(e) In the event of a vacancy on the Oversight Committee, whether as a result of the resignation, death, disability or removal of an Oversight Committee Member,

~~[●]~~<sup>3</sup>the remaining Oversight Committee Members, acting by unanimous vote, shall select a replacement Oversight Committee Member. If, thirty days after the occurrence of such vacancy, the remaining Oversight Committee Members cannot agree on a replacement Oversight Committee Member, the remaining Oversight Committee Members and the Distribution Trustee, acting by majority vote, shall select a replacement Oversight Committee Member.

6.3 Compensation. The initial aggregate compensation of each member of the Oversight Committee shall be \$~~[ ]~~ ~~per annum~~ 10,000 per annum in addition to reimbursement of actual, reasonable and necessary expenses incurred by such Oversight Committee Members in the course of fulfilling his, her or its duties as an Oversight Committee Member, which such expenses shall not include the fees and expenses of any professional advisors engaged by such Oversight Committee Member. The Oversight Committee shall have the authority, by Unanimous Consent of the Oversight Committee Members and the Distribution Trustee, or Bankruptcy Court order, to alter the compensation of the Oversight Committee Members, ~~which may include their expenses, if any, of attendance at meetings of the Oversight Committee or any committee thereof.~~

6.4 Authority. Except as otherwise expressly provided herein, the Oversight Committee shall have no authority to act on behalf of the Distribution Trust.

6.5 Rights and Powers of the Oversight Committee. In addition to such other rights as are set forth in this Agreement, the Oversight Committee shall have the right to:

(a) ~~Consent~~ consent to the taking of any Material Action by the Distribution Trustee subject to the provision of Section 5.3;

(b) receive and review the reports of the Distribution Trustee and consult with same on any matters related to the Distribution Trust or the Distribution Trust Property;

(c) review and consult with the Distribution Trustee regarding:

~~(i) — the settlement of any objection to a Claim where the remaining claim amount after the settlement exceeds \$250,000.00;~~

(i) ~~(ii)~~ distributions to Distribution Trust Beneficiaries;

(ii) ~~(iii)~~ the prosecution, settlement, transfer, release or abandonment of any Causes of Action on behalf of the Distribution Trust.

(iii) ~~(iv)~~ the amendment of this Agreement as provided in Section 12.10 of this Agreement; ~~(v) — the invoices of Distribution Trust Agents;~~  
and

(iv) ~~(vi)~~ such other actions as are specified in this Agreement;

<sup>3</sup> ~~Internal Note — Replacement rights TBD.~~

(d) ~~participate in the selection of~~appoint a successor Distribution Trustee with Bankruptcy Court approval as provided in Section 5.10 this Agreement;

(e) ~~participate in the selection of a successor~~apply to the Bankruptcy Court for the removal of an Oversight Committee member as provided in Section 6.2(b) of this Agreement;

(f) have access to all reports, documents, memoranda and other work product of the Distribution Trustee;

(g) monitor the actions of the Distribution Trustee and receive monthly status reports from the Distribution Trustee as to the status of the litigation, settlement, administration and pursuit of the Causes of Action; and

(h) monitor and receive periodic reports and updates from the Distribution Trustee regarding the status of the administration of the Distribution Trust Property and the assets, liabilities and transfers of the Distribution Trust.

#### 6.6 Fiduciary Duty and Standard of Care.

(a) Each Oversight Committee Member's rights and powers hereunder are exercisable solely in a fiduciary capacity on behalf of the Distribution Trust and the Distribution Trust Beneficiaries consistent with, and in furtherance of, the purpose of the Distribution Trust and not otherwise, and in accordance with applicable law, including the Trust Act. Each Oversight Committee Member in the exercise of his or her rights and powers hereunder shall act in accordance with principles of good faith and fair dealing.

(b) No Oversight Committee Member shall have the authority to bind the Distribution Trust.

### **ARTICLE VII** **OPERATION OF THE DISTRIBUTION TRUST**

#### 7.1 Prohibited Activities.

(a) The Delaware Trustee, the Distribution Trustee, the Oversight Committee, and the Distribution Trust Agents shall hold the Distribution Trust out as a trust in the process of liquidation, whose activities are limited to the liquidation of the Distribution Trust Property on behalf, and for the benefit, of the Distribution Trust Beneficiaries and the other purposes set forth in this Agreement. Without limiting the foregoing, the Distribution Trust shall not hold itself out as an investment company, and no part of the Distribution Trust Property shall be caused by the Distribution Trustee to be used or disposed of in furtherance of any trade or business.

(b) The Distribution Trust shall not engage in any investments or activities inconsistent with the treatment of the Distribution Trust as a liquidating trust within the meaning of Treasury Regulations section 301.7701-4(d) or under applicable Internal Revenue

Service guidelines, rulings or other controlling authorities, including Revenue Procedure 94-45, 1994-2 C.B. 684.

## 7.2 Resolution of Disputed Claims.

(a) The Distribution Trustee is authorized to administer, dispute, object to compromise or otherwise resolve, on behalf of the Distribution Trust, all Disputed Claims without further Bankruptcy Court order and may delegate this authority to one or more Distribution Trust Agents. If the Distribution Trustee or a Distribution Trust Agent, as applicable, and the holder of a Disputed Claim are unable to reach a settlement on a Disputed Claim, or if the Distribution Trustee or a Distribution Trust Agent, as applicable, determines to disallow a Disputed Claim, the Distribution Trustee shall submit an objection to the Disputed Claim to the Bankruptcy Court for resolution. Service of this objection shall be made in accordance with any of the following manners: (i) in accordance with Bankruptcy Rule 3007, (ii) to the extent counsel for a holder of the Disputed Claim is unknown, by first-class mail, postage prepaid, on the signatory on the proof of claim filed such holder or other representative identified on the proof of claim or any attachment thereto (or at the last known address of such holder if no proof of claim is Filed or if the Distribution Trustee have been notified in writing of a change of address), or (iii) by first-class mail, postage prepaid, on any counsel that has appeared on behalf of the holder and has not withdrawn such appearance. If it is determined that the Bankruptcy Court does not have jurisdiction to resolve any Disputed Claim, then such Disputed Claim shall be submitted to the United States District Court for the District of Delaware for resolution. The Distribution Trustee shall file with the Bankruptcy Court a bi-annual notice of Disputed Claims resolved and/or settled during the prior ~~quarters~~ six month period as soon as practicable following ~~the end~~ January 1 and July 1 of each ~~fiscal quarter~~ calendar year, starting with the first ~~complete fiscal quarter~~ such date after the Effective Date, provided, that the first such notice shall include all Disputed Claims resolved and/or settled from the Effective Date until the date of such notice. Any objections to Disputed Claims shall be served and filed on or before the later of (i) one year after the Effective Date, or (ii) such other date as may be fixed by the Bankruptcy Court, after notice and a hearing, with notice only to those parties entitled to notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002.

(b) Disputed Claims that become Allowed, in whole or in part, shall be satisfied exclusively out of the Disputed Claims Reserve, in the manner provided in Article III and Article IV, and in the order in which such Disputed Claims are Allowed. After all Distributable Trust Assets have been distributed from the Disputed Claims Reserve, no further distributions shall be made in respect of Disputed Claims.

## 7.3 Disputed Claims Reserve.

(a) On or as soon as practicable following the Effective Date, the Distribution Trust shall establish the Disputed Claims Reserve. ~~Upon the establishment of and fund~~ the Disputed Claims Reserve with an amount of Cash sufficient to cover the distributions and payments described in Section 6.3(f)(i) of the Plan. On or as soon as practicable following the Disputed Claims Estimation Date, the Interest Register shall be modified to reflect the Percentage Interests of the Beneficiaries and the Disputed Claims

Reserve in accordance with Section 3.4(a)-(b). All Interests of and other assets in the Disputed Claims Reserve shall be the property of the Distribution Trust and not of the holder of any Claim or any other person.

(b) All Cash held in the Disputed Claims Reserve shall be maintained with a United States FDIC insured financial institution, and may be maintained in an interest-bearing account, as the Distribution Trustee may from time to time determine. The Cash in the Disputed Claims Reserve shall be held separately and shall not be commingled with any other Cash constituting Distribution Trust Property.

#### 7.4 Trust Administration Reserve.

(a) On the Effective Date, there shall be established a Trust Administration Reserve not to exceed the trust Administration Reserve Cap for the purpose of maintaining Cash allocated and retained by the Distribution Trust from time to time in an amount necessary to cover the costs of administration of the Distribution Trust, including to (i) fund the reasonable fees and expenses of the Distribution Trustee, Distribution Trustee and the Distribution Trust Agents that the Distribution Trustee may engage to assist him, her or it in the discharge of the Distribution Trustee's duties under the Plan and this Agreement, including, without limitation, fees and expenses related to prosecute and resolve Causes of Action and objections to Claims; (ii) fund premium payments for an errors and omissions insurance policy for the benefit of the Distribution Trust, the Trustees, the Oversight Committee and the Distribution Trust Agents, (iii) meet contingent liabilities and ~~to~~ maintain the value of the Distribution Trust Assets during liquidation, (iv) pay other reasonably incurred or anticipated expenses (including, without limitation, any Taxes imposed on or payable by the Distribution Trust or in respect of the Distribution Trust Assets, including with respect to such assets as are allocable to Disputed Claims), ~~and (v) pay any fees due to the U.S. Trustee in accordance with the Plan and (vi)~~ pay any fees due to the U.S. Trustee in accordance with the Plan and (vi) satisfy other liabilities incurred or anticipated by the Distribution Trust in accordance with the Plan or this Agreement. The Trust Administration Reserve shall initially be funded from Cash included in the Distribution Trust Assets, in such amount as determined by the Debtors, the Official Committee, and the Purchaser, provided that the initial funding of (i) the Trust Administration Reserve pursuant to this Section 7.4(b) shall be not less than the sum of (y) \$1.31.4 million, plus (z) any reasonably foreseeable fees payable by the Distribution Trust pursuant to 28 U.S.C. § 1930. Thereafter, additional amounts may be added to the Trust Administration Reserve, in each case in such amounts and at such times as determined by the Distribution Trustee after consultation with the Oversight Committee, but in no event until after the distributions to be made or reserved on the DT Initial Distribution Date are effected, including, if the Distribution Trustee, after consultation with the Oversight Committee determines in accordance with Section 7.5(c) that all or a portion of the funds in the Professional Fee Reserve are not required for the purposes described in Section 7.5(a) and/or Section 7.5(b), by transfer of funds from the Professional Fee Reserve, the proceeds of any indebtedness incurred by the Distribution Trust in accordance with Section 4.8 or recoveries on Distribution Trust Causes of Action; ~~provided that any addition to the Trust Administrative Reserve that, directly or indirectly, derives from any indebtedness incurred by the Distribution Trust or recoveries on Distribution Trust Causes of Action shall constitute Supplemental Reserve Deposits.~~

(c) If the Distribution Trustee determines that any funds in the Trust Administration Reserve are not required for purposes set forth in Section 7.4(a), such funds shall be distributed to Beneficiaries in accordance with Section 4.1(c)

(d) Except as determined by the Distribution Trustee, the Trust Administration Reserve shall not be required to be held separately and may be commingled with unrestricted funds of the Distribution Trust; provided that funds in the Trust Administration Reserve shall be separately accounted for.

7.5 Professional Fee Reserve; Indenture ~~Trust~~ Trustee Fee Reserve.

(a) Pursuant to the Plan, on the Effective Date, there shall be established a Professional Fee Reserve for the purpose of maintaining Cash allocated and retained by the Distribution Trust to pay in full all amounts then owing or that may later become owing to any Professionals for professional fees and expenses incurred through the Effective Date and approved by the Bankruptcy Court.

(b) The Professional Fee Reserve shall be funded as provided in the Plan. ~~[Thereafter, additional amounts may~~ Thereafter, to the extent the final fee applications of Professionals seek reimbursement for professional fees and expenses of an aggregate amount in excess of the amount in the Professional Fee Reserve on the date such final applications are due, the amount of such excess shall be added to the Professional Fee Reserve, ~~in each case in such amounts and at such times as determined by~~ by transfer of funds constituting Distributable Trust Assets as of the date hereof as soon as practicable after such date.

~~(c) If the Distribution Trustee, including by transfer of funds from the Trust Administration Reserve, the proceeds of any indebtedness incurred by the Distribution Trust in accordance with Section 4.8 or recoveries on Distribution Trust Causes of Action; provided that any addition to the Professional Fee Reserve that, directly or indirectly, derives from any indebtedness incurred by the Distribution Trust or recoveries on Distribution Trust Causes of Action shall constitute Supplemental Reserve Deposits.]~~ (c) If after consultation with the Oversight Committee, determines that the amount of funds in the Professional Fee Reserve exceeds the amount that is necessary to pay in full all Professional Fee Claims that have not been Allowed and paid in full or finally disallowed such that such excess funds in the Professional Fee Reserve are not required for the purposes described in Section 7.5(a) and/or Section 7.5(b), such excess funds shall be applied as follows:

(i) *First*, to the extent the Distribution Trustee determines that any additional amounts are required therefor, such funds shall be deposited to the Trust Administration Reserve; and

(ii) *Second*, any such remaining funds shall be distributed to the Beneficiaries in accordance with Section 4.1(c).

(d) Except as determined by the Distribution Trustee, funds in the Professional Fee Reserve shall not be required to be held separately and may be commingled

with unrestricted funds of the Distribution Trust; provided that funds in the Professional Fee Reserve shall be separately accounted for.

(e) On the Effective Date, there shall be established ~~an~~ Post-Effective Date Indenture Trustee Fee Reserve. ~~[Details to track final Plan]~~ for the purpose of paying disputed Indenture Trustee Fees, in accordance with Section 4.1(d)(ii) of the Plan. Upon resolution of all disputes related to, and the payment of, Indenture Trustee Fees, any remaining funds in the Post-Effective Date Indenture Trustee Fee Reserve shall be distributed to the holders of Interests originally issued to the applicable holders of TruPS Claims Holders (as set forth on the Interest Register) that funded the Post-Effective Date Indenture Trustee Fee Reserve in accordance with Section 4.1(d)(iv)(B) of the Plan.

#### 7.6 Reporting and Access to Information.

(a) Each of the Reorganized Debtors and the Distribution Trustee shall mutually cooperate with the other in accordance with Section 6.3(e) of the Plan.

(b) The Distribution Trustee shall cause to be prepared financial and other reports as, in the determination of the Distribution Trustee, are necessary or desirable for administering the Distribution Trust, and as are otherwise in furtherance of the intents and purposes of this Agreement. Without limitation, the Distribution Trustee shall also cause to be timely prepared, filed and distributed such additional statements, reports and submissions (x) as may be necessary to cause the Distribution Trust to be in compliance with applicable law, including to the extent otherwise necessary to allow the Interests to be transferrable and tradable in accordance with applicable law, or (y) as may be otherwise required from time to time by the Bankruptcy Court.

(c) The Distribution Trustee shall provide to the Beneficiaries (i) a bi-annual statement in narrative form briefly describing the activities of the Distribution Trust during the ~~two~~ preceding ~~quarters~~ six months, in such detail and covering such matters as the Distribution Trustee determines is appropriate in its discretion and (ii) notice, in such detail as the Distribution Trustee deems appropriate, of the occurrence of any of the events described in clause (ii) of the definition of Material Action, or the entry of a judgment with respect to any of the matters referred to therein, in each case reasonably promptly after the occurrence of such event. The Distribution Trustee may also provide such other information regarding the affairs of the Distribution Trust as the Oversight Committee reasonably requests, or the Distribution Trustee determines, from time to time to provide in its discretion.

(d) Section 3819(a) of the Trust Act notwithstanding, Distribution Trust Beneficiaries shall have the right to obtain from the Distribution Trust only (i) the materials required to be provided by the Distribution Trustee in Section 7.6(c) and (ii) a copy of the governing instrument and the Certificate of Trust and all amendments thereto, together with copies of any written powers attorney pursuant to which the governing instrument and any certificate and any amendments thereto have been executed.

7.7 Distribution Trust Agents. The Distribution Trust may employ such Distribution Trust Agents, including counsel, advisors, administrators and other professionals, as deemed reasonably necessary or desirable by the Distribution Trustee to carry out the intents and purposes of the Distribution Trust, without further order from the Bankruptcy Court. Distribution Trust Agents shall be appointed, and their appointment may be terminated, by the Distribution Trustee. Distribution Trust Agents shall be compensated on such basis as approved by the Distribution Trustee and shall be paid without further motion, application, notice or other order of the Bankruptcy Court. The fees and expenses of Distribution Trust Agents shall be satisfied out of the Trust Administration Reserve or the proceeds of Distribution Trust Property.

## **ARTICLE VIII** **DELAWARE TRUSTEE**<sup>42</sup>

8.1 Appointment. The Delaware Trustee shall act solely for the purpose of complying with the requirement of section 3807 of the Trust Act, and its powers and obligations hereunder shall become effective upon its execution of this Agreement.

### 8.2 Powers.

(a) Notwithstanding any provision hereof to the contrary, the duties and responsibilities of the Delaware Trustee shall be limited solely to (i) accepting legal process served on the Distribution Trust in the State of Delaware and (ii) the execution of any certificates required to be filed with the office of the Delaware Secretary of State that the Delaware Trustee is required to execute under section 3811 of the Trust Act (including without limitation the Certificate of Trust). Except as provided in the foregoing sentence, the Delaware Trustee shall have no management responsibilities or owe any fiduciary duties to the Distribution Trust, the Distribution Trustee, the Oversight Committee, the Distribution Trust Beneficiaries or any other distributee of the Distribution Trust hereunder. The filing of the Certificate of Trust with the Secretary of State of the State of Delaware as provided under the Trust Act is hereby ratified.

(b) By its execution hereof, the Delaware Trustee accepts the trusteeship of the Distribution Trust on the terms set forth herein. Except as otherwise expressly set forth in Section 8.2(a), the Delaware Trustee shall not have any duty or liability with respect to the administration of the Distribution Trust, the investment of the Distribution Trust Property or the distribution of the Distribution Trust Property to the Beneficiaries, and no such duties shall be implied. The Delaware Trustee shall not be liable for the acts or omissions of the Distribution Trustee or the Oversight Committee, nor shall the Delaware Trustee be liable for supervising or monitoring the performance of the duties and obligations of the Distribution Trustee or the Oversight Committee under this Agreement. The Delaware Trustee shall not be obligated to give any bond or other security for the performance of any of its duties hereunder. The Delaware Trustee shall not be personally liable under any circumstances, except for its own gross negligence, bad faith or willful misconduct in the performance of its express duties under this Agreement. Without limiting the foregoing:

<sup>42</sup> NTD: Subject to Delaware Trustee counsel.



(i) the Delaware Trustee shall not be personally liable for any error of judgment made in good faith, except to the extent such error of judgment constitutes willful misconduct, bad faith or gross negligence in the performance of its express duties under this Agreement;

(ii) the Delaware Trustee shall not have any duty or obligation to manage or deal with the Distribution Trust Property, or to otherwise take or refrain from taking any action under this Agreement except as expressly provided in Section 8.2(a), and no implied trustee duties or obligations shall be deemed to be imposed on the Delaware Trustee;

(iii) no provision of this Agreement shall require the Delaware Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of its rights or powers hereunder if the Delaware Trustee has reasonable grounds to believe that the payment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to it;

(iv) the Delaware Trustee shall not be personally liable for the validity or sufficiency of this Agreement, the value or sufficiency of the Distribution Trust Property or for the due execution hereof by the other parties hereto;

(v) the Delaware Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect;

(vi) the Delaware Trustee may request the Distribution Trustee to provide a certificate with regard to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, and such certificate shall constitute full protection to the Delaware Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon;

(vii) in the exercise of its duties hereunder, the Delaware Trustee (I) may act directly or through agents or attorneys pursuant to agreements entered into with any of them and shall not be liable for the acts or omissions of any agents or attorneys selected by it in good faith, and (II) may consult with counsel selected by it in good faith and employed by it, and it shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel;

(viii) the Delaware Trustee acts solely as Delaware Trustee hereunder and not in its individual capacity, and all persons having any claim against the Delaware Trustee by reason of the transactions contemplated by this Agreement shall look only to the Distribution Trust Property for payment or satisfaction thereof;

(ix) the Delaware Trustee shall not be personally liable for any representation, warranty, covenant, agreement, or indebtedness of the Distribution Trust;

(x) the Delaware Trustee shall not incur liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper (or copy thereof) reasonably believed by it to be genuine and reasonably believed by it to be signed by the proper party or parties. The Delaware Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any entity party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, the Delaware Trustee may for all purposes hereof conclusively rely on a certificate, signed by an officer of the Distribution Trust, as to such fact or matter, and such certificate shall constitute full protection to the Delaware Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon; and

(xi) the Delaware Trustee shall have no duty to inquire as to the authenticity of, or to require substantiating evidence of any kind in respect of, any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper provided pursuant to subsection (v), (vi) or (x) of this Section 8.2(b).

(xii) the Delaware Trustee shall not have any duty or obligation to file Tax Returns or otherwise report Taxes for or on behalf of the Distribution Trust or Distribution Trust Beneficiaries;

(xiii) the Delaware Trustee shall not have any duty or obligation to act or respond to any notice, direction or other request or instruction unless given or made in writing and otherwise in accordance with this Agreement;

(xiv) the Delaware Trustee shall not have any duty or obligation to perform, and shall not incur any liability for the failure of any other person to perform, any duty or obligation incurred by or imposed upon any other party to this Agreement;

(xv) this Agreement is executed and delivered by [●] not individually or personally but solely as trustee of the Distribution Trust, in the exercise of the powers and authority expressly conferred and vested in it under this Agreement.

8.3 Compensation. The Delaware Trustee shall be entitled to receive compensation out of the Trust Administration Reserve for the services that the Delaware Trustee performs in accordance with this Agreement in accordance with such fee schedules as shall be agreed from time to time by the Delaware Trustee and the

Distribution Trustee, and if so required by the Plan Documents or applicable law, as approved by the Bankruptcy Court. The Delaware Trustee may also consult with counsel (who may be counsel for the Distribution Trustee) with respect to those matters that relate to the Delaware Trustee's role as the Delaware Trustee of the Distribution Trust, and the reasonable legal fees incurred in connection with such consultation and any other reasonable out-of-pocket expenses of the Delaware Trustee shall be reimbursed out of the Trust Administration Reserve.

8.4 Duration and Replacement. The Delaware Trustee shall serve for the duration of the Distribution Trust or until the earlier of (i) the effective date of the Delaware Trustee's resignation, or (ii) the effective date of the removal of the Delaware Trustee. The Delaware Trustee may resign at any time by giving thirty (30) days' written notice to the Distribution Trustee and the Oversight Committee; provided, however, that such resignation shall not be effective until such time as a successor Delaware Trustee has accepted appointment. The Delaware Trustee may be removed with the Distribution Trustee after consultation with the Oversight Committee, by providing thirty (30) days' written notice to the Delaware Trustee; provided, however, that such removal shall not be effective until such time as a successor Delaware Trustee has accepted appointment. Upon the resignation or removal of the Delaware Trustee, the Distribution Trustee after consultation with the Oversight Committee shall appoint a successor Delaware Trustee. If no successor Delaware Trustee shall have been appointed and shall have accepted such appointment within forty-five (45) days after the giving of such notice of resignation or removal, the Delaware Trustee may petition the Bankruptcy Court for the appointment of a successor Delaware Trustee. Any successor Delaware Trustee appointed pursuant to this Section shall be eligible to act in such capacity in accordance with this Agreement and, following compliance with this Section, shall become fully vested with the rights, powers, duties and obligations of its predecessor under this Agreement, with like effect as if originally named as Delaware Trustee. Any such successor Delaware Trustee shall notify the Delaware Trustee of its appointment by providing written notice to the Delaware Trustee and upon receipt of such notice, the Delaware Trustee shall be discharged of its duties herein. Any such successor Delaware Trustee shall also file an amendment to the Certificate of Trust as required by the Trust Act.

## **ARTICLE IX** **TAX MATTERS**<sup>53</sup>

### 9.1 Tax Treatment.

(a) For all United States federal income tax purposes, all parties (including, without limitation, the Debtors, the Reorganized Debtors, the Distribution Trustee, the Oversight Committee and the Beneficiaries) shall treat the transfer of the Initial Assets to the Distribution Trust as:

(i) a transfer of the Distribution Trust Property (subject to any obligations relating to those assets) directly to Beneficiaries, other than Distribution Trust Property that ~~are~~<sup>is</sup> allocable to Disputed Claims (x) in

<sup>53</sup> NTD Subject to Tax review.

Classes 4, 5, 6 and 7 under the Plan (which shall be treated as a transfer of such assets to the Disputed Claims Reserve based on the Percentage Interest of the Disputed Claims Reserve); and (y) that are an Administrative Claim (other than a Professional Fee Claim), Priority Claim or Secured Claim, (which shall be treated as a transfer of such assets to the Disputed Claims Reserve based on the amount of Cash deposited into the Disputed Claims Reserve pursuant to Section 7.3(a) in respect of such Disputed Claims), in each case followed by

(ii) the transfer by such Beneficiaries to the Distribution Trust of such Distribution Trust Property in exchange for the Interests.

(b) Accordingly, those holders of Allowed Claims in Classes 4, 5, 6 and 7 under the Plan receiving Interests shall be treated for United States federal income tax purposes as the grantors and owners of their respective shares of the Distribution Trust Property other than Distribution Trust Property that are allocable to Disputed Claims (which shall be treated as a transfer of such assets to the Disputed Claims Reserve based on the Percentage ~~Interests~~Interest of the Disputed Claims Reserve). The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

## 9.2 Tax Reporting.

(a) The Distribution Trust shall file Tax Returns treating the Distribution Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with the Plan. The Distribution Trust also shall annually send (or otherwise make available) to each holder of a beneficial interest in the Distribution Trust 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 United States federal income tax returns or to forward the appropriate information to their respective beneficial holders with instructions to report such items on their United States federal income tax returns. The Distribution Trust also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Distribution Trust that are required by any Governmental Unit or Tax Authority.

(b) Allocations of Distribution Trust taxable income among the Beneficiaries will 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 restrictions on distributions described in the Plan) if, immediately prior to such deemed distribution, the Distribution Trust had distributed all of its other assets (valued at their tax book value) to the Beneficiaries, ~~in each case up to the tax book value of the assets treated as contributed by such holders,~~ adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Distribution Trust. Similarly, taxable loss of the Distribution 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 Distribution Trust Property (valued at their tax book value). The tax book value of the Distribution Trust Property for this purpose will equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Tax Code, and applicable tax regulations, and other applicable administrative and judicial authorities and pronouncements.

(c) ~~The~~Unless otherwise determined by the Distribution Trustee, the Distribution Trust shall (A) treat the Disputed Claims Reserve, and the Distribution Trust Property allocable thereto, as a “disputed ownership fund” governed by Treasury Regulation section 1.468B-9 by timely making an election, (B) file such Tax Returns and pay such Taxes as may be required consistent with such treatment, and (C) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes.

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

### 9.3 Tax Payment.

(a) The Distribution Trust shall be responsible for the payment of any Taxes imposed on the Distribution Trust or the Distribution Trust Property, out of (i) the Trust Administration Reserve, or (ii) after the distributions to be made or reserved on the DT Initial Distribution Date are effected, then out of the Trust Administration Reserve and the proceeds of Distribution Trust Property.

(b) The Distribution Trust shall utilize Cash in the Disputed Claims Reserve for the payment of any Taxes imposed in respect thereof; provided that in the event, and to the extent, that the Cash in the Disputed Claims Reserve is insufficient to pay all or any portion of such Taxes, or if as a result of the payment of such Taxes, the Cash in the Disputed Claims Reserve will be insufficient to cover payment in full of the Face Amount all Disputed Claims (that are Disputed at the time of such proposed distribution) that are Administrative Claims (other than Professional Fee Claims), Priority Claims or Secured Claims, such Taxes shall be paid first by the Distribution Trust from the Trust ~~Administrative~~Administration Reserve and shall be reimbursed to the Trust ~~Administrative~~Administration Reserve by the Disputed Claims ~~Trust~~Reserve to the extent that Cash subsequently becomes available therefor in the Disputed Claims Reserve, and then from any proceeds of Distribution Trust Property.

## ARTICLE X LIMITATION OF LIABILITY AND INDEMNIFICATION

### 10.1 Limitation of Liability.

(a) None of the Delaware Trustee, the Distribution Trustee, Oversight Committee ~~members~~Members, Distribution Trust Agents, or any Nominating Party or their respective principals, advisors or professionals, shall be liable to the Distribution Trust, any Beneficiary or any holder of a Disputed Claim for any damages arising out of the creation, operation or termination of the Distribution Trust, including actions taken or omitted in fulfillment of his, her or its duties with respect to the Distribution Trust, except as may be determined by Final Order to have arisen out of such party’s gross negligence, bad faith or willful misconduct; provided that in no event will any such party be liable for punitive, exemplary, consequential or special damages under any circumstances. Furthermore, none of

the Delaware Trustee, the Distribution Trustee or any Oversight Committee ~~member~~Member shall be liable to the Distribution Trust, any Beneficiary or any holder of a Disputed Claim for any action taken in good faith reliance upon the advice of professionals employed by the Distribution Trust.

(b) None of the Delaware Trustee, the Distribution Trustee, any Oversight Committee ~~member~~Member or the Distribution Trust Agents, when acting in such capacities, shall be subject to any personal liability whatsoever, whether in tort, contract or otherwise, to any person, other than the Distribution Trust or the Distribution Trust Beneficiaries, in connection with the affairs of the Distribution Trust to the fullest extent provided under section 3803 of the Trust Act, and all persons claiming against any of the Delaware Trustee, the Distribution Trustee, the Oversight Committee members or Distribution Trust Agent, or otherwise asserting claims of any nature in connection with affairs of the Distribution Trust, shall look solely to the Distribution Trust Property for satisfaction of any such claims.

(c) Nothing contained in the Plan Documents shall be deemed to be an assumption by the Delaware Trustee, the Distribution Trustee, any Oversight Committee Member, or any Distribution Trust Agent of any of the liabilities, obligations or duties of the Debtors or shall be deemed to be or contain a covenant or agreement by any of them to assume or accept any such liability, obligation or duty.

(d) The exercise by a Nominating Party of its rights hereunder shall not, in any way, cause such Nominating Party to become, or result in such Nominating Party becoming, a fiduciary to the Debtors, their estates, creditors or equity holders, to the Distribution Trust, the Distribution Trustee, the Oversight Committee or to any other person or constituency. Neither a Nominating Party nor any of its subsidiaries, affiliates, successors and assigns and its present or former employees, agents, officers, directors or principals shall have or incur any liability, nor shall any of them be subject to any claim or cause of action, of any kind in connection with, arising out of, or related to, the exercise by a Nominating Party of its rights hereunder, or any act taken or omitted to be taken in connection therewith.

## 10.2 Indemnification.

(a) The Delaware Trustee, the Distribution Trustee, the Oversight Committee Members, any Disbursing Agent and their respective affiliates, and the officers, directors, partners, managers, members, and employees of each of them, as the case may be (all persons so entitled to indemnification, collectively, the “Covered Parties”), shall be indemnified and held harmless, to the fullest extent permitted by law by the Distribution Trust from and against any and all losses, claims, taxes, damages, reasonable expenses and liabilities (including liabilities under state or federal securities laws) of any kind and nature whatsoever, to the extent that such expenses arise out of or are imposed upon or asserted against such indemnified persons with respect to the creation, operation or termination of the Distribution Trust or the execution, delivery or performance of this Agreement or the transactions contemplated hereby and shall not be liable for actions taken or omitted in their capacity, as Delaware Trustee, Distribution Trustee, Disbursing Agent or Oversight Committee Member, on behalf of, or in fulfillment of their duties with respect to, the Distribution Trust, except those acts or omissions that are determined by Final Order to have

arisen out of such party's own gross negligence, bad faith or willful misconduct, and each shall be entitled to be indemnified, held harmless, and reimbursed for fees and expenses including, without limitation, reasonable attorney's fees, which such persons and entities may incur or may become subject to or in connection with any action, suit, proceeding or investigation that is brought or threatened against such persons or entities regarding the implementation or administration of the Plan Documents or the discharge of their respective duties hereunder or thereunder or in respect thereof, except for any actions or inactions that are determined by Final Order to have arisen out of their own gross negligence, bad faith, or willful misconduct.

(b) The Covered Parties shall be entitled to obtain advances from the Distribution Trust to cover their reasonable expenses of defending themselves in any action threatened or brought against them as a result of the acts or omissions, actual or alleged, of any such party in its capacity as such; provided, however, that the Covered Parties receiving such advances shall repay the amounts so advanced to the Distribution Trust immediately upon the entry of a Final Order finding that such parties were not entitled to any indemnity under the provisions of this Section 10.2.

(c) Any claim of the Covered Parties to be indemnified, held harmless, or reimbursed shall be satisfied solely from the Distribution Trust Property, bonds (if any) or any applicable insurance that the Distribution Trust has purchased, as provided in Section 2.11. The rights of the Covered Parties under this Section 10.2 shall survive the resignation or removal of any Oversight Committee Member, Disbursing Agent, the Distribution Trustee or the Delaware Trustee and the termination of this Agreement.

(d) The Distribution Trust may also determine to provide indemnification to other Distribution Trust Agents and their respective officers, directors, partners, managers, members and employees, on such terms as the Distribution Trustee may determine, after consultation with the Oversight Committee.

## **ARTICLE XI**

### **DURATION OF DISTRIBUTION TRUST**

#### 11.1 Duration.

(a) The Distribution Trust shall dissolve upon the date that is the earliest to occur of: (i) the distribution of all Distribution Trust Property pursuant to the Plan Documents, (ii) the determination of the Distribution Trustee that the administration of the Distribution Trust Property is not likely to yield sufficient additional proceeds to justify further pursuit, or (iii) all the distributions required to be made under this Agreement have been completed; provided, however, that in no event shall the Distribution Trust dissolve later than ~~{five (5)}~~ years from the Effective Date, unless (x) the Bankruptcy Court or other court with jurisdiction over the Distribution Trust, within the ninety (90) days prior to the ~~{fifth (5th)}~~ anniversary of the Effective Date (or within ninety (90) days prior to the end of an extension period), determines that a fixed-period extension, not to exceed ~~{three (3)}~~ years, together with any prior extensions, is necessary to facilitate or complete the recovery on and liquidation of the Distribution Trust Property or (y) the Distribution Trust obtains a favorable

private letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the trust as a Distribution Trust for United States federal income tax purposes. Upon dissolution, the Distribution Trustee shall wind up and liquidate the Distribution Trust in accordance with section 3808 of the Trust Act and the Delaware Trustee shall file a Certificate of Cancellation in accordance with the Trust Act and thereupon this Agreement shall terminate.

(b) If at any time the Distribution Trustee determines, in reliance upon its professionals and after consultation with the Oversight Committee, that the expense of administering the Distribution Trust, including the making of a final distribution to the Beneficiaries, is likely to exceed the value of the assets remaining in the Distribution Trust, the Distribution Trustee may apply to the Bankruptcy Court for authority to (i) reserve any amounts necessary to dissolve the Distribution Trust, (ii) donate any balance to an organization selected by the Distribution Trustee which is described in section 501(c)(3) of the Tax Code and exempt from United States federal income tax under section 501(a) of the Tax Code, as provided in Section 2.8(b) hereof, and (iii) dissolve the Distribution Trust.

11.2 Post-Termination. After the dissolution of the Distribution Trust and solely for the purpose of liquidating and winding up the affairs of the Distribution Trust, the Oversight Committee Members and the Distribution Trustee shall continue to act as such until their duties have been fully performed. Upon distribution of all the Distribution Trust Property, the Distribution Trustee shall designate a Distribution Trust Agent to retain all books and records pertaining to the Debtors or the Distribution Trust that have been delivered to or created by the Distribution Trust, subject to the provisions of Section 11.3.

11.3 Destruction of Books and Records. ~~If so determined by the Distribution Trustee after consultation with the Oversight Committee, all~~All books and records pertaining to the Distribution Trust that have been delivered to or created by the Distribution Trust may be destroyed at any time following (x) the date that is six (6) years after the final distribution of Distribution Trust Property (unless such records and documents are necessary to fulfill the Distribution Trust's remaining obligations) subject to the terms of any joint prosecution and common interests agreement(s) to which the Distribution Trust may be a party, or (y) such earlier date as may be approved by ~~order of the Bankruptcy Court on application of the Distribution Trust~~Trustee in consultation with the Oversight Committee; provided, however, that the Distribution Trust shall, upon at least ten (10) Business Days' advance written notice to the Reorganized Debtors, obtain an order of the Bankruptcy Court or the written consent of the Reorganized Debtors before disposing of any books and records that were transferred to the Distribution Trust by the Debtors or Reorganized Debtors, or are reasonably likely to pertain to pending litigation in which the Debtors or Reorganized Debtors or their current or former officers or directors are a party.

11.4 Discharge. Except as otherwise specifically provided herein, upon the final distribution of Distribution Trust Property and the filing by the Delaware Trustee of a Certificate of Cancellation with the Secretary of State of the State of Delaware, the Trustees and the Oversight Committee Members shall be deemed discharged and have



no further duties or obligations hereunder, the Interests shall be cancelled and the Distribution Trust will be deemed to have been dissolved. In the event that there is Distribution Trust Property at the termination of the Distribution Trust, the Distribution Trustee after consultation with the Oversight Committee shall cause to be donated such Distribution Trust Property to a charitable organization of the Distribution Trustee's choice described in section 501(c)(3) of the Tax Code and exempt from United States federal income tax under section 501(a) of the Tax Code, as provided in Section 2.8(b).

**ARTICLE XII**  
**MISCELLANEOUS PROVISIONS**

12.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (without reference to conflicts of law).

12.2 Jurisdiction. Subject to the proviso below, the parties agree that the Bankruptcy Court shall have exclusive jurisdiction over the Distribution Trust, including, without limitation, the administration and activities of the Distribution Trust; provided, however, that notwithstanding the foregoing or anything to the contrary set forth in the Plan, the Distribution Trust shall have power and authority to bring (or cause to be brought) any action in any court of competent jurisdiction to prosecute any Distribution Trust Causes of Action.

12.3 Severability. In the event that any provision of this Agreement or the application thereof to any person or circumstances shall be determined by Final Order to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to persons or circumstances or in jurisdictions other than those as to or in which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.4 Notices. Any notice or other communication required or permitted to be made under this Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally or by facsimile, sent by nationally recognized overnight delivery service, or mailed by first-class mail:

(i) if to the Delaware Trustee, to:

[ ]

[ ]

[ ]

Attention: [ ]

(iii) if to the Distribution Trust, to:

[ ]

[ ]

[ ]  
[ ]; and

- (iii) if to any Beneficiary or holder of a Disputed Claim, to the last known address of such Beneficiary or holder according to the records of the Distribution Trust. In addition, any Beneficiary or holder of a Disputed Claim may designate at least one counsel or other agent at any given time to receive copies of notices or other communications provided pursuant to this Section 12.4(c) by notifying the Distribution Trustee in writing of such designation.

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

12.6 Plan Documents. Nothing contained herein shall modify the terms of any other Plan Document, which are intended to be supplemented by the terms of this Agreement. However, to the extent that the terms of any of the other Plan Documents are inconsistent with the terms set forth in this Agreement with respect to the Distribution Trust, then the terms of each Plan Document shall have controlling effect in the following order of priority (i) the Confirmation Order, (ii) the Plan and (iii) this Agreement.

12.7 Confidentiality. The Trustees, the Oversight Committee Members and the Distribution Trust Agents, and their respective officers, directors, partners, managers, members and employees (the "Confidentiality Parties"), shall hold strictly confidential and not use for personal gain any material, non-public information of which they have become aware in their capacity as a Confidentiality Party of or pertaining to the Debtors, the Reorganized Debtors, the Distribution Trust, the Distribution Trust Beneficiaries or the Distribution Trust Property; provided, however, that such information may be disclosed if—

- (i) it is now or in the future becomes generally available to the public other than as a result of a disclosure by any of the Confidentiality Parties;

- (ii) such disclosure is (x) required of any of the Confidentiality Parties pursuant to legal process, including subpoena or other court order or other applicable laws or regulations or (y) would have been required to produce in response to appropriate discovery measures; or

- (iii) the Distribution Trustee determines that such disclosure is in the interests of the Distribution Trust or the Beneficiaries, provided, that in respect of material, non-public information pertaining to the Reorganized Debtors the Confidentiality Parties may disclose such information only (v) to a person in accordance with the terms of any confidentiality or similar agreement between such person and the Reorganized Debtors; (w) to a person pursuant to an agreement of any other person with the Reorganized Debtors allowing such disclosure to such person; (x) in

connection with pursuing the Distribution Trust Causes of Action or otherwise pursuing, preserving or protecting the Distribution Trust Causes of Action, or the resolution of any Disputed Claim, to any party that has been advised of the confidential nature of such information and has agreed to comply with the provisions of this Section 12.7; (y) in a filing made in any legal proceeding commenced in connection with the matters set forth in clause (x) of this subsection, provided that the Confidentiality Parties shall (A) provide reasonable notice to the Reorganized Debtors prior to such filing and (B) upon request of the Reorganized Debtors take reasonable measures to file or otherwise maintain such material, non-public information under seal; or (z) as otherwise agreed by the Reorganized Debtors.

12.8 Entire Agreement. This Agreement, including the Exhibits attached hereto, the Plan and the Confirmation Order, contain the entire agreement between the parties and supersede all prior and contemporaneous agreements or understandings between the parties with respect to the subject matter hereof. For the avoidance of doubt, to the extent holders of Allowed Claims that would otherwise be entitled to receive Interests have established or in the future establish trusts or other entities or vehicles to facilitate the implementation of the Plan with respect to their Interests or for other purposes, the agreements governing such trusts or other entities or vehicles shall not limit or impose requirements in any way on the Distribution Trust, the Oversight Committee Members, the Trustees, Distribution Trust Agents or any other employee, agent or representative of the Distribution Trust, and to the extent there is any conflict between the provisions of such agreements and this Agreement, this Agreement shall have controlling effect.

12.9 Named Party. In pursuing any Distribution Trust Causes of Action, or in disposing of any Distribution Trust Property, or otherwise administering the Distribution Trust or any Distribution Trust Property, including, without limitation, the execution of documents, such as bills of sale, releases, and agreements, the Distribution Trustee may authorize the pursuit of such matters and/or execution of any such documents in the name of "Old Scottish Holdings Distribution Trust" or in such other names or such representative capacities as necessary or appropriate.

#### 12.10 Amendment.

(a) Unless otherwise specified in this Section 12.10, this Agreement may be amended with the unanimous written consent of the Trustees and the Oversight Committee; provided, however, that Bankruptcy Court approval shall be required for any changes or amendments to this Agreement that are inconsistent with the terms of the Plan or the Confirmation Order.

(b) Any amendment, waiver, or modification of this Agreement (or any provision herein) that materially and adversely affects the rights of any Reorganized Debtor shall require the reasonable consent of such Reorganized Debtor.

(c) Notwithstanding anything to the contrary in this Section 12.10, this Agreement may be amended by order of the Bankruptcy Court upon motion of (i) the

Distribution Trustee after consultation with the Oversight Committee, or (ii) the members of the Oversight Committee, in each case, subject to the right of the Oversight Committee or the Distribution Trustee, respectively, to respond to such motion.

(d) Notwithstanding this Section 12.10, no amendments to this Agreement shall be inconsistent with the purpose and intention of the Distribution Trust to liquidate in an orderly manner the Distribution Trust Property (which will maximize the value of such assets) in accordance with Treasury Regulations section 301.7701-4(d). In the event that the Distribution Trust shall fail or cease to qualify as a liquidating trust in accordance with Treasury Regulations section 301.7701-4(d), this Agreement may be amended with Majority Consent of the Oversight Committee or Bankruptcy Court approval, to the extent necessary to take such action as the Distribution Trustee deem appropriate to have the Distribution Trust classified as a partnership for federal tax purposes under Treasury Regulations section 301.7701-3 (but not a publicly traded partnership under section 7704 of the Tax Code), including, if necessary, creating or converting it into a Delaware limited liability partnership or limited liability company that is so classified. Notice of any amendment, waiver or modification to this Agreement shall be delivered to each Beneficiary in accordance with Section 12.4, unless such amendment, waiver or modification is immaterial.

12.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed original, but such counterparts shall together constitute one and the same instrument. A facsimile or portable document file (PDF) signature of any party shall be considered to have the same binding legal effect as an original signature.

**[REMAINDER OF PAGE BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement or caused this Agreement to be duly executed by their respective officers, representatives or agents, effective as of the date first above written.

DEBTORS

By: \_\_\_\_\_  
Name:  
Title:

DELAWARE TRUSTEE

By: \_\_\_\_\_  
Name:  
Title:

DISTIRBUTION TRUSTEE

\_\_\_\_\_  
Clifford Zucker

[Hildene Master Funds as Oversight Committee Member](#)

[By: \\_\\_\\_\\_\\_](#)  
[Name: \\_\\_\\_\\_\\_](#)  
[Title: \\_\\_\\_\\_\\_](#)

[Wilmington Trust Company](#), as Oversight Committee Member

[By: \\_\\_\\_\\_\\_](#)  
[Name: \\_\\_\\_\\_\\_](#)  
[Title: \\_\\_\\_\\_\\_](#)

~~\_\_\_\_\_~~ [EJF Capital LLC](#), as Oversight Committee Member

[By: \\_\\_\\_\\_\\_](#)  
[Name: \\_\\_\\_\\_\\_](#)  
[Title: \\_\\_\\_\\_\\_](#)

\_\_\_\_\_, as Oversight Committee  
Member

**EXHIBIT A**  
**FORM OF**  
**CERTIFICATE OF TRUST**  
**OF**  
**OLD SCOTTISH HOLDINGS DISTRIBUTION TRUST**

This Certificate of Trust of Old Scottish Holdings Distribution Trust is being duly executed and filed on behalf of such trust by the undersigned, as trustee, to form a statutory trust under the Delaware Statutory Trust Act (12 Del. C. § 3801 *et seq.*) (the “Trust Act”).

1. Name. The name of the Delaware statutory trust formed by this Certificate of Trust is OLD SCOTTISH HOLDINGS DISTRIBUTION TRUST.

2. Delaware Trustee. The name and business address of the trustee of the Trust with a principal place of business in the State of Delaware are [●].

3. Effective Date. This Certificate of Trust shall be effective upon its filing with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Trust in accordance with section 3811(a)(1) of the Trust Act.

Clifford Zucker, not in its individual capacity but solely  
as trustee

\_\_\_\_\_  
Name:

## SCHEDULE A

### Distribution Trustee Compensation

{The Distribution Trustee shall be compensated on an hourly rate basis for the services of Clifford Zucker and any other Cohn Reznick LLP professionals performing services on behalf of the Distribution Trust at a ~~flat hourly rate of \$500, plus~~ blended rate of \$500/hour for himself and any other CohnReznick LLP professionals assisting him, in addition to reimbursement of ~~actual and reasonable out of pocket expenses~~ reasonable and necessary expenses incurred in connection with Mr. Zucker serving as the Distribution Trustee. Unless otherwise agreed by the Oversight Committee or ordered by the Bankruptcy Court, the Distribution Trustee shall not be entitled to a success fee or contingency fee. Should a successor Distribution Trustee be appointed, compensation shall be as approved by the Oversight Committee or ordered by the Bankruptcy Court.}



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